

Terms and Conditions

1. Definitions

In these terms and conditions unless the context requires otherwise:

Additional Services means any additional goods and services that are supplied by the Supplier to the Customer under these Terms, whether upon the Customer's request or otherwise pursuant to clause 5.2, and includes without limitation any of the goods and services set out in clause 3.10.

Additional Costs means the applicable costs or charges as set out in the Supplier's current rate schedule in respect of any Additional Services that the Supplier provides to the Customer under these Terms.

Contract means a contract for the supply of Goods to the Customer, which arises in accordance with clause 2.2 of these Terms.

Customer means the customer whose details appear in the Quotation and/or the Invoice.

Deliverables means the final version of the completed video, production, advertisement, campaign or other creative product, forming part of the Goods and Services to be supplied to the Customer by the Supplier and which will be delivered in such format specified in the Contract.

Goods and Services means any goods or services supplied to the Customer by the Supplier under these Terms, including any goods or services described in a Quotation or Invoice provided by the Supplier, any goods or services described in any order provided by the Customer and any Additional Services.

Invoice means a tax invoice describing the Goods and Services supplied by the Supplier to the Customer and the amount due and payable to the Supplier by the Customer.

Price means the price payable in respect of the Goods and Services, as specified in the Invoice.

Quotation means the proposal in relation to the supply of Goods and Services provided to the Customer by the Supplier outlining the scope of work and an estimate of costs to supply the Goods and Services.

Supplier means Motion By Design Pty Ltd ABN 79629964763

Terms means these terms and conditions of supply.

2. Contract

1. The Customer may from time to time place an order or make an offer to purchase Goods and Services from the Supplier, either verbally or in writing, including by accepting the Supplier's Quotation (**Offer**), and such Offer will constitute agreement to these Terms by the Customer. The Customer warrants to the Supplier that it is authorised to place an order with or make an Offer to purchase Goods and Services from the Supplier and that it has the authority to bind the Customer.
2. The Supplier may accept an Offer to purchase by the Customer by acceptance in writing, by performance (including by delivery), or by issue of an Invoice in respect of the Offer (whichever occurs first). Such acceptance will complete a contract between the Customer and the Supplier on these Terms, (**Contract**).
3. The Supplier's Invoice will contain a description of the Goods and Services to be supplied under the Contract, the Price payable in respect of the Goods and Services, including any Additional Costs in respect of any Additional Services, and the Supplier's terms for payment terms under the Contract.

4. These Terms apply to all Contracts made for the supply of Goods and Services from the Supplier to the Customer.
5. The Supplier will not supply Goods and Services to the Customer on any terms or conditions other than these Terms. If the Customer issues to the Supplier any purchase order in relation to the supply of the Goods and Services, these Terms shall prevail over any and all terms and conditions of the Customer's purchase order.

3. Price and payment terms

1. All Prices are exclusive of delivery and goods and services tax (**GST**) or similar tax payable except where a price is expressed to be inclusive of GST. If GST is imposed on any supply under these Terms, the Customer must pay to the Supplier the additional amount equal to the GST in accordance with the relevant valid tax Invoice.
2. The Customer agrees to pay to the Supplier the Price for all Goods and Services supplied under a Contract in the manner and in accordance with the payment terms set out in the relevant Invoice. The Supplier may in its sole discretion determine the payment terms applicable to the Customer.
3. Unless the Invoice stipulates a different time for payment, the Customer agrees to pay the Price and any other moneys payable to the Supplier as follows:
 - a deposit of 50% of the Price, prior to any work commencing;
 - the remaining 50% of the Price (consisting the balance) no later than 14 days after the final version of the Deliverables is received.
4. If the Customer fails to pay the Supplier in full the amounts stated in any Invoice on or before the due date for payment, then without prejudice to any other rights the Supplier may have against the Customer, the Supplier will be entitled to charge an additional 10% of the Price of the Invoice. A further 10% of the Price of the Invoice will accrue every 14 days thereafter.
5. The Customer agrees to pay to the Supplier interest on any amounts outstanding under clauses 2 and 3.3, together with any Additional Costs due to the Supplier, such interest to be charged by the Supplier in its sole discretion and calculated on a daily basis from the due date for payment until payment is received in full in cleared funds.
6. The Customer agrees that it must pay to the Supplier on demand any expenses, fees and disbursements incurred by the Supplier in recovering any amount owing to it by the Customer, including any reasonable debt collection agency fees and legal expenses and any costs incurred by the Supplier in respect of any order cancelled by the Customer.
7. Any payments received by the Supplier will be applied first to any enforcement costs, then to any interest and then toward any amount that is outstanding.
8. The Customer may not set off against the Price any amounts due from the Supplier.
9. Unless specified otherwise in the Quotation, if any Additional Services are supplied to the Customer by the Supplier, the Customer acknowledges and agrees that:
 - the Additional Services are supplied in addition to the scope of works outlined in the Quotation;
 - the Customer will pay the applicable Additional Costs for the Additional Services in accordance with the Supplier's rate current at the time such Additional Services are supplied; and
 - the Additional Costs for the Additional Services will be set out in the relevant Invoice and payable by the Customer in accordance with these Terms.
10. The Customer acknowledges and agrees that Additional Services which incur Additional Costs may include without limitation any of the following:
 - Additional Revisions in excess of the allocated time within the quote – charged at the rate of \$170 per each additional hour; and
 - Supply of Working Files – price to be negotiated;

