

DVR Solutions Pty Ltd – Terms & Conditions of Trade

<p>1. Definitions</p> <p>1.1 "DVR Solutions" shall mean DVR Solutions Pty Ltd its successors and assigns or any person acting on behalf of and with the authority of DVR Solutions Pty Ltd.</p> <p>1.2 "Buyer" shall mean the Buyer or any person acting on behalf of and with the authority of the Buyer.</p> <p>1.3 "Guarantor" means that person (or persons), or entity, who agrees to be liable for the debts of the Buyer on a principal debtor basis.</p> <p>1.4 "Goods" shall mean Goods supplied by DVR Solutions to the Buyer (and where the context so permits shall include any supply of Services as hereinafter defined) and are as described on the invoices, quotation, work authorisation or any other forms as provided by DVR Solutions to the Buyer.</p> <p>1.5 "Services" shall mean all services supplied by DVR Solutions to the Buyer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).</p> <p>1.6 "Price" shall mean the cost of the Goods as agreed between DVR Solutions and the Buyer subject to clause 3 of this contract.</p> <p>2. Acceptance</p> <p>2.1 Any instructions received by DVR Solutions from the Buyer for the supply of Goods and/or the Buyer's acceptance of Goods supplied by DVR Solutions shall constitute acceptance of the terms and conditions contained herein.</p> <p>2.2 Where more than one Buyer has entered into this agreement, the Buyers shall be jointly and severally liable for all payments of the Price.</p> <p>2.3 Upon acceptance of these terms and conditions by the Buyer the terms and conditions are irrevocable and can only be amended with the written consent of DVR Solutions.</p> <p>2.4 The Buyer undertakes to give DVR Solutions at least fourteen (14) days notice of any change in the Buyer's name, address and/or any other change in the Buyer's details.</p> <p>3. Price And Payment</p> <p>3.1 At DVR Solutions's sole discretion the Price shall be either;</p> <p>(a) as indicated on invoices provided by DVR Solutions to the Buyer in respect of Goods supplied; or</p> <p>(b) DVR Solutions's current price at the date of delivery of the Goods according to DVR Solutions's current published Price list; or</p> <p>(c) DVR Solutions's quoted Price (subject to clause 3.2) which shall be binding upon DVR Solutions provided that the Buyer shall accept DVR Solutions's quotation in writing within thirty (30) days.</p> <p>3.2 DVR Solutions reserves the right to change the Price in the event of a variation to DVR Solutions's quotation.</p> <p>3.3 At DVR Solutions's sole discretion a deposit may be required.</p> <p>3.4 Time for payment for the Goods shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due seven (7) days following the date of the invoice.</p> <p>3.5 At DVR Solutions's sole discretion;</p> <p>(a) payment shall be due on delivery of the Goods, or</p> <p>(b) payment shall be due before delivery of the Goods, or</p> <p>(c) payment for approved Buyers shall be made by instalments in accordance with DVR Solutions's payment schedule, or</p> <p>(d) payment for approved Buyer's shall be due fourteen (14) days following the end of the month in which a statement is posted to the Buyer's address or address for notices; or</p> <p>(e) payment for approved Buyer's shall be due thirty (30) days following the date of the invoice.</p> <p>3.6 Payment will be made by cash, or by cheque, or by bank cheque, or by credit card (plus a surcharge of up to 3% of the Price), or by direct credit, or by any other method as agreed to between the Buyer and DVR Solutions.</p> <p>3.7 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.</p> <p>4. Delivery Of Goods</p> <p>4.1 At DVR Solutions's sole discretion delivery of the Goods shall take place when;</p> <p>(a) the Buyer takes possession of the Goods at DVR Solutions's address; or</p> <p>(b) the Buyer takes possession of the Goods at the Buyer's address (in the event that the Goods are delivered by DVR Solutions or DVR Solutions's nominated carrier); or</p> <p>(c) the Buyer's nominated carrier takes possession of the Goods in which event the carrier shall be deemed to be the Buyer's agent.</p> <p>4.2 At DVR Solutions's sole discretion the costs of delivery are;</p> <p>(a) included in the Price, or</p> <p>(b) in addition to the Price, or</p> <p>(c) for the Buyer's account.</p> <p>4.3 The Buyer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Buyer is unable to take delivery of the Goods as arranged then DVR Solutions shall be entitled to charge a reasonable fee for redelivery.</p> <p>4.4 Delivery of the Goods to a third party nominated by the Buyer is deemed to be delivery to the Buyer for the purposes of this agreement.</p> <p>4.5 DVR Solutions may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.</p> <p>4.6 The failure of DVR Solutions to deliver shall not entitle either party to treat this contract as repudiated.</p> <p>4.7 DVR Solutions shall not be liable for any loss or damage whatever due to failure by DVR Solutions to deliver the Goods (or any of them) promptly or at all.