



AVCorp Audio Visual  
Sales & Hire

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## STANDARD TERMS AND CONDITIONS

These Standard Terms and Conditions shall represent with the Quotation, Payment Terms and Special Conditions the offer by AVCorp to you (“**the Customer**”) to hire the Equipment to you and if you accept this offer these Standard Terms and Conditions with the Quotation, Payment Terms and Special Conditions shall be and constitute the whole of the Contract with you.

### 1. DEFINITIONS AND EXPLANATIONS

In these Terms and Conditions the following words and phrases shall have the following meanings:

“**Cancellation Fees**” means the terms under which the Customer will be liable to pay in the case of Contract cancellation.

“**COD**” means cash on delivery to Site.

“**Contract**” means the Contract between AVCORP and the Customer for the hiring of the Equipment the Terms of which are fully set out in these Standard Terms and Conditions and in the Quotation and any special conditions.

“**Customer**” means the company or person described in the Quotation as “the Customer” and shall include where applicable its lawful successors and assignees.

“**Day**” means a period of 24 hours.

“**Day-Rate**” means the rate per Day for the hire of the Equipment as set out in the Quotation.

“**Equipment**” means collectively all the Equipment described in the Quotation and separately each item of the Equipment designated in the Quotation.

“**Facilities**” means all electrical services, scaffolding, lighting, awnings and other requirements necessary in order to facilitate the proper and safe installation and use of the Equipment on the Site.

“**GST**” means Goods and Services Tax as defined in *A New Tax Act (Goods and Services)* 1999.

“**Hire Fee**” means the fee exclusive of GST which the Customer has by this Contract agreed to pay to AVCORP for the hire of the Equipment.

“**Manufacturer**” means in respect to each item of Equipment the identified Manufacturer of that item of Equipment.

“**Offer**” means this offer to hire the Equipment to the Customer.

“**Period of Hire**” means the period for which the Equipment is hired by the Customer as specified in the Quotation.

“**Quotation**” means the Quotation on the reverse side of these Terms and Conditions.

“**Services**” means the provision of labour by AVCORP (its servants agents or lawful contractors) including but not limited to labour for production planning, event management, Equipment delivery, set-up, operation, pack-down and collection.

“**Site**” means the designated place venue location at which the Equipment is to be delivered to and at which place the Customer is to take possession of the Equipment.

“**Special Conditions**” means the special conditions (if any as set out in the Quotation).

“**AVCORP**” means AVCorp Audio Visual Sales & Hire, its staff or agents.

**“Terms”** means these Standard Terms and Conditions together with any Special Conditions set and the Quotation itself..

**“You”** means the Customer.

**“Your”** means the Customer.

A reference to a Statute Rule or Regulation is a reference to that Statute Rule or Regulation as amended, re-enacted or modified from time to time.

The headings in these Standard Terms and Conditions are for convenience only and shall not affect their construction.

A reference to any party shall include their lawful successors and assigns.

## **2. BINDING CONTRACT**

- 2.1. This Contract is entered into and will be binding on AVCORP and the Customer upon the Customer's written or oral acceptance of the Quotation. All Equipment is available as listed at the time of the Customer's enquiry.
- 2.2. Until the Customer has accepted this Offer, AVCORP may at any time withdraw the Offer by Email, facsimile or letter to the Customer to that effect.
- 2.3. Your Written Confirmation (Purchase Order with Deposit) will secure this Equipment, subject to availability at time of confirmation. It shall be conclusive evidence of Your acceptance of the Quotation and the Terms of this Contract if:-
  - (i) You accept the Quotation in writing;
  - (ii) AVCORP confirms by Email or facsimile your oral acceptance of the Quotation;
  - (iii) AVCORP deliver the Equipment or any items thereof to the Site designated by You and You accept or take possession of the said Equipment at that Site.
- 2.4 The date of this Contract is the date of acceptance by the Customer of this Offer.

## **3. TERMS OF PAYMENT**

- 3.1. The Customer shall pay to AVCORP the Hire Fee in accordance with this clause and AVCORP shall provide a Tax Invoice to the Customer for the Hire Fee. Payment shall be made within seven (7) days from date of invoice (with approved credit application), unless payment in advance is required by AVCORP or unless payment is required by AVCORP on a COD basis. If payment in advance or COD is required, it shall be noted in the Quotation. The Customer shall also pay, when paying the Hire Fee to AVCORP the GST as stated in the Tax Invoice.
- 3.2. Without limiting the circumstances in which AVCORP may require the Hire Fee payment to be paid in advance, AVCORP will require advance payment of the Hire Fee, where before any hiring takes place, any of the Equipment to be hired has to be manufactured, adapted or any process has to be applied to existing items of the Equipment to match with the Customer's specific requirements.