4. Variations

1. If the Customer wishes to vary the nature, scope or quantity of the Goods and Services outlined in the Contract, then such variation must be agreed between the parties by way of a variation to the Contract or by entering into a new contract for the additional goods and/or services requested. The Supplier may in its discretion determine whether to accept any request for variation to the Contract. The Customer must provide to the Supplier sufficient detail of the requested variation to enable the Supplier to provide a revised Quotation. The Customer agrees to pay to the Supplier the revised Price for the varied Goods and Services

and/or any Additional Costs associated with the variation. No variations will be effective unless agreed in writing and signed by both parties.

2. The Supplier is not liable to the Customer for any delay, default, loss or damage, or the inability to perform any obligation under these Terms as the result of any event beyond the control of the Supplier, including without limitation, strike, trade dispute, any act of God, storm, earthquake, fire, flood, accident, tempest, death, war declared or undeclared, blockade, governmental or quasi-governmental restraint, unavailability of any materials, talent or other goods, services required for the supply of the Goods and Services, loss or destruction of the Goods and Services, delays in shipping or transport, (each a **Force Majeure Event**). If as a result of a Force Majeure Event, the Supplier is unable to perform its obligations or supply the Goods and Services at the time required by the Customer or at all, the Supplier shall be relieved from performing its obligations or supplying the Goods and Services to the extent and for the period that it is affected by the Force Majeure Event.

5. **Safety and site preparation**

1. It is the Customer's responsibility to provide a safe site with unimpeded access to the Supplier to perform its obligations in providing the Goods and Services.
2. The Customer must ensure that it has made all preparations to the site that are required by the Supplier in order for the Supplier to commence production or shooting. If any additional work or re-shooting is required due to the Customer's failure to adequately prepare the site, the Customer agrees that the additional work or re-shooting will be considered Additional Services and the Customer will be liable to pay the applicable Additional Costs charged by the Supplier for those Additional Services.

6. **Liability and Indemnity**

1. Nothing in these Terms excludes, restricts or modifies any right or remedy, or any guarantees, warranties, representations, statements, undertakings, terms and conditions which cannot be lawfully excluded, modified or limited by agreement, including any consumer guarantees set out in the Australian Consumer Law (**ACL**) in Schedule 2 of the *Competition and Consumer Act 2010* (Cth).
2. Subject to the ACL and except as expressly provided to the contrary in the Terms, any guarantee, warranty, representation, statement, undertaking, term or condition, that would have been implied by statute, the general law or otherwise, is expressly excluded to the maximum extent permitted by law.
3. To the extent that any legislation including the ACL, may imply warranties or impose obligations on the Supplier which cannot be excluded, the Supplier's liability will be limited to one or more of the following as determined by the Supplier in its sole discretion:
 - in the case of goods, the repair, the replacement or the supply of substitute goods (or the payment of the cost of doing so); or
 - in the case of services, the supplying of the services again or payment of the cost of having the services supplied again.
4. Subject to clause 3, the Supplier shall not be liable to the Customer or any other person for any indirect, incidental, special, punitive or consequential loss or damage, including (without limitation) loss of profits or anticipated profits, loss of revenue, economic loss, loss of business opportunity or damage to good will suffered under or in relation to these Terms, whether in contract, tort (including negligence), in equity, under statute, under an indemnity, whether or not such loss or damage was foreseeable and even if advised of the possibility of loss or damage.
5. The Customer hereby releases and indemnifies the Supplier and its officers, employees, consultants and agents from and against liability in respect of all matters referred to in clause 4 and with respect to all costs and expenses and interest incurred by reason of the Customer's breach of these Terms.

