

## SOUND CONTROL GENERAL CONDITIONS OF QUOTATION

### 1. DEFINITIONS

- "Company" means Penina Pty Ltd trading as Sound Control.
- "Quotation" means this document together with plans, drawings, specifications and other material referred to in the quote attached to this Quotation issued by the Company to the Purchaser in respect of the Works.
- "Purchaser" means the person named in the quote attached to this Quotation.
- "Contract" means the agreement between the Company and the Purchaser for the Works, which will be based entirely on the terms and conditions specified in the Quotation.
- "Works" means the works expressly specified in the quote attached to this Quotation, including the provision of material and labour.
- "Materials" means any machine, appliance, device, equipment, parts, items or other substances necessary for completion of, or incorporation into, the Works.
- "Normal Working Hours" means between 7.30am and 4.00pm Monday to Friday excluding public holidays in the place the Works are to be performed and any rostered days off the Company is required to provide its employees, from time to time, under industrial relations arrangements.
- "Insolvency Event" means if an administrator, liquidator, receiver, receiver and manager or other controller (as defined in the *Corporations Act 2001* (Cth)) is appointed to, or over, any of the property or undertaking of the Purchaser, if the Purchaser is unable to pay its debts when they become due and payable, if the Purchaser ceases to carry on business or if the Purchaser or the Purchaser's property or undertaking becomes subject to a personal insolvency arrangement under part X *Bankruptcy Act 1966* (Cth) or a debt agreement under part IX *Bankruptcy Act 1966* (Cth).
2. The Company shall only be obliged to undertake the Works and no additional work is to be implied or inferred to form part of the Quotation.
3. All intellectual property rights in the Works (including without limitation, moral rights, copyright and trademarks) remain vested in the Company, as between the Purchaser and Company.
4. The Company reserves the right to change, modify or alter the construction or design of the Works if, in the Company's sole discretion, such change, modification or alteration is in the interests of the Company.
5. Except where the Company undertakes in writing to obtain a permit, licence or approval, all permits, licences and approvals required or reasonably requested by the Company for the performance of the Works shall be obtained by the Purchaser, at the Purchaser's cost. The Purchaser shall ensure that all permits, licences and approvals are obtained within such time as is required, having regard to the provisions of the Contract, to ensure there is no delay or disruption to the Company's performance of the Works.
6. Unless it is expressly stated in the Quotation that the Company shall complete the Works within a set duration or by a set date, the Company shall not be obliged to complete the Works within any set duration or by any set date. If any event or circumstance which is outside of the Company's direct control causes a delay or disruption to the Company's performance of the Works, including without limitation, any act or omission of the Purchaser, failure or delay in the supply or delivery of Materials (including a supply or delivery by the Company's subcontractors or suppliers), any shortage of supply of Materials, any industrial disturbances, industrial disputes, strikes, lockouts, inclement weather, physical natural disasters (including without limitation floods, fires and earthquakes), acts or omissions of any authority, agency or government, war, insurrection, or terrorism, then the Company's obligations under the Contract shall be suspended for the duration of the delay or disruption. If the Contract requires the Works to be completed within a set duration or by a set date, then that duration or set date shall be deemed extended by the period that the Company's obligations are suspended in accordance with this clause 6.
7. Where the Works involve the provision of labour by the Company, the Company shall only be obliged to carry out the Works during Normal Working Hours. If the Company reasonably undertakes the Works at times outside of the Normal Working Hours (including without limitation pursuant to an instruction given by the Purchaser), then the additional costs of undertaking the Works at those times shall be added to the contract price and must be paid for by the Purchaser in accordance with clause 16.
8. The Purchaser must, at its cost and expense, provide suitable access to and possession of the site, all proper foundations, all necessary structures and any other amenities and services reasonably required, or requested, by the Company, to perform the Works (including, without limitation, power, light, water, suitable protection, including security, for the plant and equipment used by the Company on site and any Materials placed by the Company on site from the time of delivery). In so far as the Purchaser is required to supply power and light, the Purchaser must ensure that supply of 240V, 415V power and light shall be within convenient working distance from usage points as required by the Company.