## **4. THE EQUIPMENT**

- 4.1. The Equipment shall at all times remain the property of AVCORP. The Customer has no legal or equitable interest in the Equipment or any part thereof. The Customer's possession of the Equipment (upon delivery) shall be as a bailee for the Period of Hire and thereafter at will.
- 4.2. Upon delivery, the Equipment shall be inspected by the Customer to determine whether the Equipment delivered is complete in accordance with the Contract and is in good order and working condition. Unless otherwise stated in the Special Conditions the Customer shall on completion of the inspection be deemed to have satisfied itself that the Equipment as a whole is suitable, fit and merchantable and capable of meeting all the requirements of the Customer.
- 4.3. Unless AVCORP has been expressly retained, in writing, to advise on the suitability fitness and merchantability of the Equipment for the Customer's purpose, any warranting as to suitability, fitness or merchantability is hereby expressly excluded.
- 4.4. Any shortages or malfunctioning of the Equipment shall be notified by the Customer to AVCORP, in writing, within 24 hours of delivery.

- 4.5. The Customer is a bailee of the Equipment. In addition to all duties imposed at law upon bailees, it is an essential term of the Contract that the Customer will:
- At all times exercise all reasonable care and diligence in the use of the Equipment in accordance with Manufacturer's specifications.
  - Where the Customer has responsibility to return the Equipment, return it in good order and working condition to AVCORP at its Warehouse prior to the expiration of the Period of Hire.
  - Where AVCORP is to collect the Equipment at the expiration of the Period of Hire, make it available for collection in good order and working condition.
  - Not tamper or in any way interfere with, or repair, or attempt to repair the Equipment.
  - Be responsible for all accidental damage to the Equipment, save and except where such damage is caused by AVCORP.
  - At no time during the Period of Hire, part with possession of the Equipment or in any way deal with it in a manner inconsistent with the rights of AVCORP as owner.
  - Ensure that the Equipment is secure at all times, and where being stored in unlocked premises, supply such security measure to ensure that the Equipment is secure at all times.
  - Keep the Equipment safe at all times during the Period of Hire.
  - Not remove or deface any label, Manufacturer's serial numbers or other marks identifying the Equipment and/or AVCORP's ownership of the Equipment.
  - Not permit any person to improperly use the Equipment.
  - Be responsible for all damage to the Equipment caused by laser technology and smoke related effects units.
- 4.6. In the event that the Equipment or any part of it is lost, stolen or damaged during the Period of Hire, in circumstances where the Customer bears responsibility under these Terms, the Customer shall be liable to AVCORP and indemnify it for the cost and expenses of the replacement of such lost or stolen Equipment and/or for the replacement of Equipment which, in the sole determination of AVCORP is damaged beyond repair and/or for the costs and expenses of repairing or re-instating damaged equipment.
- 4.7. In the event that the Customer fails or refuses, for any reason whatsoever, to return or make available for collection all the Equipment to AVCORP at the expiration of the Period of Hire, then the Customer shall be in breach of an essential Term of this Contract hereunder and, without prejudice to any other rights which AVCORP may have, either pursuant to these Terms or at law, the Customer shall be liable to pay AVCORP on a Day-Rate basis for the hiring for Equipment for such further period of time. That time shall commence at the expiration of the Period of Hire and conclude at the earliest to occur of, the date when the Equipment is returned to AVCORP in good working order and condition or the date when AVCORP receives from the Customer full monetary compensation for the loss or damage to the Equipment. The loss or damage to the Equipment shall be the replacement cost of the Equipment at that time or where the Equipment cannot be replaced the cost of new substitute Equipment that can substantially be used for the same purpose as the lost damaged or destroyed Equipment. In addition, the Customer shall fully indemnify AVCORP for any other liability, loss or cost that AVCORP might sustain as a consequence of AVCORP being unable to meet any other contractual obligation to supply that Equipment (or any other item thereof) to any other person.

## 5. SERVICES

- 5.1. Where AVCORP provides Services for a Customer at a Site it is an essential Term of this Contract that the Customer shall:
- Ensure that AVCORP is able to access the Site at all times specified by AVCORP and at all other reasonable times so as to enable AVCORP to provide the Services.

