

OUTWEST PTY LTD ABN 41 096 607 046
TERMS AND CONDITIONS OF SALE
IMPORTANT NOTICE TO ALL CUSTOMERS

Please read these Terms and Conditions of Sale. They apply to every transaction you have with the Company.

Our Company documentation includes a notice in writing that you have had the opportunity to read, and that you agree to be bound by, these Terms and Conditions.

1. DEFINITIONS

Company means OutWest Pty Ltd ABN 41 096 607 046 trading as Out West Productions (WA 0231099W) of Post Office Box 327, Dianella, Western Australia 6059.

Contract of Sale means any written contract or agreement for the sale of Goods or for the provision of Services by the Company to the Customer of the Goods and/or Services incorporating these Terms and Conditions of Sale.

Customer means the legal or natural person whose order for the Goods or Services, based on the Company's invitation to treat, is accepted or acted on by the Company.

Goods means any goods or services sold to the Customer pursuant to the Contract of Sale and as specified on the Customer Invoice/Statement.

Hard copy means and includes CDs, DVDs, video tape and broadcast material of any kind and in any medium produced by the Company for or on behalf of the Customer AND FURTHER means any Hard Copy supplied to the Customer by the Company.

Hard Copy Retention means and includes any medium of hard copy retained by the Company on behalf of the Customer where the Hard Copy is retained on or off the Company's premises solely to enable the Company to regenerate the medium for the Customer at the Customer's request or to provide substitution for media lost, mislaid or destroyed by the Customer, for a fee.

Intellectual Property means such intellectual property as defined in the Intellectual Property Act of 1956 as amended AND INCLUDES an allocation of Intellectual Property so defined in materials supplied to the Company by Customers and / or third parties and AS FURTHER DEFINED in clause 2 herein.

Unauthorised use of our copyrighted works entitles the Company to equitable remuneration for the work's unauthorised publication, broadcast, communication (or other transmission, distribution of use of any kind whatsoever) to the public or for remuneration of any kind whatsoever.

Purchase Order and PO mean and refer to an authority, either in writing or verbal, by which the buyer authorises the Company to provide Goods or Services on the Customer's behalf AND FURTHER means the full description of any one or more aspects of Goods or Services to be provided by the Company to any Customer.

Services means one or more of the provision of Goods and Services by the Company from time to time and includes but is not limited to the provision of Hard Copy, Retention of Hard Copy, utilization of resources both material and copyrighted, configuring, reconfiguring, upgrading, amending, dubbing, overdubbing, editing, compiling, the transfer of one media type to another, the provision of more than one media format of Goods and Services, and broadcast testing of any Goods purchased by the Customer from the Company under a Contract of Sale and as specified in the Customer Invoice/Statement.

Software means and includes operation system software or other software from any proprietary manufacturer and may include software bundled with a certain package of hardware and software as a result of a specific sales promotion, brochure or offer from the Company.

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Standard Service Hours, Standard Business Hours and Business Day means between the hours of 8.30AM and 5.30PM (Western Standard Time) each day Monday to Friday inclusive. Saturdays, Sundays and public holidays relevant to that state in which the Goods are purchased are not Business Days. The Standard Service Hours may be changed by the Company without prior notification to the Customer. Please note that our head office is located in Western Australia where there is generally a time difference of between 2 and 3 hours (minus) compared to Eastern Winter Time and Eastern Summer Time respectively.

Terms and Conditions means these Terms and Conditions of Sale – all of which are deemed part of every Contract for Sale as evidenced by our Tax Invoice / Statement.

Third Party Goods means Goods not manufactured, produced, or authored by the Company or by any companies deemed Associates of the Company under Australian law AND FURTHER includes Goods supplied to the Company by third parties for inclusion in, or amalgamation into, Goods and Services that are then sold or resold by the Company.

Website means www.outwest.com.au and includes all intellectual property associated therewith.