</p> <p>5. Risk</p> <p>5.1 If DVR Solutions retains ownership of the Goods nonetheless, all risk for the Goods passes to the Buyer on delivery.</p> <p>5.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Buyer, DVR Solutions is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by DVR Solutions is sufficient evidence of DVR Solutions's rights to receive the insurance proceeds without the need for any person dealing with DVR Solutions to make further enquiries.</p> <p>6. Title</p> <p>6.1 It is the intention of DVR Solutions and agreed by the Buyer that ownership of the Goods shall not pass until:</p> <p>(a) the Buyer has paid all amounts owing for the particular Goods, and</p> <p>(b) the Buyer has met all other obligations due by the Buyer to DVR Solutions in respect of all contracts between DVR Solutions and the Buyer.</p> <p>6.2 Receipt by DVR Solutions of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then DVR Solutions's ownership or rights in respect of the Goods shall continue.</p> <p>6.3 It is further agreed that:</p> <p>(a) where practicable the Goods shall be kept separate and identifiable until DVR Solutions shall have received payment and all other obligations of the Buyer are met; and</p> <p>(b) until such time as ownership of the Goods shall pass from DVR Solutions to the Buyer DVR Solutions may give notice in writing to the Buyer to return the Goods or any of them to DVR Solutions. Upon such notice the rights of the Buyer to obtain ownership or any other interest in the Goods shall cease; and</p> <p>(c) DVR Solutions shall have the right of stopping the Goods in transit whether or not delivery has been made; and</p> <p>(d) if the Buyer fails to return the Goods to DVR Solutions then DVR Solutions or DVR Solutions's agent may enter upon and into land and premises owned, occupied or used by the</p>	<p>(e) Buyer, or any premises as the invitee of the Buyer, where the Goods are situated and take possession of the Goods; and the Buyer is only a bailee of the Goods and until such time as DVR Solutions has received payment in full for the Goods then the Buyer shall hold any proceeds from the sale or disposal of the Goods on trust for DVR Solutions; and</p> <p>(f) the Buyer shall not deal with the money of DVR Solutions in any way which may be adverse to DVR Solutions; and</p> <p>(g) the Buyer shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of DVR Solutions; and</p> <p>(h) DVR Solutions can issue proceedings to recover the Price of the Goods sold notwithstanding the ownership of the Goods may not have passed to the Buyer; and</p> <p>(i) until such time that ownership in the Goods passes to the Buyer, if the Goods are converted into other products, the parties agree that DVR Solutions will be the owner of the end products.</p> <p>7. Buyer's Disclaimer</p> <p>7.1 The Buyer hereby disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any misrepresentation made to the Buyer by DVR Solutions and the Buyer acknowledges that the Goods are bought relying solely upon the Buyer's skill and judgement.</p> <p>8. Defects</p> <p>8.1 The Buyer shall inspect the Goods on delivery and shall within seven (7) days notify DVR Solutions of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Buyer shall afford DVR Solutions an opportunity to inspect the Goods within a reasonable time following delivery if the Buyer believes the Goods are defective in any way. If the Buyer shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which DVR Solutions has agreed in writing that the Buyer is entitled to reject, DVR Solutions's liability is limited to either (at DVR Solutions's discretion) replacing the Goods or repairing the Goods.</p> <p>9. Returns</p> <p>9.1 Returns will only be accepted provided that:</p> <p>(a) the Buyer has complied with the provisions of clause 8.1; and</p> <p>(b) DVR Solutions has agreed in writing to accept the return of the Goods; and</p> <p>(c) the Goods are returned at the Buyer's cost within seven (7) days of the delivery date; and</p> <p>(d) DVR Solutions will not be liable for Goods which have not been stored or used in a proper manner; and</p> <p>(e) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.</p> <p>9.2 DVR Solutions may (in its discretion) accept the return of Goods for credit but this may incur a handling fee of 15% of the value of the returned Goods plus any freight.</p> <p>10. Warranty</p> <p>10.1 The warranty shall be the current warranty provided by the manufacturer of the Goods. DVR Solutions shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods. DVR Solutions Pty. Ltd. assumes no responsibility for the labour costs involved in the freight, removal of defective parts, installation of new parts or service charges related thereto.</p> <p>11. The Commonwealth Trade Practices Act 1974 and Fair Trading Acts</p> <p>11.