- Ensure that the Equipment, when installed remains in place at the Site for the Period of Hire and that the Site is not required for any other purpose which would require the Equipment to be dismantled and re-installed or which may put the whole or any part of the Equipment at risk of being lost damaged or destroyed.
  - Ensure that all access to the Site is given to AVCORP and such time as is required by AVCORP is available at the conclusion of the Period of Hire to enable AVCORP to dismantle and remove the Equipment from the Site.
  - Do all such things as are necessary to discharge the Customer's obligations under all applicable Occupation Health and Safety legislation, regulations and codes of practice so as to ensure that the Site and the Equipment as installed are safe and free from defects and dangerous conditions.
  - Ensure that where the Equipment is being installed on any structure or held in place by any structure that the structure is capable of holding the weight of the Equipment and that the structure is properly erected so as to be safe and so as to take the anticipated loads involved in holding the Equipment.
  - Ensure that the Site is safe for all of AVCORP's employees and contractors to carry out the services required of AVCORP under this Contract.
- 5.2. The Customer acknowledges that AVCORP may in providing the Services be dependent upon other contractors preparing the Site for the Equipment or its installation. AVCORP shall not be liable for any delay in installing the Equipment or providing the Services where such delay is a consequence of any act or omission on the part of such external contractors.
- 5.3. It is the exclusive responsibility of the Customer to ensure that the Site is:-
- (i) Safe for the installation and use of the Equipment;
  - (ii) All required Facilities are in place, safe and in good working order;
  - (iii) Safe for the provision of the Services.

## 6. DEFAULT EVENTS

- 6.1. The Customer shall be in default if:
- (i) It breaches any of its obligations under this Contract and fails to remedy the same within seven (7) days of being requested by AVCORP to do so;
  - (ii) It breaches any essential Term of this Contract;
  - (iii) Insolvency.
- Where the Customer being a corporation, is insolvent, is wound-up, or goes into Liquidation or has an Administrator appointed to it or has a Receiver appointed over any of its assets.
  - Where the Customer, is a natural person he or she is or becomes insolvent or makes an assignment for the benefit of his or her creditors, or commits an act of bankruptcy under *The Bankruptcy Act* 1966 or is declared bankrupt.
- 6.2. On the happening of a Default Event, AVCORP may, without prejudice to any of its other rights either under these Terms or at law and without previous notice to the Customer, enter any Site where AVCORP believes the Equipment to be located, re-possess it and the Customer hereby agrees not to make any claim or bring any action against AVCORP as a result of the re-possession of the Equipment.
- 6.3. The Customer agrees to indemnify AVCORP and keep AVCORP indemnified against any loss or liability expense or cost which might be incurred by AVCORP in entering upon the Site and taking possession of the Equipment or any item thereof. Such indemnity shall cover any liability to any third party for trespass or for damage to the Site occasioned through the entry upon the Site, the re-possession of the Equipment or its removal from the Site.

## 7. WARRANTIES

- 7.1. Except where specifically agreed in the Special Conditions AVCORP gives no warranty express or implied in respect of the Equipment its fitness for purpose or the condition thereof.
- 7.2. All warranties implied by the *Trade Practices Act 1974* and any other Statutes, (if any) that can be expressly excluded are hereby expressly excluded.
- 7.3. Where permitted by Statute, AVCORP's liability for breach of any warranty is limited to:
- The supply to the Customer of substituted equivalent equipment; or
  - The payment of the costs of supplying to the Customer substituted equivalent equipment.
  - The repayment to the Customer of the Hire Fee.

**8. DISCLAIMER**

- 8.1. Subject to the clauses immediately above AVCORP shall not be liable for any loss damage or injury of whatsoever kind or nature (including indirect or consequential loss or damage) and howsoever arising sustained by the Customer its servants or agents and which is in any way, attributable to the Equipment, its installation or use including any loss damage or injury arising out of any negligent act or omission on the part of AVCORP its servants agents or contractors.

**9. NO SALE**

- 9.1. This is a hiring agreement only and does not constitute or give rise to any sale of the Equipment to the Customer, any hire purchase agreement or arrangement with the Customer or any leasing agreement that contains an option to purchase the Equipment. The relationship between AVCORP and the Customer is limited to a relationship of owner and bailee in respect to the equipment.

**10. CANCELLATION FEES**

- 10.1. The Customer shall be liable for payment of a Cancellation Fee if the Customer cancels the event or any of the Services, Equipment and/or Resale Items (together "the Cancelled Items"). The Cancellation Fee shall be equal to (i) twenty-five percent (25%) of the Cancelled Items price indicated on the Quotation if AVCORP receives written notice of cancellation from Customer fourteen (14) or more days prior to the "Deliver" date shown on the Quotation; (ii) fifty percent (50%) of the Cancelled Items price indicated in the Quotation if written notice is received seven (7) or more (but less than fourteen (14)) days before the "Deliver" date; and (iii) one hundred percent (100%) of the Cancelled Items price indicated on the Quotation if written notice is received six (6) days or less before the "Deliver" date. In addition, cancellation of Resale Items will result in a charge equal to any direct or indirect losses suffered by AVCORP as a result of such cancellation.

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