

av1

AV1 TERMS & CONDITIONS OF BUSINESS

av1.com.au

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AV1 Terms & Conditions of Business | v1.3



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1. RESPONSIBLE PERSON

Name	Nigel Mintern
Role	Managing Director
Department	Administration

2. DOCUMENT VERSION HISTORY

Version	Date	Reason	Author
1.3	28/07/24	Amended 15.2	Kealan Coleman
1.2	04/09/23	Clarified the currency payable	Kealan Coleman
1.1	14/08/23	Assignments clarified	Keith Wootton
1.0	21/10/21	Initial Release Document	Keith Wootton

3. PART A - GENERAL TERMS

1. Parties

This agreement is between AV1 Pty Limited ACN 115 225 048 of PO Box 1571 Strawberry Hills NSW 2012 (us, we or our) and the entity specified in the Proposal (you or your).

2. Formation

2.1 When you ask us to supply any Equipment and/or Services, we will send you a Proposal setting out the scope of work, Fees and other relevant details.

2.2 The Proposal is valid for 30 days, and you can accept it by returning a signed copy to us or emailing us to accept it.

2.3 When you accept the Proposal, a legally binding contract is formed between you and us, consisting of the Proposal, General Terms (Part A) and Specific Terms (Part B) (Contract).

2.4 If there is any conflict between the Proposal, the General Terms and the Specific Terms:

- (a) the terms in the Specific Terms will prevail over the General Terms to the extent of the inconsistency; and
- (b) the terms in the General Terms and Specific Terms will prevail over the Proposal to the extent of the inconsistency.

3. Equipment and /or Services

3.1 We will provide you with the Equipment and/or Services on the terms of this Contract.

3.2 You may request a variation to the Contract (including a change to the scope) by submitting a change request to us and we may propose a variation order in such form as we determine.

3.3 You, or Your Representative, may approve the variation order in writing or by email. Any approval by Your Representative will be binding on you.

4. Fees and payment

4.1 You understand that the amount quoted in the Proposal is an estimate of probable fees and charges based on your brief, the agreed scope of work and assumptions. Regardless of the amount quoted, you must pay the actual Fees incurred, which may vary due to changes and/or circumstances beyond our control.

4.2 Time is of the essence in respect of this clause 4.2. Unless agreed otherwise, you must pay:

- (a) the Deposit to us prior to the Start Date; and
- (b) the remainder of the Fees are payable in accordance with the payment terms specified on our invoice to you.

4.3 You must pay the Fees in full even if you do not (or are unable to) use the Equipment and/or Services.

4.4 If you fail to pay an undisputed amount by the due date, we may, without limiting any other rights available to us:

- (a) charge interest on the amount due at the rate of 10% from the due date until it is paid in full; and/or
- (b) terminate or suspend the supply of any further Equipment or Services under the Contract.

4.5 On 30 days' notice to you, we may increase the Fees for any reason during the Term (acting reasonably), including as a result of an increase in Fees charged by third-party suppliers.

4.6 All amounts payable under this Contract are in Australian Dollars (AUD), and exclusive of GST. If GST is payable in relation



to a Taxable Supply, the amount payable for that Taxable Supply is the amount for that Taxable Supply specified in this Contract plus GST. All capitalised terms in this clause are defined in A New Tax System (Goods and Services Tax) Act 1999.

5. Your obligations

5.1 You must:

- (a) obtain all rights, consents and licences for us to access the site to supply the Equipment and/or Services and install and/or remove the Equipment;
- (b) procure for us safe and proper access to the site (including to operate, inspect, repair or maintain the Equipment);
- (c) comply with all applicable laws and regulations;
- (d) comply with all third-party terms and requirements applicable to your use of the Equipment and Services under this Contract as notified to you or requested by you, from time to time; and
- (e) perform any additional obligations for you as set out in the Proposal.

5.2 If you do not perform, or are delayed in performing, any of your obligations:

- (a) we will not be liable for any failure or delay in supplying the Equipment or Services; and
- (b) if the delay is extensive, we may elect to terminate the Contract without liability on notice to you.

6. Warranties

Each party represents and warrants to the other that, to the best of its knowledge, each of the following statements is true, accurate and not misleading as at the date of this Contract and will be true and accurate on each day during the Term:

- (a) it has the corporate power to enter into and perform its obligations under this Contract and to carry out the transactions contemplated by this Contract; and
- (b) there are no pre-existing rights or obligations that would prevent it from complying with its obligations under this Contract.