7. **Insurance**

1. The Customer and the Supplier undertake that they each have the necessary insurances as required by law or otherwise reasonably necessary to meet claims and liabilities arising under any statute or at common law, including worker's compensation and public liability insurance in respect of personal injury death or property damage and (where applicable), and professional indemnity insurance in place as at the date of the Contract and for the

duration of any production, shooting and period during which the Goods and Services are carried out.

8. Title, Risk and Intellectual Property

1. Risk of loss or damage to the completed Deliverables will pass to the Customer on delivery to the Customer. Notwithstanding delivery, title to the completed Deliverables will remain with the Supplier until payment in full by the Customer of all moneys due to the Supplier under the Contract, including the Price and all Additional Costs .
2. Subject to clauses 8.1 and 3, and upon payment in full all moneys due to the Supplier under the Contract, the Supplier hereby assigns to the Customer all right, title and interest, other than in respect of any third party rights, in the copyright subsisting in the final version of the Deliverables.
3. Despite clause 2, the Customer acknowledges that there is no assignment or transfer by the Supplier of any intellectual property rights in any pre-existing material or any work-in-progress material (including but not limited to the Supplier's designs, raw material, raw footage, scripts, documentation, templates, data and processes) which is incorporated into or which has been created or used in the course of and for the purposes of developing the Deliverables.
4. From delivery of the Deliverables to the Customer, the Supplier grants the Customer a non-exclusive, perpetual, royalty-free licence to use the intellectual property rights referred to in clause 3 as necessary for the Customer's continued use of the Deliverables.
5. Except to the extent specified in the Quotation and/or the Invoice, the Customer shall be responsible for:
 - obtaining all necessary permission, authorisations, licences and consents in relation to the use and incorporation of third party materials into the Deliverables; and
 - paying all royalties or licence fees associated with the use of a third party's intellectual property rights in connection with the Deliverables.
6. The Customer must notify the Supplier immediately if the Customer's use of the Goods and Services or the Deliverables results in an actual or alleged infringement of a third party's intellectual property rights.
7. The Customer is solely responsible for any infringement of the intellectual property rights of any third party resulting from the Customer's use of the Goods and Services, including where the Customer has altered the Deliverables, and the Customer hereby agrees to indemnify and hold harmless the Supplier for any costs, expenses, damages or liability incurred by the Supplier arising from any such infringement by the Customer's use of the Goods and Services or Deliverables.

9. Termination

1. Subject to clauses 9.2, 9.3 and clause 10, a party (the non-defaulting party) may terminate the Contract by giving the other party notice in writing of such termination if the other party is in breach of a material term of the Contract (the defaulting party) and such breach is not remedied within 14 days' of a notice of the breach given by the non-defaulting party.
2. In addition to any other termination right under these Terms or at law, the Supplier may without any liability to the Customer, suspend the supply of Goods and Services and/or terminate the Contract in whole or in part with immediate effect by giving written notice to the Customer if:
 - the Customer fails to pay any amounts owing under the Contract by the due date for payment; or
 - if the Customer is a company, it is unable to pay its debts as and when they fall due or is otherwise insolvent, or if it is a natural person, it is declared bankrupt.
3. In the event that either party terminates the Contract in accordance with clause 1 or the Supplier terminates the Contract in accordance with clause 9.2, the Customer must pay to the Supplier all amounts due and payable under the Contract, including the portion of the Price plus all Additional Costs incurred by the Supplier, for all Goods and Services provided and/or performed by the Supplier as at the date of termination, without prejudice to the Supplier's other rights and remedies under this Contract and at law.

