

Terms & Conditions of Business

General

We agree to sell and you agree to purchase the Goods and/or the Services in accordance with these terms.

If you place an order or submit a purchase order with us for Goods and/or Services or enter into a contract with us and the Goods and/or Services are delivered or provided to you, or you provide any payments to us, you are taken to have accepted these terms.

These terms are deemed to be incorporated into all contracts for the sale of Goods and/or Services by us to you and will prevail over any inconsistent terms in any of your documents.

Date Changes and Cancellations

Cancellation and Administration Fees may apply where the Customer requires cancellation, or modification to the date of the supply of Goods and/or Service.

RESCHEDULING FEE: A 2 hour rescheduling fee may be charged (at the Job Managers rate).

EQUIPMENT RENTAL FEE: An Equipment Rental Fee may be charged. See term below "Equipment Rental Fee".

LABOUR & COSTS: Ektimo will charge for work that has been carried out for the cancelled job which may extend to time spent on mobilisation and de-mobilisation of the job. Costs may extend to freight fees, travel costs and any other expenses incurred by Ektimo.

Equipment Rental Fee

An Equipment Rental fee may apply where Ektimo's equipment is not accessible for use by Ektimo.

This may be due to Ektimo's equipment being on the Customers site and Ektimo unable to perform Services due to weather conditions, job date changes or job cancellations made by the Customer, or if Ektimo's equipment is in transit to or from the Customers site.

Price and Costs

All prices are in Australian Dollars unless stated otherwise and are those applying at the date of issue of quotation and are subject to adjustment for any variation in:

- exchange rates, customs duty, freight, shipping expenses, sorting and tracking charges or insurance;
- supplier's prices;

Where Goods or Services are supplied over a period exceeding 12 months, Ektimo may increase the cost of supplying Goods or Services for any subsequent 12 month period from commencement of the contract by 3.5% to allow for cost increases relating to the supply of those Goods or Services.

Payment

Terms of payment are either payment upfront upon placement of order (referred to as 'prepayment') or through a credit account.

- Credit account: Payment is due 30 days from the date of invoice. Ektimo reserves the right to refuse credit at any time at its own discretion.
- Payment up front: Funds of any prepayment amount must be received into Ektimo's bank account before proceeding with the order.

Default

If Customer defaults in the payment of money payable under these terms, we may

- cancel or suspend any unfulfilled orders you have with us and apply proceeds to the overdue amount.
- enter any premises where Ektimo's Goods are stored to reclaim possession without liability for trespass, negligence, or compensation.
- charge you interest on the overdue amount at the rate of 5% higher than the Reserve Bank of Australia's 90 day bill rate calculated daily until payment in full is received.
- charge you additional costs Ektimo may incur, including legal, administrative and collection costs to recover unpaid amounts.

Delivery

Any delivery time we give you for the supply of Goods and/or Services is an estimate only. Ektimo shall not be liable for failure or delay in delivery or for any loss or damage resulting directly or indirectly from the failure or delay in delivery of the Goods and/or Services.

Force Majeure

We are not liable for failure to comply with these terms, any contract or an agreement for sale of Goods and/or Services if the failure (directly or indirectly) arises out of any circumstances that result from a Force Majeure Event. If such circumstances occur, we may delay or cancel delivery of the Goods and/or Services or reduce the quantity of Goods to be delivered and/or Services provided.

Equipment Sale

Returns and Claims: Any claim must be received within 7 days of delivery to you, otherwise the Order will be deemed to have been delivered correctly in all respects and accepted by you.

Any Goods being returned must be returned in brand new condition and packaged in their original packaging, including all packing materials, manuals, warranty cards, and accessories. Goods must be free of any damage. Goods that have been installed or attempted to be installed cannot be returned under this clause.

Title and Risk: Both the legal and equitable title to any Goods supplied by Ektimo to the Customer is retained by Ektimo until full payment and all other amounts owed is made to Ektimo for all the Goods.

The risk in the Goods shall pass to the Customer immediately upon delivery of the Goods to the Customer if Ektimo organises the freight or upon dispatch of the Goods to the Customer if freight is organised by and/or put on a freight account belonging to the Customer.

Warranties: We warrant that any Goods supplied will be free from defects in material and workmanship, for a period of twelve (12) months from date of delivery of the Goods unless the original manufacturer offers a lesser period in which case that manufacturer's warranty period will apply.

With the exception of the above warranties and any otherwise expressly provided in writing by Ektimo to the Customer, to the maximum extent permitted by law:

(a) no warranty, condition, description or representation on the part of Ektimo is given or implied or has been given or is to be implied from anything said or written in the negotiations between the parties or their representatives in connection with the supply of the Goods; and

(b) any statutory or other warranty, condition, description or representation, express or implied as to the state, quality or fitness of the Goods is expressly excluded, however nothing in these Terms and Conditions derogates from or excludes any warranties or conditions necessarily implied by any statute or other applicable law.

Rental Equipment

Rental Period: The rental period commences on the date of dispatch of Rental Goods and terminates when Ektimo receives the Rental Goods from the Customer.

Early Termination: Ektimo expressly reserves the right to early termination of the Rental Goods Agreement, which may be exercised on demand and at the absolute discretion of Ektimo. In the event of early termination of the Rental Goods Agreement, the Customer shall immediately return the Rental Goods to Ektimo. The applicable rental payable shall be adjusted and payable on a pro-rata basis.