9. The Purchaser acknowledges that if it issues any instructions (including without limitation for any additional work or any alteration to the Works) or fails to promptly issue an instruction when reasonably required or requested by the Company, then the Company may incur extra costs, expenses, losses or damages. The Purchaser acknowledges that if it causes or contributes to any delay or disruption in the Company's performance of the Works it may result in the Company incurring extra costs, expenses, losses or damages. Any extra costs, expenses, losses or damages referred to under this clause 9 shall be added to the contract price and must be paid by the Purchaser in accordance with clause 16.
10. Where the Contract includes supply by the Company of any Materials and the Company has an entitlement to costs, expenses, losses or damages under clause 9 or its obligations are suspended under clause 6, then without limitation to those clauses, the Company may recover any additional storage, demurrage and insurance costs and expenses, which shall be added to the contract price and must be paid by the Purchaser in accordance with clause 16.
11. The Contract shall be subject to the laws of Queensland and the jurisdiction of Queensland courts and courts competent to hear appeals from them. The parties agree the *Sale of Goods (Vienna Convention) Act 1986* (Qld) will have no application to any matter in connection with the Contract, including without limitation the sale of any Materials.
12. On delivery of any Materials to site, the Purchaser takes full risk in the Materials, including without limitation, responsibility for maintenance, security and insurance of the Materials. If the Works only requires the supply of Materials, then the Works are deemed to be complete upon delivery of all Materials to the site.
13. The Purchaser is responsible for the risk in, and insurance of, the Works and Materials at the site. Until the Company has been paid in full under the Contract for the Works, within 5 days of a request by the Company, the Purchaser must provide evidence of a policy of insurance covering the Works and Materials at the site. If the Purchaser fails to provide evidence to the reasonable satisfaction of the Company within 5 days, then the Company may suspend performance of the Works. Any extra costs, expenses, losses or damages incurred as a result of a suspension under this clause 13 shall be added to the contract price and must be paid by the Purchaser in accordance with clause 16. If the Contract requires the Works to be completed within a set duration or by a set date, then that duration or set date shall be deemed extended by the period that the Company's obligations are suspended in accordance with this clause 13.
14. The Company will indemnify the Purchaser for claims made by a third party for personal injury, death or property damage caused by the negligence of the Company in the performance of the Works, except to the extent that the third party personal injury, death or property damage is caused or contributed to by an act or omission of the Purchaser.
15. Notwithstanding clause 14, the Company's liability to the Purchaser for any personal injury, death or property damage, is limited to the actual amount the Company recovers under a policy of public liability insurance. A certificate of currency for the Company's public liability policy shall be made available for the Purchaser's inspection upon written request.
16. Payment for the Works or as otherwise required under this Contract must be made to the Company by the Purchaser within 7 days of the date of the Company's invoice. Full payment of the amount stated in the invoice must be made by the Purchaser without any deduction or set off. The Company may at its option, and at any time, include amounts in an invoice for Materials ordered which have not yet been delivered to site or incorporated in the Works.
17. The contract price based on current rates of exchange, freight, insurance, duty, primage and cartage and additional expenses incurred by variations in the foregoing shall be added to the contract price and must be paid by the Purchaser in accordance with clause 16.
18. To the extent permitted by law, no warranties shall be implied into this Contract and the Company shall only be liable for defects in the Works to the extent they are caused by the Company in the provision of the services or are in Materials manufactured by the Company (excluding any Materials which form part of the Works but which are not manufactured by the Company). The Company shall use reasonable endeavours to pass on the benefit of the warranty (if any) provided to the Company by other manufacturers of Materials.
19. The Purchaser warrants it has relied entirely on its own expertise in selecting the Works (including all Materials forming part of the Works), that it is satisfied the Works will be suitable for its purposes and that it has not relied on any representation made by the Company in connection with the Works suitability for any purpose.