2. CONTRACT AND CONTRACT FORMATION INCLUDING COPYRIGHT

2.1 These Terms and Conditions form a part of each and every Contract of Sale whether such sale occurs by telephone, by internet or by direct written contact between the Customer and any one or more of the Company's staff. As such, these Terms and Conditions take precedence over any other terms or conditions stipulated or referred to by the Customer UNLESS the prior written consent of the Managing Director of the Company has been obtained in respect of a particular Contract of Sale for any particular term or condition relied on by the Customer where that term or condition varies from those stated herein.

2.2 The Company sells to the Customer and the Customer buys from the Company the Goods and / or Services as principals in the matter of any sale and purchase transaction. The Company and the Customer intend that no other party has a right or obligation to sue or be sued under the Contract of Sale, but the Company and the Customer agree that the Company accepts liability only for those Goods or components of Goods where there is no liability or warranty in respect of that Good or Service and that the liability assumed by the Company is not in addition to, does not overlap and is not construed to be in place of, the liability or warranty represented to the Company as being the liability of the Customer or their agent.

2.3 The Customer warrants to the Company on a full indemnity basis that if the Customer provides images, sounds, descriptions or other copyrighted materials to the Company for the Company to use or incorporate in the provision of the Company's Goods and Services to the Customer then the Customer:

- a. has made reasonable inquiries to establish the identity of the copyright holder in relation to the materials the Customer supplies to the Company;
- b. has sought and obtained the written permission or other requisite authority of the copyright holder in respect of those materials prior to submitting those materials to the Company;
- c. can provide written or other evidence of the copyright holder's consent if asked to do so by the Company, its agents, or by any competent legal body; and
- d. indemnifies the Company against any costs, charges, fees, levies, or financial imposts of any nature whatsoever in respect of any and all actions of any nature whatsoever in respect of copyrighted materials.

2.4 Pursuant to clauses 2.2 and 2.3 above, the Company is under no obligation whatsoever to make inquiries in relation to copyrighted or potentially copyrighted materials supplied to the Company by a Customer to enable the Company to provide Goods or Services.

However, the Company reserves the right to refuse to supply Goods and Services to a Customer based on real or reasonably suspected breach or potential breach of the terms of clauses 2.2 or 2.3 above.

2.5 Any prices or promotions appearing within the www.outwest.com.au website constitute nothing more than an invitation to treat.

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2.6 A Contract of Sale only comes into existence when:

- a the Company receives the Customer's PO and that signed quotation/PO is confirmed and accepted by the Company verbally or in writing; or
- b. the Goods and Services related to that PO are delivered or supplied to the Customer.

2.7 All sales are subject to, and the Company's acceptance of the order for the sale is contingent upon, the Customer either:

- a. achieving a satisfactory credit approval from the Company entitling the Customer to receive the Goods and Services from the Company prior to the Company receiving full payment, without deduction, of the Tax Invoice/Statement for the Goods AND ON CONDITION THAT the balance of the outstanding monies are paid in full by the Customer within the terms specified on the Invoice/Statement;
- b. paying by Cash On Delivery by which is meant the payment of a cheque, bank cheque or cash for the whole amount of the Tax Invoice/Statement and free of any deduction of any kind whatsoever in respect of the Goods and Services delivered and with such cheque, bank cheque or cash made payable to "...Out West Productions...";
- c. paying for the Goods by credit card application.

In placing an order with the Company, the Customer explicitly grants approval to the Company to ask for and obtain from one or more credit reporting agencies a credit report of sufficient depth of information to permit the granting of credit to the Customer under the *Privacy Act* (as amended) or any similar legislation. The Company makes every reasonable attempt to grant a credit account and to otherwise seek authority from credit card issuers to proceed with the Customer's credit application HOWEVER the Company takes no responsibility for a refusal by the credit provider and is under no obligation to advise the Customer of the credit provider's reasons for such a refusal.

3. QUOTATIONS, ORDERS, INVOICE PRICE AND PAYMENT CONDITIONS

3.1 Unless credit terms have been expressly agreed by the Company and subject to clause 2.7 above, payment for the Goods or Services is made in full before the expiry of 14 days for the date of the Tax Invoice / Statement issued by the Company to the Customer.

3.2 Unless stated otherwise by the Customer, the delivery address is the billing address as stated in the Invoice / Statement.

