

TERMS AND CONDITIONS OF TRADING

Omnilab Media Melbourne Pty Limited (Omnilab Media Melbourne) ABN 91 115 418 294

OMNILABMEDIA

1. Definitions

In these Terms and Conditions unless the context otherwise clearly requires:

"Omnilab Media Melbourne" means Omnilab Media Melbourne Pty Limited (ABN 91 115 418 294) each and every business of Omnilab Media Melbourne Pty Limited (whether carried on under a different business name or otherwise) and any successor in business of Omnilab Media Melbourne Pty Limited;

"Booked Date" means the day on which a Customer requires Omnilab Media Melbourne to first provide Facilities under a Contract;

"Business Day" means Monday to Friday inclusive but excluding all Public Holidays;

"Conditions" means these Terms and Conditions;

"Contract" means any written or oral contract, agreement, arrangement, transaction or dealing entered into or made by Omnilab Media Melbourne with any Customer;

"Customer" means, in respect of each Contract entered into by Omnilab Media Melbourne, the person with whom Omnilab Media Melbourne so contracts and where there is more than one person contracting with Omnilab Media Melbourne under a Contract shall mean each person so contracting and each such person shall be bound jointly and severally by these Conditions;

"Customer's Materials" means any audio visual materials, goods, chattels, items or things (including but not only any documents, Media, props and equipment) made available by a Customer to Omnilab Media Melbourne for the purposes of a Contract;

"Facilities" means any studio, recording area or space, suite, office, room, space, equipment, goods or thing hired, supplied or provided and any and all services of Omnilab Media Melbourne personnel made available by Omnilab Media Melbourne to a Customer under or for the purposes of a Contract;

"Media" means any article or thing in or on or by means of which visual images and/or sound or sounds is or are recorded, reproduced, stored or embodied and includes tape, master tape, videodiscs, computer discs, compact discs, digital versatile discs, glass master discs and any similar article or technologies however described and whether now in existence or subsequently invented;

"Person" includes a corporation and a firm;

"Services" means the services provided or procured by Omnilab Media Melbourne for the Customer, as specified in the Contract;

The singular shall mean and include the plural and vice versa;

The male gender shall mean and include the female and neuter genders and vice versa.

The words "including" and "includes" are not words of limitation;

2. Application

(a) These Conditions apply to all Contracts save for:

- any provision of Facilities or Services by Omnilab Media Melbourne under any other written terms and conditions which expressly exclude these Conditions; and
- any Contract which is recorded in writing and by its terms expressly excludes these Conditions.

(b) Subject always to Condition 2(a) these conditions shall apply to and are deemed to be incorporated into all Contracts. Omnilab Media Melbourne is only prepared to provide Facilities and Services upon these Conditions and no Contract shall exist between Omnilab Media Melbourne and the Customer except upon these Conditions. Any order placed by a Customer is deemed to be an order incorporating these Conditions notwithstanding any inconsistencies in the Customer's order. Where the Customer places an order with Omnilab Media Melbourne and such order contains terms and/or conditions conflicting with or differing from these Conditions the subsequent provision of Facilities or Services to the Customer under that order shall be deemed to be counter-offer to provide such Facilities and Services on these Conditions and such counter-offer shall be deemed to have been accepted by the Customer on the date on which such Facilities and Services are first provided to the Customer.

3. Bookings and Cancellations

(a) During its normal business hours, Omnilab Media Melbourne will accept bookings of Facilities either by telephone, email or post but all bookings must be accompanied by the Customer's official order number.

(b) All bookings must specify a Booked Date.

(c) A Customer may cancel a booking but:

- in respect of any cancellation made between forty-eight (48) and twenty-four (24) hours prior to the Booked Date, the Customer shall pay a charge equal to 50% of the full rate applicable on the Booked Date to the provision of the Facilities ordered;
- in respect of cancellations made after 10.00am on the Business Day preceding the Booked Date, the Customer shall pay a charge equal to the full rate applicable on the Booked Date to the provision of the Facilities ordered; and
- the above charges will be in addition to disbursements on any cancelled booking.

(d) In the case of duplication operations, and other Services where the job has commenced prior to cancellation, Omnilab Media Melbourne will only accept cancellations made between the hours of 9.00am and 5.00pm on Business Days.

4. Rates

(a) The Customer acknowledges that any quotation given by Omnilab Media Melbourne to the Customer (whether in writing or otherwise) is indicative and approximate only and that Omnilab Media Melbourne is in no way bound by any such quotation.