7. Exclusion of liability

7.1 Notwithstanding any other provision of this Contract and to the fullest extent permitted by law whether in contract, tort (including negligence), statute or otherwise:

- (a) our aggregate liability in connection with this Contract will not exceed an amount equal to the Fees paid by you to us in the last 12 months under the Contract;
- (b) we are not liable for any Consequential Loss, indirect, incidental, punitive or special Losses of any kind (including loss of profit or business interruption);

7.2 Subject to any express warranties in this Contract but otherwise to the fullest extent permitted by law, we expressly exclude all warranties, conditions and representations in whatever form relating to the Services, including any warranties or representations relating to performance, quality, fitness for use or the security and operation of the Services.

7.3 Where a mandatory term or consumer guarantee is implied by law, our liability for breach of such a term or consumer guarantee is limited, at our option, to:

- (a) if the breach relates to goods:
 - (i) the replacement of the goods or the supply of equivalent goods;
 - (ii) the repair of the goods;
 - (iii) the payment of the cost of replacing or repairing the goods; or
- (b) if the breach relates to services:
 - (i) the supplying of the services again; or
 - (ii) the payment of the cost of having the services supplied again.

8. Indemnity

You indemnify us from and against all claims, liability, loss, damage, expenses and costs (including legal costs on a full indemnity basis) arising directly or indirectly from or in connection with:

- (a) any breach of this Contract, negligence, fraud or wilful misconduct by you, your directors, officers, employees, contractors, agents and contractors;
- (b) personal injury or death, or property loss or damage caused by any act or omission by you, your directors, officers, employees, contractors, agents and contractors; and
- (c) any claim that Your Content is unlawful or infringes the intellectual property or other rights of any person.

9. Privacy and Confidential Information

9.1 Each party must comply with the Privacy Act 1988 (Cth).

9.2 Each party must keep all Confidential Information confidential and use such information for the sole purpose of performing its obligations under this Contract.

10. Intellectual Property

10.1 Nothing in this Contract transfers ownership of any Pre-Existing IP to the other party or any other person.

10.2 You own all Intellectual Property Rights in Your Content. You grant us a royalty-free, non-exclusive, revocable licence to use Your Content to the extent necessary to perform our obligations under this Contract.

10.3 We understand we must obtain your prior written consent to use, or expressly or implicitly refer to, your name, logo or any other intellectual property or the name of any of your personnel, including, without limitation:

- (a) any promotional or advertising communications or material; and
- (b) any promotions, links or information which may appear or be displayed on our website.



11. Term and termination

11.1 Unless stated otherwise, this Contract will commence on the Start Date and continue for the Term unless terminated earlier in accordance with this Contract.

11.2 Either party may terminate this Contract on notice if the other party:

- (a) fails to remedy a breach within 21 days notice from the other party requesting the breach be remedied;
- (b) breaches this Contract and that breach is not capable of remedy; or
- (c) becomes insolvent or enters into liquidation.

11.3 Our Cancellation Policy applies to all cancellations and/or postponements.

11.4 Upon the expiry or termination of this Contract, you must pay to us all outstanding Fees.

12. Force Majeure

12.1 If a Force Majeure Event occurs, the affected party must notify the other party, and the obligations of the party will be suspended to the extent that they are affected by the relevant Force Majeure Event until that Force Majeure Event has ceased.

12.2 If a Force Majeure Event continues for more than 30 days, either party may terminate this Contract.

12.3 For clarification, notwithstanding clause 4.3, you are not required to pay any Fees under this agreement for any Equipment and/or Services that we are unable to provide as a result of a Force Majeure Event. We will refund to you any Fees that were paid by you in accordance with this agreement for any Equipment and/or Services that we were unable to provide as a result of a Force Majeure Event.

13. Dispute resolution

13.1 Any party who claims to have a dispute against another party must issue a notice to the other party setting out details of the dispute (Dispute Notice).

13.2 The parties must meet to resolve the dispute within 5 business days of receiving the Dispute Notice. Each party will be represented by a person having the authority to agree to such resolutions or methods. All aspects of the meetings will be confidential and without prejudice to the parties' rights, obligations, and liabilities.

13.3 If the parties do not resolve the dispute within 20 Business Days (or such longer period the parties may agree in writing) after the Dispute Notice, then either party may initiate court proceedings in relation to the dispute.

13.4 Despite the existence of a dispute, each party must continue to perform its obligations under the Contract unless those obligations are the subject of the dispute.