3.3 All invoices are payable in full, without deduction of any kind, in the currency denomination stated in the quotation. The currency stated in the invoice/statement is Australian Dollars (AUD) unless specifically stated otherwise by the Company.

3.4 The price of the Goods and/or Services shall be the Company's price quoted in writing. Any variation to the quoted price is at the Company's discretion prior to the completion of the provision of the Goods and / or Services. The Company will notify the Customer in writing of any price variation or where no price has been quoted (or a quoted price is no longer valid), the price advertised in the Company's current price list as at the date of the formation of the Contract will be deemed to be the Invoice Price.

3.5 All prices quoted in writing are valid only for the period specified on the quotation (generally 14 days, unless stated otherwise) or until the Company accepts the Customer's order in writing, whichever is the earlier.

3.6 Unless specified otherwise by the Company, all prices quoted by the Company to the Customer are inclusive of taxes and other charges of any kind whatsoever including, but not limited to, Goods and Services Tax (GST). Taxes or other charges of any kind whatsoever imposed on the Company in connection with the sale, delivery or use of the Goods or Services purchased pursuant to these Terms and Conditions (including but not limited to administrative charges on accounts which the Customer pays after the due date and any applicable CAD / Free TV application, supporting documentation, submission, freight or other charges legitimately incurred in respect thereof) are paid by the Customer. Such additional charge items appear as separate line entries on the Customer's invoice.

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Customers are encouraged to consider CAD / FreeTV approval matters prior to making any application to the relevant authorities for approval of the Goods or Services as to fitness for publication or veracity of the claims made therein.

If the Customer instructs the Company to seek CAD / FreeTV approval for any Goods or Services, the Company accepts no liability of any nature whatsoever for the veracity of the Customer's claims, the fitness of the material for publication, or for the outcome of the application or applications.

If a CAD /FreeTV submission is rejected, the Company will notify the Customer of the reasons for the rejection. The Customer can not make any claim of any nature whatsoever on the Company in respect of the failure of CAD / FreeTV to issue the approval of the Goods and Services for broadcast or publication. The Customer indemnifies the Company against any and all fees and charges of any nature whatsoever in respect of the preparation of any one or more additional applications, the submission and freight of the additional application, the costs of responding to queries about the original or the additional application, the professional fees incurred by the Company in amending the Goods and Services to make an additional application more likely to be successful.

A failure by CAD /FreeTV to approve a Customer's Goods and Services as suitable for publication or broadcast is usually issued in relation to matters that can, at additional cost to the Customer, be rectified in any additional application or submission. If instructed by the Customer to amend the Customer's Goods or Services in accordance with the orders of the relevant authority or authorities the Company may charge the Customer for all services rendered by the Company to the Customer or on the Customer's behalf.

Where the Company is notified on behalf of a Customer that the CAD / FreeTV application has been unsuccessful, and the Customer elects not to proceed with the publication or broadcast of the Goods or Services, and the Customer notifies the Company in writing to cease works, the Company will only charge the Customer for all Goods and Services performed for the Customer by the Company and completed to or on the date of the Customer's written notice.

3.7 In the matter of the Customer making payment to the Company, time is of the essence. The Company reserves the right to charge the Customer an administration fee on overdue accounts. Such administration fee applies from the original due date and applies to the time both before and after any judgment in respect of the matter is handed down by a body of competent jurisdiction. The administration fee is payable by the Customer to the Company upon demand.

3.8 In certain circumstances, interest will be charged to the overdue amount in addition to the administration fee mentioned in 3.7 above. It is at the Company's discretion to levy such interest on overdue amounts. If applied, the interest on the overdue amount or amounts is 3% above the base commercial rate (from time to time) of BankWest in Perth for borrowings in excess of \$100,000. Where applied, the Customer acknowledges that such interest does not constitute unjust enrichment. Such interest accrues daily and ceases accruing on the day that full payment of the overdue monies and the relevant applicable interest is received by the Company.

3.9 If OutWest books certain crew or hires equipment of any description whatsoever on behalf of a client, and the client or OutWest are required by unforeseeable circumstances (including but not limited to bad weather or cancellation or rescheduling by a third party) to cancel the booking or hiring arrangements, then OutWest may, unless agreed otherwise at the time of booking, charge the client any booking fee, cancellation fee or other fee charged to OutWest as a reimbursement or payment on a full indemnity basis.