(b) The Customer acknowledges that Omnilab Media Melbourne's charges do not include any component for any government duties, taxes, imposts, levies or charges which Omnilab Media Melbourne may from time to time and at any time be liable to pay in respect of the provision of the Facilities or Services (including but not only goods and services tax) and the Customer agrees that it shall pay or reimburse to Omnilab Media Melbourne the full amount of any and all duties, taxes, imposts, levies and charges assessed on or in relation to the Contract or any transaction hereunder or charged to or incurred by Omnilab Media Melbourne in the course of the provision of the Facilities or Services by Omnilab Media Melbourne and the Customer hereby indemnifies and holds Omnilab Media Melbourne harmless against any and all liability for any such duty, tax, impost, levy or charge and any penalty fine or interest payable in respect of or by reason of, or non-payment of any such duty, tax, impost levy or charge.

(c) In the event that any equipment or goods are to be delivered to the Customer under the Contract the Customer shall bear all costs and expenses incurred in the delivery to the Customer and, if necessary, the re-delivery to Omnilab Media Melbourne of such equipment or goods.

(d) The Customer shall from the commencement of delivery bear all risk for the destruction, loss or damage of any and all equipment or goods to be delivered to the Customer under the Contract. In respect of equipment or goods to be returned to Omnilab Media Melbourne under the Contract, the Customer shall remain at risk until such equipment or goods are re-delivered to Omnilab Media Melbourne.

(e) For the purposes of this Condition 4 delivery shall be deemed to commence at the time when the equipment or goods leave the place at which they are stored or kept and re-delivery shall be deemed to be completed at the time when the equipment or goods are returned to the place to which Omnilab Media Melbourne requires them to be re-delivered.

5. Payment

(a) Omnilab Media Melbourne's terms of payment are net cash within 30 days from the date of the invoice to which such payment relates.

(b) Any claim for adjustment by the Customer in relation to any invoice must be made to Omnilab Media Melbourne in writing at the address stated on the invoice within 10 days from the date of the relevant invoice and Omnilab Media Melbourne shall be under no liability to consider or accept any claim made by the Customer after the expiration of that period.

(c) No payment due from the Customer to Omnilab Media Melbourne shall be deemed to have been made until the same is actually received by Omnilab Media Melbourne at its address stated on the invoice and, if payment is made by cheque, the cheque is cleared for payment.

(d) In addition to Omnilab Media Melbourne's other remedies for late payment, Omnilab Media Melbourne shall be entitled to charge and the Customer shall be liable to pay:

- interest on any payment that is overdue pursuant to Condition 5(a) calculated at a rate equal to the overdraft rate payable by Omnilab Media Melbourne plus 3% per annum from the date of the relevant invoice and up to and including the date of payment in full of the due amount (including any interest incurred thereon; and/or
- an administrative charge for late payment as determined by Omnilab Media Melbourne from time to time.

6. Lien

The Customer acknowledges that Omnilab Media Melbourne shall have a lien on any and all Customer's Materials until such time as all monies due under the Contract are paid to Omnilab Media Melbourne.

7. Passing of Property and Copyright

(a) The property in any goods, chattels or things manufactured, produced, duplicated or otherwise created by Omnilab Media Melbourne under the Contract shall only pass to the Customer in accordance with this Condition and only then when the Customer pays to Omnilab Media Melbourne all monies due to Omnilab Media Melbourne under that Contract.

(b) Subject to paragraphs (c) and (d), the whole of the copyright in any original cinematograph film (with and without soundtrack), sound recording, musical work, artistic work (including but not only photographs), literary work (including computer software) or in any other original material made, produced, recorded, composed, written, devised or created by Omnilab Media Melbourne pursuant to the Contract ("the Materials") shall vest in Omnilab Media Melbourne.

(c) Subject to paragraph (d), on payment of all monies due to Omnilab Media Melbourne under the Contract this Condition shall be effective (without the need for any further documentation) to:

- transfer and assign unto the Customer all the copyright in those of the Materials required to be delivered by Omnilab Media Melbourne to the Customer to fulfil the obligations of Omnilab Media Melbourne under the Contract ("the Final Product") other than the Reserved Materials (as defined in paragraph (d));
- license the Customer to use on a non-exclusive basis, the copyright in the Reserved Materials to the extent to which that use is necessary for the Customer to utilise the Final Product (but Omnilab Media Melbourne may charge additional fees for any other use of the Reserved Materials).