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Commonwealth Trade Practices Act 1974 or the Fair Trading Acts in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.</p> <p>12. Intellectual Property</p> <p>12.1 Where DVR Solutions has designed, drawn or written Goods for the Buyer, then the copyright in those designs and drawings and documents shall remain vested in DVR Solutions, and shall only be used by the Buyer at DVR Solutions's discretion.</p> <p>12.2 The Buyer warrants that all designs or instructions to DVR Solutions will not cause DVR Solutions to infringe any patent, registered design or trademark in the execution of the Buyer's order and the Client agrees to indemnify DVR Solutions against any action taken by a third party against DVR Solutions in respect of any such infringement.</p> <p>13. Default & Consequences Of Default</p> <p>13.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% per calendar month and such interest shall compound monthly at such a rate after as well as before any judgement.</p> <p>13.2 If the Buyer defaults in payment of any invoice when due, the Buyer shall indemnify DVR Solutions from and against all costs and disbursements incurred by DVR Solutions in pursuing the debt including legal costs on a solicitor and own client basis and DVR Solutions's collection agency costs.</p> <p>13.3 Without prejudice to any other remedies DVR Solutions may have, if at any time the Buyer is in breach of any obligation (including those relating to payment), DVR Solutions may suspend or terminate the supply of Goods to the Buyer and any of its other obligations under the terms and conditions. DVR Solutions will not be liable to the Buyer for any loss or damage the Buyer suffers because DVR Solutions exercised its rights under this clause.</p> <p>13.4 If any account remains overdue after thirty (30) days then an amount of the greater of \$20.00 or 10.00% of the amount overdue (up to a maximum of \$200) shall be levied for administration fees which sum shall become immediately due and payable.</p> <p>13.5 Without prejudice to DVR Solutions's other remedies at law DVR Solutions shall be entitled to cancel all or any part of any order of the Buyer which remains unperformed and all amounts owing to DVR Solutions shall, whether or not due for payment, become immediately payable in the event that:</p> <p>(a) any money payable to DVR Solutions becomes overdue, or in DVR Solutions's opinion the Buyer will be unable to meet its payments as they fall due; or</p> <p>(b) the Buyer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or</p> <p>(c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Buyer or any asset of the Buyer.</p> <p>14. Security And Charge</p> <p>14.1 Despite anything to the contrary contained herein or any other rights which DVR Solutions may have however:</p> <p>(a) where the Buyer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Buyer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to DVR Solutions or DVR Solutions's nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Buyer and/or the Guarantor acknowledge and agree that DVR Solutions (or DVR Solutions's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.</p> <p>(b) should DVR Solutions elect to proceed in any manner in accordance with this clause and/or its sub-clause, the Buyer and/or Guarantor shall indemnify DVR Solutions from and against all DVR Solutions's costs and disbursements including legal costs on a solicitor and own client basis.</p>	<p>(c) the Buyer and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint DVR Solutions or DVR Solutions's nominee as the Buyer's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 14.1.</p> <p>15. Cancellation</p> <p>15.1 DVR Solutions may cancel these terms and conditions or cancel delivery of Goods at any time before the Goods are delivered by giving written notice. On giving such notice DVR Solutions shall repay to the Buyer any sums paid in respect of the Price. DVR Solutions shall not be liable for any loss or damage whatever arising from such cancellation.</p> <p>15.2 In the event that the Buyer cancels delivery of Goods the Buyer shall be liable for any loss incurred by DVR Solutions (including, but not limited to, any loss of profits) up to the time of cancellation.</p> <p>16. Privacy Act 1988</p> <p>16.1 The Buyer and/or the Guarantor/s agree for DVR Solutions to obtain from a credit reporting agency a credit report containing personal credit information about the Buyer and Guarantor/s in relation to credit provided by DVR Solutions.</p> <p>16.2 The Buyer and/or the Guarantor/s agree that DVR Solutions may exchange information about the Buyer and the Guarantor/s with those credit providers either named as trade referees by the Buyer or named in a consumer credit report issued by a credit reporting agency for the following purposes:</p> <p>(a) to assess an application by Buyer; and/or</p> <p>(b) to notify other credit providers of a default by the Buyer; and/or</p> <p>(c) to exchange information with other credit providers as to the status of this credit account, where the Buyer is in default with other credit providers; and/or</p> <p>(d) to assess the credit worthiness of Buyer and/or Guarantor/s.