If the booking or hiring arrangements are cancelled by OutWest or by the client:

- a. with 48 hours or more written notice to OutWest, no cancellation fee applies; or
- b. with more than 24 hours but less than 48 hours written notice to OutWest, the agreed cancellation fee is 50% of the total estimated fees or charges; or
- c. with 24 hours or less written notice to OutWest, the agreed cancellation fee is 100% of the total estimated fees or charges.

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4. WARRANTY

All Goods and Services supplied or performed by the Company are checked by the Company prior to being supplied or provided to the Customer.

Reasonable care is taken to ensure that the Goods or Services that are provided by the Company leave us in good condition.

A signature by the Customer, their agent, the person or business nominated by the Customer to be the recipient of Goods or Services, or by any person purporting to have the authority to sign for or on behalf of the Customer, is *prima facie* evidence that the Goods or Services were delivered in good order and condition.

Pre-completion samples issued to the Customer are amended by the Company if the error or omission is the fault of the Company. Where amendments are requested by the Customer and no fault of the Company is involved, additional charges may apply.

Once the pre-completion samples are approved by the Customer either verbally or in writing for mastering and release by the Company, the Company accepts no liability of any nature whatsoever for legal outcomes associated with, or the financial costs associated with rectifying, errors, omissions or amendments to Goods or Services which have been approved by the Customer.

4.1 The Company warrants the workmanship and in Goods and Services the Company supplies to the Customer. No warranty either expressed or implied applies to the Goods or Services if the Goods or Services are then supplied by the Customer to persons or entities other than the Customer, or if the Customer instructs the Company to deliver the Goods and Services to any third party.

4.2 CIRCUMSTANCES NOT COVERED BY THE WARRANTY INCLUDE:

- a.** Goods or Services which are damaged by the Customer either intentionally or as a result of an accident;
- b.** Goods or Services which were deemed by the Company to be in good working order or merchantable condition at the time they leave our premises or the premises of an Associate entity, and which, after delivery, have interacted with faulty peripherals or accessories not supplied by the Company;
- c.** Goods or Services which fail or malfunction due to external causes including accident, abuse, and intentional or unintentional misuse by the Customer or their agent or nominated recipient;
- d.** problems with Goods or Services caused by:
 - i.** electrical power interruption or surge;
 - ii.** third parties dealing with the Goods or Services in any way which is not authorised in writing by the Company prior to the dealing;
 - iii.** storage and/or use of the Goods or Services which is not in accordance with any relevant instructions issued by the Company;
 - iv.** failure to perform required preventive maintenance;
 - v.** normal wear and tear;
 - vi.** act of God, fire, flood, war, act of violence or any similar occurrence;
 - vii.** any attempt by a person or entity other than the staff or authorised agents of the Company, to adjust, repair or support the Goods or Services and problems caused by use of hardware or software not authorised by the Company.

4.3 ITEMS EXCLUDED FROM THE WARRANTY include:

- a.** third party software;
- b.** external devices not supplied by the Company as part of the Goods or Services; or
- c.** accessories or parts added to or installed in addition to the Goods and Services where such is or are used by the Customer after the Goods and Services are supplied or performed by the Company.

4.4 During the Warranty period, the Company will, at the Company's discretion, either repair and/or replace its Goods or Services subject to the Warranty where written notice of a defect is made to the Company within

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48 hours of the delivery or supply of the Goods or Services to the Customer AND FURTHER only where the defect is proved by the Customer to be the fault of the Company.

The Customer must pay all packing, shipping and transportation charges involved in returning the Goods or Services to the Company, and insure the shipment to its full replacement value, or accept the risk of loss or damage, during such shipment and transportation.

On completion of the Warranty work, the Company will return the repaired or replacement Goods to the Customer at the Company's prepaid expense, or to the Customer on a C.O.D. basis, at the Company's discretion but in any event, only after notifying the Customer of its decision in respect thereto.

