

## 1.0 DEFINITIONS OF TERMS

In this document the following words shall have the following meanings:

**Terms and Conditions** means the terms and conditions of supply set out in this document and any special terms and conditions agreed in writing by the Supplier.

**Agreement** means these terms and conditions herewith.

**Supplier** means the Australian Television Archive, also known as 'austvarchive'

**Client** means any person, business or entity which purchases or orders goods and services from the Australian Television Archive.

**Goods** means all goods delivered by the Seller to the Buyer or to be delivered by the Seller to the Buyer.

**Services** means all things to be performed in accordance with a formal request.

**Price** means the fees outlined by Australian Television Archive.

A **reasonable time frame** is within 30 days. But it may sometimes be extended by client requests, amends or delays.

**Intellectual Property or IP** means all items of intellectual property attaching to the Services, including without limitation trademarks (registered or unregistered), designs, copyrights, patents and all other forms of intellectual property wherever in the world enforceable.

**Client IP** means Intellectual Property owned by the Client which was created prior to or independently of your obligations to Australian Television Archive under this Agreement.

**Third Party IP** means Intellectual Property owned by a party who is not a party to this Agreement.

**Confidential Information** means all the information provided by one party to the other in connection with this Agreement where such information is identified as confidential or reasonably considered to be confidential based on its context, nature or the manner of its disclosure, but excluding:

- information that is in the public domain other than by a breach of this Agreement.
- information that becomes, after being given to the Supplier, part of the public domain, except through disclosure contrary to this Agreement.
- information that was in the Supplier's possession when it was given to the Supplier and had not been acquired in some other way (directly or indirectly) from Australian Television Archive.
- information that was lawfully received from another person or third party who had the unrestricted legal right to disclose that information free from any obligation to keep it confidential.

**Delivery Date** means: (i) in relation to Goods, the date for delivery of the Goods to the delivery point/address; and (ii) in relation to Services, the date for completion of the Services.

**Delivery Point** means the place where the Goods are to be delivered as specified by the client or Australian Television Archive.

**Loss** includes any losses, damages, liabilities and costs (including legal expenses)

**Business Day** means a weekday (not being a Saturday, Sunday or public holiday).

**Personal Information** means all information about a person that is 'personal information' as defined in the Act which is collected or held by Supplier in connection with this Agreement.

## 2.0 SCOPE AND RESPONSIBILITY

### 2.1 Scope

2.1.1 It is vital that you (the Client) take time to read through this document thoroughly and ensure you fully understand these terms and conditions and their implications before you confirm your order with Australian Television Archive.

2.1.2 These Terms and Conditions shall apply to all transactions for the supply of Services by the Supplier to the Client and shall prevail over any other documentation or communication from the Client.

2.1.3 By accepting products or services from Australian Television Archive, the Client (or its representative) indicates acceptance of all the terms and conditions in this document.

2.1.4 This Agreement with Australian Television Archive is non-exclusive and we may engage any other person to provide the Goods and/or Services or similar products and services from time to time.

2.1.5 Australian Television Archive has the authority to update the Terms and Conditions as required, at its sole discretion, with or without notice to the Client.

Please contact us if you do not understand any of the terms and conditions in this document.

### 2.2 Client Responsibility

2.2.1 To enable Australian Television Archive to perform its obligations, the Client shall:

- co-operate with the Supplier.
- provide the Supplier with correct and accurate information reasonably required by the Supplier.
- keep the Supplier notified of their correct name, postal address and any phone, fax or e-mail information.
- comply with any other requirements as agreed between the parties, and
- comply with all other statutory requirements – particularly with regards to data protection and confidentiality.

2.2.2 The Client must provide Australian Television Archive with clear instructions accompanying all digitisation orders which detail technical requirements such as video file format, resolution, codec, or other specifications. This information must be provided in writing (via email or physical document).

2.2.3 Incomplete instructions and/or missing information may result in limiting digitisation outcomes. Australian Television Archives will not be held liable for any delays or errors due to insufficient information.

### 2.3 Supplier Responsibility

The Australian Television Archive provides services relating to archival film & videotape digitisation. The Australian Television Archive shall perform all services with reasonable skill and care and to a reasonable standard in accordance with recognised standards and codes of practice.