Risk: The risk in the Rental Goods shall pass to the Customer immediately upon delivery of the Equipment to the Customer if Ektimo organises the freight or upon dispatch of the Equipment to the Customer if freight is organised by and/or put on a freight account belonging to the Customer and remains with the Customer until Rental Goods are returned to Ektimo.

The Customer bears the risk of any and all loss or damage in connection with the Customer during the Risk Period, including but not limited to:

- (l) any damage to the Equipment caused by vandalism, theft, a force majeure event, or any other event; and

- (II) any damage caused by the Equipment or by the operation of the Equipment; and
- (III) any loss of data caused by misuse, damage, incorrect operation of the Equipment or misuse, damage, destruction of downloaded data; and
- (IV) any costs incurred in relation to the Equipment, including costs related to the repair or replacement of the Equipment, or the salvage of the Equipment.

In the event that the Equipment is lost or damaged, the Customer remains liable for payment of the Rental Price in accordance with the terms of this Agreement for the period while the Equipment is being repaired or replaced.

In the event that the Equipment is damaged but is capable of repair, the Customer hereby agrees to compensate the Provider for the full cost of any repair. The Provider will assess the cost, at Provider's sole and exclusive discretion, and will provide the Customer with an invoice to be paid as per the terms on the provided invoice.

The Customer must not attempt to repair any damage to the Equipment itself, without the Provider's prior written consent.

In the event of loss or destruction of the Equipment, the Customer hereby agrees to compensate the Provider for the replacement cost, without deduction for depreciation.

Care of Rental Goods: The Customer must exercise the utmost care and diligence in relation to the Rental Goods and keep them at the address specified unless Ektimo gives written permission to relocate them elsewhere and will not remove any sticker or other identification from the Rental Goods giving notice of Ektimo ownership of the Rental Goods. Customer must only use those Rental Goods for the purpose for which it is manufactured and in accordance with the manufacturer's instructions and not sell, hire, re-loan, demonstrate to a third party without the written permission of Ektimo.

Repairs: The Customer must notify Ektimo immediately if the Rental Goods breakdown or require repair and not carry out any repairs, adjustments, modifications or other work to be done on the Rental Goods without Ektimo's consent. Ektimo's officers may enter Customer's premises in order to inspect the Rental Goods or carry out repairs.

Return of Rental Goods: Rental Goods must be returned to Ektimo at the completion of the rental period. Rental Goods must be returned clean and in good working order. If they are not returned in this manner Ektimo will recover from the Customer the reasonable cost of cleaning, repairing or replacing them. If damaged, the Rental Period extends until the date that they are repaired by Ektimo or the replacement cost of Rental Goods are paid by Customer.

If the Rental Goods are not returned upon the expiration of the Rental Contract, then the daily rental rate may be charged (at Ektimo's discretion) and shall continue to accrue until the Rental Goods are returned. The Rental Period may only be extended if Customer has obtained Ektimo's written consent.

Contamination: If the Rental Goods are used with hazardous materials, they must be decontaminated at the Customer's expense prior to return. Ektimo must be notified by

Customer immediately if Rental Goods are being intended for use, used or in contact with Dangerous Goods & Hazardous Substances

Insurance: The Customer must insure the Rental Goods with a reputable insurer from time of delivery (or dispatch if Customer is organising freight and/or is on the freight account of the Customer) to the Customer until time of return to Ektimo. It must include but not limited to insurance for physical and material damage to the Rental Goods, for not less than its replacement value; and insurance for public risk of not less than AUD\$20 million per occurrence, including liability for sudden and accidental pollution.

Long Term Hire: If a hire rate discount has been provided for long term hires and the Customer returns the Rental Goods prior to the nominated end date, Ektimo reserves the right to charge the Customer full value for the period of hire without discount.

Security Interest

Expressions used in this clause and in the *Personal Property Securities Act 2009 (Cth)* (PPSA) have the same meanings as when used in the PPSA.

The Customer grants to Ektimo a security interest for the purposes of the PPSA in any Rental Goods or Equipment supplied by Ektimo on credit, until the Rental Goods have been returned to Ektimo and Ektimo has received payment in full for the Rental Goods or Equipment and all other monies payable by the Customer to Ektimo. The Customer agrees that:

- Ektimo may register this security interest with the Registrar of Personal Property Securities pursuant to the PPSA in order to perfect its security interest;
- the Customer agrees the security interest granted to Ektimo pursuant to these Terms and Conditions may also be a purchase money security interest for the purpose of the PPSA;
- if requested, the Customer must pay or reimburse the costs of registering the security interest, and provide Ektimo with all assistance reasonably required in order for Ektimo to register the security interest; and
- for the purpose of section 115 of the PPSA, the following sections of the Act do not apply to this Agreement: sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4) and 135.

The Customer authorises Ektimo to search the Personal Property Securities Register at any time for any information about the Customer.

The Customer waives its right to receive a copy of the verification statement confirming registration of a financing statement or financing change statement relating to the security interest granted under this Agreement.

LIMITATION OF LIABILITY

In no event shall Ektimo be liable to the Customer for any indirect, special, punitive, exemplary, or consequential damages, including lost profits, costs of delay, any failure of delivery, costs of lost or damaged products or any similar damages, regardless of whether such damages were reasonably foreseeable or unforeseeable.

Ektimo's total liability to the Customer for matters arising under or in connection with the supply or any Rental Goods, Equipment or Services, including on respect of negligence is limited to, and will not exceed the greater of value of fees charged by Ektimo and \$1 million.