14. Notices

14.1 A notice, consent or other communication under this Contract is only effective if it is in writing at the addressee's address or email address.

14.2 A notice is deemed to have been received:

- (a) if posted, on the third Business Day after posting; or
- (b) if delivered personally, upon delivery;
- (c) if sent by email, the earlier of when the sender receives an automated message confirming delivery or within 24 hours after the message has been sent (as recorded on the device from which the sender sent the message).

15. General

15.1 Nothing in this Contract will be taken as giving rise to a relationship of employment, agency, partnership or joint venture. Except as otherwise provided in this Contract, the parties acknowledge and agree that neither party will have any authority to bind the other party or to enter into an agreement in the name of the other party.

15.2 We may subcontract the performance of any part of the Services to any third party.

- (a) Services in Queensland may be provided by TBT AV Pty Ltd (TA "AV1 QLD").
- (b) Services in Victoria may be provided by Live AV Pty Ltd (TA "AV1 Melbourne").
- (c) Digital Media Services may be provided by All Things All Creatures Pty Ltd (TA "All Things All Creatures").
- (d) Event Technology Services may be provided by Sprintr Pty Ltd (TA "Sprintr").

15.3 This Contract contains the entire understanding between the parties concerning the subject matter of the agreement and supersedes all prior communications.

15.4 Either party's failure to enforce any provisions under this Contract does not waive the right of such party to enforce any such provisions thereafter.

15.5 If a court holds any term or provision of this Contract to be illegal, invalid, or unenforceable under the applicable law, that term or provision will be severed from this Contract, and the remaining terms and conditions will be unaffected.

15.6 This Contract is governed by, and construed in accordance with the laws of New South Wales, Australia. The parties agree to submit to the non-exclusive jurisdiction of the courts of New South Wales.

15.7 This Contract may not be amended or varied unless the amendment or variation is in writing and signed by all parties.

15.8 You may not assign, transfer or otherwise deal with this Contract or any right under this Contract without our prior written consent, which must not be unreasonably withheld.

15.9 Any warranty, indemnity, or obligation of confidentiality in this Contract will survive termination. Any other term, which by its nature is intended to survive termination of this Contract, survives termination of this Contract.

In this Contract, unless the context otherwise requires:

- (a) Business Day means a day that is not a Saturday, Sunday or public holiday in New South Wales.
- (b) Cancellation Policy means the cancellation policy set out in the Specific Terms.
- (c) Confidential Information means confidential, proprietary and commercially sensitive information (irrespective of the form or the manner in which the information is disclosed or the time of such disclosure), including information which:
 - (i) is identified as confidential or ought to have been known to be confidential; and
 - (ii) relates to the business affairs and practices, including financial information, business opportunities, business plans, business processes and methodologies,



but does not include information which is in, or comes into, the public domain other than by a breach of this Agreement, or which is independently known to the other party as evidenced by its written record.

(d) Consequential Loss means any Loss that does not arise naturally in the ordinary course of things from the event or circumstance giving rise to the Loss.

(e) Contract Materials means works created or produced by us arising in connection with the provision of the Services as set out in a Proposal or approved variation order.

(f) Deposit means the deposit set out in the Proposal.

(g) Digital Media Services means the digital media services we supply to you under the Contract, as specified in the Proposal or approved variation order.

(h) Equipment means the rentable asset(s) we lease to you under the Contract, as specified in the proposal.

(i) Fees means the fees payable for the Equipment and/or Services.

(j) Force Majeure Event means any act, event or cause, including earthquakes, cyclones, floods, fires, lightning, storms or other acts of God, strikes or industrial disputes, riots, terrorist acts, civil disturbances, breakages of machinery, or industrial conditions, or arising out of any other unexpected and exceptional cause, delays in transportation and dispositions or orders of governmental authority, which:

(i) directly or indirectly results in a party being prevented from or delayed in performing any of its obligations under this Contract; and

(ii) is beyond the reasonable control of that party.

(k) Intellectual Property Rights means all present and future rights conferred by statute, common law or equity in or in relation to any copyright, trademarks, designs, patents, circuit layouts, plant varieties, business and domain names, confidential information, inventions and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields whether or not registered, registrable or patentable.

(l) Losses means any judgment, debt, damage, loss, cost, expense or liability howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at law, in equity, or otherwise.

(m) Pre-existing IP means any intellectual property in any materials existing at the Start Date, including trademarks, designs, design specifications, software, hardware or other documentation and materials used in each party's business.