4.5 THE COMPANY ACCEPTS NO LIABILITY FOR LOST DATA

- a. The Customer accepts all liability for lost data on storage media.
- b. The Company accepts no liability of any kind whatsoever for lost data on storage media. The Company hereby notifies the Customer that, without any further notice or requirement to notify, the Customer, prior to returning Goods to us for replacement or repair, is responsible for:
 - i. backing up any and all data stored in the Goods or on devices which are attached to the Goods; and
 - ii. removing any diskette, DVD, CD, PC Card or pen drive, zip drive or other portable storage device connected to the Goods or in any way associated with the Services

4.6 The Company neither represents nor warrants any Goods it sells as being fit for the purpose for which it is purchased by the Customer. Laws to the contrary are expressly excluded to the extent permissible at law.

4.7 If a Customer purchases Third Party Goods supplied to them through the Company, then the Customer expressly affirms that such Goods are covered by, and are subject to, the manufacturer's warranty only AND FURTHER AFFIRMS THAT the manufacturer's warranty acts to the exclusion of any Company Warranty in respect thereto. The Customer agrees that it will utilise the manufacturer's warranty and will not approach the Company for warranty support in respect of the Third Party Goods.

4.8 The Customer acknowledges that Goods and Services, once properly performed by the Company, are not capable of being returned or credited for any reason whatsoever.

5. SOFTWARE

5.1 If the Company provides software to the Customer under these Terms and Conditions, such software is sold subject to the separate terms and conditions of the license agreement specific to that software as outlined by the software manufacturer.

5.2 The Customer agrees to abide by the requirements and obligations of the licensor's license agreements.

5.3 The Customer acknowledges that:

- a. the Company offers no warranty of any nature whatsoever for any software by way of these Terms and Conditions; and
- b. any software related to the Goods is warranted in accordance with the license agreement provided by the software manufacturer that governs the Customers use of its goods.

5.4 All intellectual property and any other rights in respect of the software remain with the Company or (as appropriate) with the licensor of the software at all times.

6. GOODS, SERVICES AND GOODS VARIATIONS

The nature of the film, video and digital media industry is such that certain Goods become superseded, outmoded or outdated, but that consequently Goods of another electronic type or format become more acceptable or capable of integration and use by the broadcast media as time progresses.

6.1 The Customer acknowledges and agrees that the:

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- a. Company may revise and/or discontinue Goods or parts of Goods at any time and without notice to the Customer as part of the Company's policy of on-going Goods review and development; and
- b. Company's policy may result in differences between the specification of Goods delivered to the Customer and the specification of Goods ordered by the Customer.

6.2 The Company warrants that any revised or updated Goods or parts of Goods have the same or better functionality and/or performance as the Goods ordered by the Customer.

7. DELIVERY

7.1 As per clause 3.2 above, the Company delivers the Goods to the billing address of the Customer, unless otherwise ordered ("Delivery Address").

7.2 Dates quoted by the Company for the delivery of the Goods are best estimates. Such quoted dates do not form part of the Contract of Sale. The Company is not liable for damages in respect of any delay in delivery, publication, transport, transmission of the Goods and/or Services, regardless of the cause, where that delay is outside the scope of the Company's direct control. Delivery earlier than the quoted delivery date will be confirmed with the Customer by the Company.

7.3 The Company may choose to deliver all or part of the Goods ordered. Such delivery may be by instalment or instalments and in any sequence. Each separate instalment is the subject of a separate contract hereunder. No failure or default by the Company entitles the Customer to cancel, vary or rescind the Contract of Sale with the Company and the Company is not liable to damages in respect thereof. Any such Contract of Sale remains on foot until the Company discharges its obligations under the terms of the Contract of Sale. The Company commits to completing the delivery of the instalments of the Goods within a reasonable time of the order AND FURTHER to notify the Customer in the event that any delay in delivery is, or is reasonably expected to be, in excess of 2 business days past the quoted delivery date.