</p> <p>16.3 The Buyer consents to DVR Solutions being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).</p> <p>16.4 The Buyer agrees that personal credit information provided may be used and retained by DVR Solutions for the following purposes and for other purposes as shall be agreed between the Buyer and DVR Solutions or required by law from time to time:</p> <p>(a) provision of Goods; and/or</p> <p>(b) marketing of Goods by DVR Solutions, its agents or distributors in relation to the Goods; and/or</p> <p>(c) analysing, verifying and/or checking the Buyer's credit, payment and/or status in relation to provision of Goods; and/or</p> <p>(d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Buyer; and/or</p> <p>(e) enabling the daily operation of Buyer's account and/or the collection of amounts outstanding in the Buyer's account in relation to the Goods.</p> <p>16.5 DVR Solutions may give information about the Buyer to a credit reporting agency for the following purposes:</p> <p>(a) to obtain a consumer credit report about the Buyer; and/or</p> <p>(b) allow the credit reporting agency to create or maintain a credit information file containing information about the Buyer.</p> <p>17. Unpaid DVR Solutions's Rights</p> <p>17.1 Where the Buyer has left any item with DVR Solutions for repair, modification, exchange or for DVR Solutions to perform any other Service in relation to the item and DVR Solutions has not received or been tendered the whole of the Price, or the payment has been dishonoured, DVR Solutions shall have:</p> <p>(a) a lien on the item;</p> <p>(b) the right to retain the item for the Price while DVR Solutions is in possession of the item;</p> <p>(c) a right to sell the item.</p> <p>17.2 The lien of DVR Solutions shall continue despite the commencement of proceedings, or judgement for the Price having been obtained.</p> <p>18. Equipment Loan / Evaluation</p> <p>18.1 If DVR Solutions loans goods or equipment (the "Equipment") to the Buyer for evaluation purposes or while repairs are being made the following will apply:</p> <p>(a) The Equipment shall at all times remain the property of DVR Solutions and is returnable on demand by DVR Solutions. In the event that the Equipment is not returned to DVR Solutions in the condition in which it was delivered DVR Solutions retains the right to charge the Price of repair or replacement of the Equipment.</p> <p>(b) The Buyer shall;</p> <p>(i) keep the Equipment in their own possession and control and shall not assign the benefit of the Equipment nor be entitled to lien over the Equipment.</p> <p>(ii) not alter or make any additions to the Equipment including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment.</p> <p>(iii) keep the Equipment, complete with all parts and accessories, clean and in good order as delivered, and shall comply with any maintenance schedule as advised by DVR Solutions to the Buyer.</p> <p>18.3 The Buyer accepts full responsibility for the safekeeping of the Equipment and the Buyer agrees to insure, or self insure, DVR Solutions's interest in the Equipment and agrees to indemnify DVR Solutions against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will effect adequate Public Liability Insurance covering any loss, damage or injury to property or persons arising out of the use of the Equipment. Further the Buyer will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.</p> <p>19. General</p> <p>19.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.</p> <p>19.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Queensland and are subject to the jurisdiction of the courts of Queensland.</p> <p>19.3 DVR Solutions shall be under no liability whatever to the Buyer for any indirect loss and/or expense (including loss of profit) suffered by the Buyer arising out of a breach by DVR Solutions of these terms and conditions.</p> <p>19.4 In the event of any breach of this contract by DVR Solutions the remedies of the Buyer shall be limited to damages. Under no circumstances shall the liability of DVR Solutions exceed the Price of the Goods.</p> <p>19.5 The Buyer shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Buyer by DVR Solutions.</p> <p>19.6 DVR Solutions may license or sub-contract all or any part of its rights and obligations without the Buyer's consent.</p> <p>19.7 DVR Solutions reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which DVR Solutions notifies the Buyer of such change.</p> <p>19.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.</p> <p>19.9 The failure by DVR Solutions to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect DVR Solutions's right to subsequently enforce that provision.</p>
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