(n) Proposal means a proposal, quote, estimate, email or any other document we may issue you setting out the commercial details, including a detailed description of, and specifications for, the Equipment and/or Services (including any deliverables) and the Fees.

(o) Services means the services we supply to you under the Contract, as specified in the Proposal or approved variation order.

(p) Start Date means the date on which you accept this Contract in accordance with clause 2.2.

(q) Term means the term set out in the Proposal and any extension term.

(r) Your Content means all content provided by you to us, including words, images, logos, information, documents and materials and in the case of Digital Media Services, includes data, text, files, images, photos, profiles, audio and video clips, sounds, musical works, works of authorship and other materials.

(s) Your Representative means the representative you nominate in the Proposal, or as notified to us from time to time.

15.10 In this document, unless the context otherwise requires:

(a) clause and subclause headings are for reference purposes only;

(b) the singular includes the plural and vice versa;

(c) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;

(d) references to statutes include all statutes amending, consolidating or replacing such statutes;

(e) \$ means the lawful currency of Australia;

(f) any reference to a party to this document includes its successors and permitted assigns; and

(g) the use of the word "includes" or "including" is not to be taken as limiting the meaning of the words preceding it.

4. PART B - SPECIFIC TERMS

Equipment

1. Your responsibilities

1.1 Where the Equipment is solely in your possession, you must:

(a) satisfy yourself that the Equipment is in good condition, and suitable for your purposes;

(b) use the Equipment only for, and at, the event for which the Equipment was supplied;

(c) use the Equipment strictly in accordance with our directions and requirements, and the manufacturer's instructions and specifications (if any);

(d) take care of the Equipment, keep it clean, safe and secure and return it to us in the same condition (fair wear and tear excepted) on time;

(e) notify us immediately if you have reason to believe that the Equipment malfunctions. If we agree that it is malfunctioning, we will replace the Equipment at no cost to you but with no liability to us.

1.2 While the Equipment is in your possession, you must not:

(f) remove any serial number or identification markings on the Equipment;

(g) permit anyone else to use, or take control or possession of, the Equipment; or

(h) use, or allow the Equipment to be used, for unlawful purposes (including displaying or communicating obscene, offensive, defamatory or infringing material).

2. Risk, title and security

2.1 We own the Equipment. Nothing in this Contract transfers title to you.

2.2 We lease the Equipment to you on the basis that you have obtained all necessary permits, licenses and authority to use the



Equipment for the purpose contemplated in the Contract.

2.3 Where the Equipment is in your sole possession, risk in the Equipment passes to you immediately upon your acceptance of delivery of the Equipment. You bear all risk and liability for loss or damage to property, personal injury or death, and third-party claims arising directly or indirectly in connection with the use, installation, possession or control of the Equipment by you, your directors, officers, employees, contractors, agents and contractors.

2.4 You acknowledge and agree that clause 2 of this Part B creates a security interest (as defined in the PPSA) in our favour and that you must:

- (a) promptly do all things and sign all documents required by us to enable the security interest over the Equipment to be registered on the PPSA register; and
- (b) you waive any right to receive notices under sections 95, 118, 121(4), 129, 130, 132(3)(d), 132(4), 134(1) and 135 of the PPSA and your rights under sections 96, 117, 142 and 143 of the PPSA.

2.5 In this clause PPSA means the Personal Property Securities Act 2009 (Cth).

3. Fees and payment

Unless and until we have received full payment in cleared funds in accordance with clause 4.2 of Part A, we will not reserve or supply the Equipment to you, and we will have no liability to you.

4. Indemnity

You indemnify us from and against all claims, liability, loss, damage, expenses and costs (including legal costs on a full indemnity basis) arising directly or indirectly from or in connection with your use, possession or control of the Equipment (including the cost of repair or replacement of Equipment as determined by us).

Services

5. Our responsibilities

5.1 We will:

- (a) use all reasonable commercial efforts to complete the Services within any estimated time frame; and
- (b) perform the Services with due care, competence and diligence.

5.2 We reserve the right to substitute new personnel for any personnel assigned to you from time to time where any assigned personnel become unavailable due to illness, leave or circumstances outside of our control.

6. Your responsibilities

6.1 In order for us to perform the Services, you must provide us on our request with relevant information and access to your files, records, information, premises and people with relevant skills.

6.2 You acknowledge we are entitled to rely on the accuracy of that information without independently verifying it, whether the information is provided by you, Your Representatives, or your advisers.