7.4 If, for any reason whatsoever, the Customer fails to take delivery of all or some of the Goods or Services when the Company attempts to deliver or provide them, or if, by an act or omission of the Customer the Company is unable to deliver Goods on the agreed delivery date, then the Customer and the Company agree that, after the Company notifies the Customer in writing, and from the due date, the Company will do one or more of the following:

- a. deem delivery to have occurred;
- b. pass risk in the Goods to the Customer;
- c. store the Customer's Goods in a secure facility;
- d. invoice the Customer for all costs, insurance, storage, handling and redelivery fees relevant to the undelivered Goods and Services, with such fees agreed by the Customer to be due and payable to the Company as per the terms stated in the invoice that relates to the fees.

8. ACCEPTANCE / RETURN OF GOODS

8.1 Acceptance

To the extent permissible at law in recognition of the Company's express exclusion in Clause 4.9 herein, of any representation or warranty as to any Goods' fitness for purpose, Goods delivered by the Company are deemed accepted by the Customer as being in good order and marketable condition and corresponding to the PO placed by the Customer unless:

- a. the Customer notifies the Company to the contrary ON THE DAY OF DELIVERY by way of e-mail or by telephone call that the Goods are not of acceptable quality or are incorrectly supplied; and
- b. such e-mail or telephone notification by the Customer to the Company is subsequently confirmed in writing by the Company within three business days of the delivery.

8.2 Returns Policy

For Goods and Services delivered to the Customer by the Company, the Customer acknowledges, agrees and consents that for Goods which are proved to be defective, where that defect is caused solely by the negligent act or omission of the Company:

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- a. the Customer may return the Goods, in a condition identical to the condition in which it was delivered by the Company (inclusive of all operating or related diskettes, CDs, DVDs, packaging material and other items included with Goods as delivered) to the Company to reach the Company no later than 5 working days after the delivery date (after which time the Company will not accept receipt of the Goods or entertain the Return); and
- b. the Company may, at its discretion, offer the Customer:
 - i. replacement Goods of at least the same performance and specification;
 - ii. a full or partial refund; or
 - iii. a credit of all or some of the purchase price.

HOWEVER

Any replacement, refund or credit will not include any packaging, transport or handling charges either forming part of the purchase price or forming a part of the Customer's costs to return the Goods to the Company.

Please note that the Customer may not withhold payment of all or any of the purchase monies whilst any claim is being investigated by the Company.

If the result of the Company's investigations is that the Company has been negligent, the Customer is notified of the outcome of the investigation and the Company may elect which of the alternatives in 8.2. b above the Company decides is in the best interests of both parties to adopt.

9. RIGHT, TITLE AND INTEREST

- a. Right to, title to and interest in the Goods passes to the Customer on the earlier of:
 - i. payment for the relevant Goods being cleared into the bank account of the Company; or
 - ii. the Goods being delivered to the Customer's billing address (or other address as specified prior to delivery) after full payment for the Goods or Services has been received by the Company.
- b. In the meantime, the Company retains right, title and interest (per *Romalpa*) in such a way that permits the Company to reclaim or repossess the Goods on reasonable suspicion that the Customer has not paid, or does not intend to pay, the full amount quoted on the Invoice/Statement for the Goods.
- c. If the Customer defaults on the terms of Clause 9a or 9b above, the Customer grants the Company a first-ranking lien on the Goods in lieu of payment in such circumstances.
- d. The lien mentioned in Clause 9c above is not subrogated to any right of any kind whatsoever granted in respect of the Goods by the Customer to any other person or entity in the event of the Customer entering into a bankruptcy, liquidation or scheme of arrangement with the Customer's creditors.

10. WEBSITE AND INTELLECTUAL PROPERTY

10.1 The Website is the property of the Company. All rights are hereby reserved in the name of the Company.

10.2 The Company is the only legal, equitable and rightful owner or licence holder of the names and terms "Out West Productions", "OutWest", "OutWest Productions" (and derivatives thereof) and of all permissible legal and equitable rights attached thereto.

10.3 No part of this Website may be:

- a. reproduced;
- b. stored in a data retrieval system; or
- c. transmitted in any form or by any means whatsoever by any person or legal entity whatsoever including by:
 - i. electronic;
 - ii. mechanical;
 - iii. photocopying;
 - iv. recording; or
 - v. any other means whatsoever

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without the prior consent of the Company in writing and signed on behalf of the Company by the Managing Director, who is the authorised officer of the Company.