10. Cancellation

1. The Supplier may cancel any Contract or cancel performance and/or delivery of Goods and Services, including Deliverables, at any time before the Goods and Services are delivered by

giving 7 days' written notice to the Customer. The Supplier is not liable for any loss or damage whatever arising from such cancellation other than providing a refund to the Customer of the portion of the Price paid under the Contract that relates to any Goods and Services that were not performed or provided by the Supplier.

2. If the Customer cancels any part of the Goods and Services under the Contract in circumstances where the Supplier is not in material breach of the Contract, the Customer acknowledges and agrees that:
 - it will not be entitled to a refund in respect of any payments made to the Supplier under these Terms; and
 - it will pay to the Supplier the Price plus any and all Additional Costs incurred by the Supplier for all Goods and Services provided and/or performed by the Supplier up to the date of cancellation by the Customer; and
 - if it cancels less than 48 hours before a film shoot is scheduled, it will pay to the Supplier 100% of the Supplier's costs and all third party costs in respect of the cancelled shoot, including without limitation any late cancellation fees relating to talent, location, operators, equipment and travel.
3. If, as a result of the Customer's delay, the Supplier is unable to perform its obligations under the Contract or to deliver the Goods and Services within 6 months' from the date of the Contract, the Supplier may in its sole discretion determine that the Customer has cancelled the Contract in which case clause 2 will apply.

11. Dispute Resolution

1. If a dispute arises out of or relating to a Contract under these Terms (a **Dispute**), either party may notify the other party of the nature and particulars of the Dispute, and the parties must, within 7 days of the delivery of such notice, commence discussions to attempt to resolve the Dispute in good faith, prior to instigating any formal proceedings, including mediation or litigation.
2. If the Dispute is not resolved within 28 days of the parties commencing discussions, either party may refer the Dispute for mediation administered by the Australian Disputes Centre (**ADC**) which shall be conducted in accordance with, and subject to, the ADC Guidelines for Commercial Mediation operating at the time the matter is referred to ADC (**ADC Guidelines**).
3. Each party must bear its own costs in relation to the Dispute. The parties agree that they must bear the costs of any mediation under this clause 11 equally, including the costs of hiring the mediation venue and the mediator's fees.
4. If the parties have complied with this clause 11 and the Dispute is not resolved following mediation in accordance with the ADC Guidelines the Dispute, either party may commence court proceedings in respect of the Dispute.

12. Jurisdiction

1. These Terms and all Contracts made between the Supplier and the Customer are governed by the laws of the state of South Australia. The parties agree to submit to the non-exclusive jurisdiction of the courts of the State of South Australia and any courts which may hear appeals from those courts in respect of any proceedings in connection with these Terms and any Contract made under them.

13. Entire Agreement

1. These Terms are to be read in conjunction with the Quotation and the Invoice and these three documents constitute the entire agreement between the parties in respect of the supply of Goods and Services to the Customer. In the event of any inconsistency or a conflict between these Terms and the Quotation or the Invoice or both, the provisions of the Quotation will take precedence to the extent of the inconsistency or conflict, followed by the provisions of the Invoice and by these Terms in that order, and the provisions of the later documents must be read and construed accordingly.
2. The Customer acknowledges and agrees that the Supplier may revise and amend these Terms from time to time (**Revised Terms**). The Supplier will give the Customer notice of any Revised Terms by providing a copy to the person named in the Quotation and/or Invoice. The Customer will be deemed to have accepted the Revised Terms if it does not advise the Supplier in writing that it does not agree to the Revised Terms within 14 days of receiving them.

14. Severability

1. If any provision or part of a provision of these Terms is held to be invalid or unenforceable in any jurisdiction, that provision or part of the provision must be read down for the purposes of ensuring it is not invalid or unenforceable. If the provision or part of a provision cannot be interpreted in that way, it will be severed from these Terms to the extent of the invalidity or unenforceability, without affecting the remaining provisions of these Terms which will continue in force, or without affecting the validity or enforceability of that provision or part of a provision in any other jurisdiction.