20. The Company's liability for defects it is responsible for under the Contract is limited to the replacement or repair, at its option, of such parts of the Works as have been returned to the Company's offices, or if return is impractical, identified in a written notice by the Purchaser to the Company. If in the reasonable opinion of the Company, the Company is not responsible for the Works returned or which are the subject of a notice by the Purchaser, then the costs incurred by the Company in inspecting the Works for defects (including without limitation any testing of Materials, transport of Materials and site attendances) shall be paid to the Company by the Purchaser in accordance with clause 16.
21. The warranty period for any defects in the Works expires twelve (12) months after the date the Works are completed by the Company. The Company shall not be liable for any defects after the expiration of the warranty period.
22. Any warranty shall be void if the Works have not been operated, used and maintained by competent and qualified tradesmen and strictly in accordance with all instructions given by the Company in connection with the Works.
23. The Company accepts no liability for damage to the Works due to fair wear and tear, normal deterioration of the Works including, without limitation, rusting, erosion, electrolytic action or corrosion of any other kind or any damage caused by the Purchaser or third parties (including, without limitation, due to incorrect power supply).
24. Notwithstanding any other provision of this Contract:
- (a) the Company's liability to the Purchaser or to any other party beneficially entitled under this Contract is limited to 10% of the contract price stated in the Quotation; and
- (b) the Company shall not be liable to the Purchaser, or to any party beneficially entitled under the Contract for any indirect, economic or consequential losses, loss of profits, loss of revenue, failure to realise expected profits or savings, loss of production, loss of reputation or loss of goodwill, arising out of or in connection with the Contract, whether such liability arises for breach of contract, in tort (including negligence), in equity or otherwise.
25. In this clause, the words 'Accession', 'Comingled', 'Personal Property', 'Financing Statement', 'Security Interest' and 'Verification Statement' have the meaning given to them in the *Personal Properties Securities Act 2009* (Cth) ('PPSA'). The Purchaser must not create any Security Interest over any of the Company's Personal Property. If the Company determines that this document (or a transaction in connection with it) is or contains a Security Interest, the Purchaser agrees to do anything (including obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which the Company asks and considers necessary for the purposes of:
- (a) ensuring that the Security Interest is enforceable, perfected and otherwise effective;
- (b) enabling the Company to apply for any registration, complete any Financing Statement or give any notification, in connection with the Security Interest; or
- (c) enabling the Company to exercise rights in connection with the Security Interest.
- The Purchaser must not allow any of the Materials to become an Accession to or Comingled with any asset that is not owned by the Company prior to the Purchaser making payment for the Materials. The Company is not required to give any notice, and the Purchaser waives its rights to receive any notice under the PPSA (including notice of Verification Statement) unless the notice is required by the PPSA to be given (even though the Purchaser has waived the right to receive notice).
26. The Works and any part thereof shall remain the property of the Company until paid for in full. Until payment for the Works in full is received, the Purchaser must store any Materials in such a manner to show they are the property of the Company. In the event of a failure by the Purchaser to make any payment when due to the Company, an Insolvency Event or the breach by the Purchaser of the terms or conditions of the Contract, then the Company may, without prejudice to any other rights it may have whether at law or in equity, and without notice to the Purchaser, cease all Works and enter upon the site, or location at which the Works (including the Materials) are situated, and take such steps as are necessary to remove the Works (including the Materials) from site. The Purchaser grants an irrevocable, perpetual and royalty free licence to the Company and its authorised representatives to enter upon such site, or location as may be needed and to the extent required appoints the Company as its agent for the purposes of entry onto such sites or locations for removal of the Works (including any Materials).
27. The Company shall be entitled to use such force, and effect such changes to the Works or any structure to which the Works are attached or which obstruct retrieval any part thereof as shall be necessary to remove the Works, provided that such force or changes shall not dangerously affect the structural aspects of that site or location.
28. The Purchaser acknowledges, by placing an order or providing any response requesting the Works in connection with the Quotation that the Purchaser shall be bound to the Contract. The Contract forms the entire agreement between the Company and the Purchaser in connection with the Works. To the extent permitted by law, any statement, representation or promise made in any other document or discussion (including without limitation any terms or conditions proposed by the Purchaser) will not apply to the subject matter of this Contract. The Purchaser acknowledges that the contract price shall in no circumstances be an offer to perform the Works other than on the terms of the Contract.