10.4 Any description of Goods appearing within the Website is for identification purposes only. The use of such description by the Customer shall not constitute an order for the supply of Goods by the Company to the Customer as a sale by description.

10.5 Any advertisement or special promotion appearing in the Website shall be the subject of the terms and conditions appearing therein and shall not be valid in conjunction with any other promotion carried out by the Company whether the other promotion appears within the Website or otherwise.

10.6 Any prices appearing within the Website may be varied by the Company without notice to the Customer.

10.7 All rights in any:

- a. logo;
- b. trademark;
- c. brand-name;
- d. Goods name; or
- e. descriptive name of any type

appearing within the Website are hereby reserved and are strictly the property of each respective entity as they appear herein.

10.8 The Company shall be entitled to recover from the Customer (on a full indemnity basis) any and all costs, fees and charges (including but not limited to legal costs) that the Company may incur due to the failure of the Customer to strictly adhere to any of the terms and conditions appearing within the Website.

10.9 All sales or transactions (of any type whatsoever) arising out of any promotions or any materials within the Website shall be strictly governed by the laws of Western Australia, and the Customer hereby agrees to submit to the jurisdiction of the courts of Western Australia in matters arising.

11. LIMITATIONS ON COMPANY LIABILITY

11.1 Errors or Omissions

The Company may, without penalty or liability to Customers in respect thereto, amend any error or omission on any document already in the public domain.

11.2 Limit on Liability Payment

The limit of the total liability for the Company in respect of any one event or series of interrelated events is \$1 million AUD or the amount charged by the Company to the Customer for the Goods and paid by the Customer in accordance with these Terms and Conditions, whichever is the lesser amount.

11.3 No Liability for Damages Caused by Customer Use

The Customer agrees that the Company is not, under any circumstances, liable for damages of any description or type whatsoever incidental to, arising out of or in connection with the Customer's use of the Goods or services.

11.4 Customer Indemnity

The Customer indemnifies, and keeps indemnified, the Company against:

- a. any and all property loss or damage; and
- b. injury to or death of any persons

where such loss, injury or death is caused by the negligent act or omission or willful misconduct of the Customer, its employees, assigns, agents, Associate entity or sub-contractors or by any breach of its contractual obligations under these Terms and Conditions.

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11.5 Customer Acknowledges that Limitations are Reasonable

The Customer acknowledges and agrees that the liability limitations in this clause are reasonable and that the limitation provisions have been taken into account by the Company in pricing the Goods.

12. TRADE PRACTICES ACT

12.1 To the extent permissible under the *Trade Practices Act 1974* (Cwlth) ("the Act"), all implied terms, conditions and warranties are excluded.

12.2 Where the Act disallows the exclusion of implied conditions and warranties, the Customer and the Company agree that the Company's liability for a breach by the Company of such implied conditions and warranties (explicitly excluding a condition or warranty implied by section 69 of the Act) is limited, at the Company's option, to:

for Goods:

- a. the replacement of the Goods or the relevant part of the Goods at issue; or
- b. the repair of such Goods or part Goods; or
- c. the payment of the cost of replacing such Goods or part Goods;
- d. the supply of replacement Goods or part Goods of at least the same technical specification or description but possibly of a different brand to the Goods originally purchased and paid for; or
- e. the payment of the cost of having the goods repaired by a third party; or
for Services:
 - i. performing the Services again; or
 - ii. supplying the Services again; or
 - iii. the payment of the cost of having a third party perform or supply the services again.

13. FORCE MAJEURE

- a. Neither party shall be liable for any delay in performing any of its obligations under these Terms and Conditions if such delay is caused by circumstances beyond the reasonable control of the party so delaying (Delaying Party).
- b. The Delaying Party is entitled to a reasonable extension of time for the performance of their obligations.
- c. Without limiting the generality of Clauses 13a and 13b herein, causes beyond the Delaying Party's reasonable control include all matters involved in the Company's procedures for supplying Goods and Services.