Digital Media Services

7. Your obligations

7.1 We are not responsible for the quality of Your Content (including substandard images and video footage) provided by you.

7.2 You must not provide us with Your Content that:

- (a) you do not have permission, right or licence to use;
- (b) is objectionable, offensive, unlawful, deceptive or harmful; or
- (c) is personal, private or confidential information belonging to others.

8. Contract Materials

8.1 You acknowledge and agree:

- (a) it is your sole responsibility to safely store the Contract Materials and we are not liable for any loss of, or damage to, the Contract Materials once delivered to you;
 - (b) we may delete any raw footage in respect of the Contract Materials upon delivery to you; and
 - (c) we delete our copy of the Contract Materials from our archives after the expiration of 12 months from delivery to you.
- 8.2** You acknowledge that, with respect to any requests for data files relating to the Contract Materials, will only provide data files to you in file structures that comply with the applicable industry standards, as used by us.

9. Live filming

If we record any live footage as part of the Digital Media Services, we will use reasonable endeavours to capture such live footage. You acknowledge we are not liable for the quality of capture.

10. Talent

Where you engage talent to feature in the Contract Materials, you acknowledge and agree you have obtained:

- (a) police checks from the talent and approvals to photograph children under the age of 18; and
- (b) irrevocable and unlimited releases from the talent, or in the case of children, from their legal guardians, in a form approved by us.



11. Intellectual property rights

11.1 In some circumstances we may transfer ownership of the Intellectual Property Rights in Contract Materials we develop specifically for you to you on your full payment for the Contract Materials.

11.2 Where clause 11.1 applies:

- (a) we grant you a non-exclusive, non-transferable licence to use the Pre-Existing IP to the extent they form part of the Contract Materials; and
- (b) you grant us a non-exclusive, non-transferable licence to use the Contract Materials to perform our obligations in accordance with this agreement and for promotional purposes.

12. Cancelling or postponing

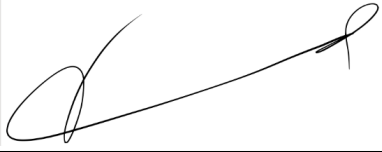
12.1 If you cancel or postpone your order for the Equipment and/or the Services, you must pay us:

- (a) all costs incurred by us; and
- (b) the following Fees:
 - (i) if you cancel within 7 days of the event date, you must pay 100% of the Fees;
 - (ii) if you cancel more than 7 days before but less than 21 days before the event date, you must pay 50% of the Fees;
 - (iii) if you cancel 21 days or more before the event date, you must pay 25% of the Fees.

12.2 If you cancel or postpone the Digital Media Services:

- (a) all costs incurred by us; and
- (b) the following Fees:
 - (i) before any production services have commenced, you must pay 20%; or
 - (ii) once the Digital Media Services have commenced, you must pay for all completed or partly performed services up to and including the date of termination plus 20% of all amounts that would otherwise be payable to us for the provision of the uncompleted Digital Media Services.

5. AUTHORISED BY

<i>Nigel Mintern</i>	
Nigel Mintern, Managing Director, AV1 Signed for and on behalf of AV1 Pty Ltd	Kealan Coleman, Witness, AV1
Date: 29 / 07 / 2024	Date: 01 / 08 / 2024

Signature Certificate

Reference number: KRGWS-TKQBH-QQ3WW-GTQZY

Signer

Timestamp

Signature

Nigel Mintern

Email: nigel@av1.com.au

Sent: 27 Jul 2024 23:13:58 UTC
Viewed: 29 Jul 2024 07:00:05 UTC
Signed: 29 Jul 2024 07:07:08 UTC



Recipient Verification:

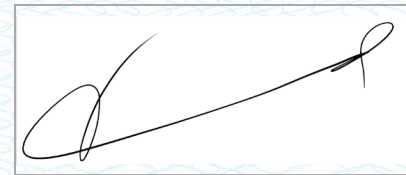
✓ Email verified 29 Jul 2024 07:00:05 UTC

IP address: 210.23.157.10
Location: Sydney, Australia

Kealan Coleman

Email: kealan@av1.com.au

Sent: 27 Jul 2024 23:13:58 UTC
Viewed: 01 Aug 2024 02:52:35 UTC
Signed: 01 Aug 2024 02:52:46 UTC



Recipient Verification:

✓ Email verified 01 Aug 2024 02:52:35 UTC

IP address: 210.23.157.10
Location: Sydney, Australia

Document completed by all parties on:

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