(d) Nothing in this Condition shall transfer or assign unto the Customer the copyright or other intellectual property rights in the whole or part of any of the Materials which:

- are not used in the production or assembly of the Final Product; or
- are not incorporated or reproduced in the Final Product; or
- were in existence prior to the Contract; or
- are created by Omnilab Media Melbourne in connection with performing the Contract but which have a functionality that is not solely specific to the Contract and which Omnilab Media Melbourne wishes to utilise for other purposes (for example computer software that performs functions for the purposes of the Contract but which can be used for other applications), ("Reserved Materials") which copyright shall continue at all times to belong to Omnilab Media Melbourne.

8. Customer's Covenant, Warranties and Indemnity

(a) The Customer covenants and warrants with and to Omnilab Media Melbourne that no act or thing required to be done or omitted to be done by Omnilab Media Melbourne under the Contract or at the request or direction of the Customer pursuant to the Contract:

- will infringe the copyright of any person or render Omnilab Media Melbourne liable or expose Omnilab Media Melbourne to any action, suit, proceeding, claim or demand for infringement of copyright; or
- will infringe the privacy of any person or render Omnilab Media Melbourne liable or expose Omnilab Media Melbourne to any action, suit, proceeding, claim or demand for breach of privacy; or
- will be defamatory of any person or render Omnilab Media Melbourne liable or expose Omnilab Media Melbourne to any action, suit, proceeding, claim or demand under the law of defamation; or
- will render Omnilab Media Melbourne liable or expose Omnilab Media Melbourne to prosecution in respect of the production and distribution of any obscene article or thing; or
- will render Omnilab Media Melbourne liable or expose Omnilab Media Melbourne to prosecution or other action under any Federal, State or Territory legislation or at common law including laws regulating:
 - the communication of electronic messages (including the Spam Act, 2003 (Cth));
 - the protection of personal information (including the Privacy Act, 1988 (Cth));
 - the transmission of audio and visual content (including the Broadcasting Services Act, 1992 (Cth));
 - the ownership and use of telecommunications facilities (including the Telecommunications Act, 1997 (Cth)); and
 - the classification of audiovisual content (including the National Classification Code).

(b) The Customer indemnifies Omnilab Media Melbourne and holds Omnilab Media Melbourne harmless against any and all fines, penalties, damages, loss, costs or expenses (including but not only legal expenses of any nature and payable to or on behalf of any person whatsoever) suffered or incurred by Omnilab Media Melbourne as a result of or arising from or in connection with any breach of the covenants and warranties given and made by the Customer under Condition 8 (a).

any action, suit, proceeding, claim or demand brought or made against it by any person as a result of or arising from or in connection with any breach of the covenants and warranties given and made by the Customer to Omnilab Media Melbourne pursuant to Condition 8(a) and the Customer expressly acknowledges and agrees that the aforesaid indemnity shall extend to any cost and expense incurred by Omnilab Media Melbourne in conducting any such defence and any cost or expense incurred by Omnilab Media Melbourne in settling or compounding any such action, suit, proceeding, claim or demand.

(c) Omnilab Media Melbourne reserves the right to refuse to do or omit to do any act or thing or to refuse to comply with any request or direction of the Customer which in the reasonable opinion of Omnilab Media Melbourne would if done, omitted to be done or complied with constitute a breach of any warranty given by the Customer pursuant to Section 8(a).

9. Customer's Materials

(a) The Customer acknowledges that any Customer's Materials are provided to and used and stored by Omnilab Media Melbourne solely at the Customer's risk and that Omnilab Media Melbourne shall be under no obligation to insure Customer's Materials.

(b) The Customer must hold a security copy of any Customer's Materials provided to Omnilab Media Melbourne for the purposes of the Contract or notify Omnilab Media Melbourne if Omnilab Media Melbourne is provided with the only version of any Customer's Materials (and clause 9(c) will still apply in any event).

(c) Neither Omnilab Media Melbourne nor any of its officers, employees or agents shall be liable for the loss, destruction or damage of Customer's Materials unless such loss, destruction or damage was caused by the negligence of Omnilab Media Melbourne or any of its officers, employees or agents in which event the liability of Omnilab Media Melbourne and any of its officers, employees or agents shall be limited to the cost of replacement of the Customer's Materials so lost, destroyed or damaged provided always that where the Customer's Materials lost, destroyed or damaged is in the form of Media, Omnilab Media Melbourne's liability shall be limited to the cost of replacing such Media with unexposed raw-stock or blank Media in the same quantity as that which was lost, destroyed or damaged. This stipulation is made on behalf of each of the officers, employees and agents of Omnilab Media Melbourne and the Customer agrees with Omnilab Media Melbourne not to bring or to be a party to or assert any action, claim, counterclaim or set-off against any such officer, employee or agent in a manner inconsistent with the protection extended to them by this Condition 9(c).