14. CONFIDENTIALITY

- a. Each party treats as confidential all information obtained from the other pursuant to a Contract which is marked "Confidential" or the equivalent on any document, representation, quotation or correspondence that has the requisite quality of confidence about it as determined by a reasonable person or a court of competent jurisdiction (Confidential Information).
- b. Neither party divulges Confidential Information to any persons (except to such party's own employees and then only to those employees who need to know the same) without the other party's prior written consent provided that this clause shall not extend to Confidential Information which was rightfully in the possession of such party or deemed to be in the public domain prior to the commencement of the negotiations leading to the Contract, which is already knowledge considered to be in the public domain or information that becomes so at a future date (otherwise than as a result of a breach of this clause) or for which to claim otherwise would prove to be vexatious.
- c. Each party ensure that its employees are aware of, and comply with, the provisions of this clause and is prepared to lawfully sign a Statutory Declaration to that effect if called upon to so do.
- d. If the Company appoints any sub-contractor then the Company may disclose confidential information to such sub-contractor subject to such sub-contractor giving an undertaking in similar terms to the provisions of this clause. The foregoing obligations as to confidentiality shall survive any termination of the Contract.

15. CONTRACTING OUT

15.1 Where it is not lawful for the Company to contract out of, supersede or contractually override a Customer's statutory rights, nothing in these Terms and Conditions shall affect the statutory rights of that Customer. Under such circumstances, the statutory rights of the Customer take precedence.

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15.2 The Company may assign Contracts to any Associate entity.

15.3 The Customer may not assign all or any part of its rights or obligations without prior written consent of the Managing Director of the Company.

16. SEVERANCE

If any provision herein is held by any duly constituted competent authority to be invalid or unenforceable in whole or in part, then such invalid or unenforceable provision or part of a provision is severed to such an extent that the other provisions or balance of a particular provision remain on foot and unaffected by the severance.

17. WAIVER

- a.** If the Company or the Customer execute some indulgence to the other of them in enforcing the provisions of these Terms and Conditions such action does not prejudice or restrict the rights of that party.
- b.** No waiver of rights granted by one to the other operates or is intended to operate as a waiver of any subsequent breach.
- c.** No right, power or remedy herein conferred upon or reserved for either party, is exclusive of any other right, power or remedy available to that party and each such right, power or remedy shall be cumulative.

18. NOTICES

- a.** Notices must be in writing and sent:
for Notices sent by the Customer to the Company:

PRIVATE AND CONFIDENTIAL

The Managing Director
OutWest Pty Ltd ABN 41 096 607 046
Post Office Box 327
DIANELLA Western Australia 6059

OR

for Notices sent by the Company to the Customer:

to the address of the recipient set out in the Contract or on the relevant Tax Invoice / Statement, or such other address as the recipient may nominate by notice given in accordance with the provisions of this Clause.

- b.** Notices may be delivered personally or by mail or by facsimile transmission.
- c.** Notices are deemed to have been served:
 - i.** if delivered personally - on the date of the personal delivery;
 - ii.** if by mail - 48 hours after the post marked date appearing on the front of the envelope; and
 - iii.** if by facsimile transmission – on the day our electronic facsimile software dates our successful receipt of all of the relevant documents.

Notices relating to the existence of or validity of any Contract must be delivered personally or sent by registered mail or sent by any mailing method which requires the signature of the recipient as confirmation of delivery of the Notice.

19. HEADINGS

The headings used herein are for convenience only and are neither used, nor intended to be used, to affect the interpretation of the document.

20. GOVERNING LAW

These Terms and Conditions shall be governed by and construed in accordance with the laws of Western Australia and, where applicable, in accordance with the laws of the Commonwealth of Australia.

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21. JURISDICTION

These Terms and Conditions are subject to the non-exclusive jurisdiction of the courts of Western Australia and, where applicable, to the Courts of the Commonwealth of Australia. The Company and the Customer each irrevocably consent to the submission of appropriate matters to the appropriate Court or Courts to hear.

22. ENTIRE CONTRACT

This agreement represents the entire agreement between the parties with respect to the matters herein.

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Send mail to sales@outwest.com.au with any questions or comments about this website.

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