10. Storage of Media

(a) Omnilab Media Melbourne will store at its premises any:

- Customer Materials delivered to it by the Customer for the purposes of the Contract (Delivered Materials); and
- materials created by Omnilab Media Melbourne for the purposes of or pursuant to the Contract (Created Materials), whether in digital form on a computer or otherwise at all times in accordance with Omnilab Media Melbourne's published rates and conditions for such storage.

(b) Payments for storage are not refundable.

(c) Omnilab Media Melbourne will store project data (being the software instructions as to how to create the images which form part of the Customer Materials) without charge for 12 months from the date of the Contract. After that 12 month period, if so requested by the Customer, Omnilab Media Melbourne will store that data in accordance with paragraph (a) (including rates) to the extent to which the application software necessary for retrieval and revision of that data is still readily commercially available. However, the Customer acknowledges that Omnilab Media Melbourne makes no warranty that the project data will be able to be retrieved after the initial 12 month period has ended. If the project data can no longer be so retrieved, Omnilab Media Melbourne will be under no obligation to notify the Customer.

(d) The Customer is responsible for notifying Omnilab Media Melbourne of any change in Customer's address or contact details for the purpose of Omnilab Media Melbourne's correspondence with the Customer regarding the materials stored by Omnilab Media Melbourne.

(e) Omnilab Media Melbourne may notify the Customer in accordance with its conditions of storage that it requires the Customer to direct Omnilab Media Melbourne to:

- return the materials to the Customer at the Customer's expense or risk;
- continue to store the materials at the applicable published rental fee for those materials;
- destroy the Materials.

and Omnilab Media Melbourne will comply with any direction so given. If the Customer does not respond to a notice from Omnilab Media Melbourne seeking direction within 60 days after such dispatch of such notice Omnilab Media Melbourne may, at its sole discretion and without incurring any liability to the Customer, destroy the relevant Materials.

11. Use of Material by Omnilab Media Melbourne and DP Melbourne credit

(a) Without limiting clause 7, the Customer hereby grants to Omnilab Media Melbourne the non-exclusive right to use any or all of the Customer Materials in all media, throughout the world in perpetuity for the purposes of publicity and promotion of Omnilab Media Melbourne.

(b) Omnilab Media Melbourne may claim credit, in perpetuity, in its own promotional material for Omnilab Media Melbourne's involvement in the production of the Customer Material.

12. Agency and Sub-contracting

(a) The Customer acknowledges and agrees with Omnilab Media Melbourne that in the event that for the purposes of the Contract Omnilab Media Melbourne engages any person not being an employee of Omnilab Media Melbourne to provide goods or services to the Customer, Omnilab Media Melbourne shall in engaging such services be acting as the agent of the Customer and, unless otherwise agreed, the Customer shall be liable to pay any and all monies due to such person for the provision of such goods or services.

(b) Omnilab Media Melbourne reserves the right to sub-contract for the provision of any Facilities or Services required to be provided by Omnilab Media Melbourne under the Contract. Any and all monies due to such sub-contractor shall be paid by Omnilab Media Melbourne, but the Customer must pay any fees charged by Omnilab Media Melbourne in connection with those costs, in accordance with clause 5.

13. Implied Conditions and Warranties and Limitation of Omnilab Media Melbourne Liability

(a) Conditions and warranties expressed or implied by statute, the common law, equity, trade, custom, usage of otherwise howsoever are to the extent permitted by law expressly excluded from this Contract. Without limiting the generality of the foregoing, Omnilab Media Melbourne does not warrant that the Facilities or Services will be uninterrupted and error free.

(b) The Customer acknowledges that save for a breach of a condition or warranty implied by the Trade Practices Act 1974, which cannot be excluded by these Conditions, the Customer's remedy in respect of any breach by Omnilab Media Melbourne of any condition or warranty not otherwise excluded by these Conditions is limited, if such breach relates to goods, to the replacement of such goods or the supply of equivalent goods or, if such breach relates to the supply of services, the resupply of such services or the cost of having such services resupplied.

(c) Save as expressly otherwise provided in these Conditions Omnilab Media Melbourne shall not be liable to the Customer or the Customer's servants or agents for any direct, indirect, incidental or consequential damage or loss of any nature whatsoever caused (whether based on tort, contract or otherwise) including but not limited to loss of profits, loss of production, loss of sales opportunity or business reputation, direct or indirect labour costs and overhead expenses and damage to equipment or property or any other claim whatsoever arising directly or indirectly or in any way attributable to the performance or non-performance of its obligations under the Contract (including these Conditions).

(d) Without limiting the generality of Condition 12(c), Omnilab Media Melbourne will not be liable for any damage or loss caused or contributed to by the failure to have any materials prepared by Omnilab Media Melbourne for the Customer:

- forwarded in any form of Media to the person notified by the Customer who will broadcast or otherwise transmit those materials ("the Broadcaster") by the time at which those materials are required by the Broadcaster for the purpose of that broadcast or transmission; or
- available to be accessed via a web site on the world wide web by a particular time or for a particular duration or in a particular territory.

(e) Without limiting the generality of Condition 12(c), Omnilab Media Melbourne will not be liable for any damage or loss caused or contributed to by:

- any matter beyond its reasonable control;
- any failure to provide goods or services by a sub-contractor of Omnilab Media Melbourne (including telecommunications services, web hosting services);
- any failure by the Customer to utilise computer equipment and other facilities recommended by Omnilab Media Melbourne for the purposes of providing the Facilities or Services (including in Omnilab Media Melbourne's proposal to provide Services);
- any unauthorised use, alteration, or modification by the Customer of software or other intellectual property licensed by Omnilab Media Melbourne under condition 7(b).

(f) Without limiting the generality of Condition 12(c), Omnilab Media Melbourne does not warrant that any website created as part of the Materials:

- will be resistant to the transmission of so-called computer "viruses";
- will comply with all applicable legal requirements in each territory in which it may be available; and excludes any liability in connection with any third party's website that is linked to the site, whether with the permission of the Customer or not.

(g) Except as expressly provided to the contrary in the Contract, Omnilab Media Melbourne will not be under any liability to the Customer in respect of any loss or damage (including consequential loss or damage) however caused which may be suffered or incurred or which may arise directly or indirectly in respect of the supply of goods or services under the Contract or the failure or omission on the part of Omnilab Media Melbourne to comply with its obligations under the Contract. In any event, the maximum liability of Omnilab Media Melbourne under the Contract is any amount equal to so much of the fee as has been paid by the Customer to Omnilab Media Melbourne.

14. Termination

In any of the events that:

- the Customer commits or allows to be committed any breach of any of its obligations under these Conditions (including but not only its obligation to pay any monies due to Omnilab Media Melbourne) and does not remedy such breach within 14 days of the same occurring and whether or not Omnilab Media Melbourne has made formal demand upon the Customer to remedy such breach; or
- the Customer, being a natural person, becomes bankrupt; or
- the Customer, being a corporation, resolves or is ordered to be wound up, goes or passes into liquidation (provisional or otherwise), enters into any scheme of arrangement or otherwise has an administrator appointed to it, compounds with its creditors or is otherwise unable to pay its debts then Omnilab Media Melbourne shall have the right to determine the Contract and/or cease and withhold the provision of Facilities or Services to the Customer under the Contract and/or to retain any payments made by the Customer under the Contract all of which remedies shall be in addition to any right of action or remedy that Omnilab Media Melbourne may have against the Customer for recovery of any monies due to Omnilab Media Melbourne or for or in respect of any antecedent breach by the Customer of the Contract (including these Conditions).

15. General

(a) **Waiver**
Any failure or delay on the part of Omnilab Media Melbourne in insisting upon strict performance by the Customer of any provision of the Contract (including these Conditions) shall not be taken to be a waiver of such provision or of any rights of Omnilab Media Melbourne under or in relation thereto and in particular shall not be taken to be a waiver of the same provision on any subsequent occasion.

(b) **Assignment**
The Contract is personal to the Customer and may not be assigned or novated in any circumstances.

(c) **Notice**
Any notice required to be given by Omnilab Media Melbourne to the Customer pursuant to the Contract (including these Conditions) shall be in writing and shall be given by Omnilab Media Melbourne to the Customer by delivering or posting such notice to the address of the Customer last known to Omnilab Media Melbourne and shall be deemed to have been properly given, if delivered, on the day of such delivery or, if posted, on the day being two days after the day on which such notice was posted to the address of the Customer.

(d) **Clause Headings**
The headings to these Conditions are for convenience only and shall not be used for the purpose of or affect the interpretation of these Conditions.

(e) **Governing Law**
The Contract (of which these Conditions form part) shall be governed by and construed in accordance with the laws of the State of Victoria and Omnilab Media Melbourne and the Customer submit to the non-exclusive jurisdiction of the courts of that State, and any courts able to hear appeals from those courts.

Without in any way limiting the liability of the Customer under the indemnity given by the Customer to Omnilab Media Melbourne under Condition 8(b), Omnilab Media Melbourne may at its sole discretion by itself or in conjunction with the Customer defend, settle or compound