2.3.1 While Australian Television Archive takes all care to avoid errors, Australian Television Archive accepts no responsibility for blank tape, poor quality originals or incorrect information. It is the "Clients" responsibility to check that the correct media has been supplied. No refunds are given after the job has commenced due to oversights by "The Client".

2.3.2 Due to the nature of archival material (which can be old), there is always the risk that the film/ videotape media may deteriorate further during processing. Australian Television Archive will always take care to minimize such loss and will not be liable for any loss due to such natural activity and/or damage.

## 3.0 DIGITISATION & PRESERVATION SERVICES

The archival, film & videotape digitisation and preservation services comprise of three key activities:

### 3.1 Assessment of Archival Media

A full assessment of the film/ videotape and/or other media will be carried out to assess the condition of the media prior to digitisation. If the media requires restorative treatment or cleaning, Australian Television Archive will inform the Client and await follow-on instructions.

### 3.2 Preparation of Tapes (if required)

From time to time, the original film/media may need or require various forms of restorative treatment and/or preparation before digitisation is possible. If such treatment is required, this will be explained to the client. Additional fees may apply.

### 3.3 Digitisation Services

Films/tapes are digitised on an as-is basis.

### 3.4 Additional Services

Additional services are available upon request, including file transcoding, standards conversion and up-scaling. These services will attract an additional fee.

## 4.0 PRICE

### 4.1 Price Quote

4.1.1 Unless otherwise stated, the quoted price:

- is exclusive of GST, or any other applicable costs (such as taxes, duties, levies, fees or charges), and
- excludes all Supplier's costs, such as packaging, freight, re-delivery or other applicable charges.
- excludes digital media storage medium (HDD, USB) unless specified.
- excludes International order costs, such as importation costs including but not limited to customs duty and related customs charges, freight forwarding costs, inland charges, and ocean and/or air freight costs, storage fees, exchange rate costs and any associated agency fees.

4.1.2 The quoted price for all Digitisation & Preservation work shall be provided via email, unless work undertaken exceeds work outlined. If work undertaken exceeds the items specified in the instructions, the Client agrees to pay for the excess work outside the scope of the original agreement. Wherever possible the Client will be notified of any increases in the scope of work.

4.1.3 All prices will be quoted in Australian Dollars.

4.1.4 Payments made from outside Australia (i.e. overseas) will incur an additional surcharge of \$30 to cover for bank direct debit and telegraphic transfer fees.

4.1.5 Under no circumstances shall the Supplier refund the difference should the price of the Digitisation & Preservation service decrease from the previously quoted price.

### 4.2 Pricing Confidentiality

4.2.1 Quotes and pricing terms are negotiated between Australian Television Archive and the Client and may be unique to the Client. Therefore, and except as otherwise provided by law, the Client hereby agrees to keep the pricing arrangement confidential for a period of no less than three (3) years from the date of quotation.

4.2.2 The client shall not use this Confidential Information in furtherance of its business, or the business of anyone else, whether or not in competition with Australian Television Archive.

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## 5.0 ORDERS

### 5.1 Order Acceptance

- 5.1.1 Acceptance of the order constitutes agreement to these terms and conditions.
- 5.1.2 The Client is deemed to have accepted the quote/order when notification is provided to the Supplier to go ahead with the work, either verbally, in writing or electronically (via email).
- 5.1.3 The Client must provide detailed instructions on type of digitisation and preservation work required (where possible). Failure to provide all the necessary information may lead to errors or a delay in commencing the work.
- 5.1.4 Australian Television Archive may require additional verifications or information before accepting confirmation of the order.
- 5.1.5 Australian Television Archive reserves the right at any time after receipt of your order to accept or decline your order for any reason.
- 5.1.6 If Order Acceptance does not take place within 30 days from the date the quote is provided, then our offer to provide the Digitisation & Preservation Services will expire without further notice to you.
- 5.1.7 Australian Television Archive will issue an invoice once an order has been confirmed.

### 5.2 Commence Work

- 5.2.1 Depending on the nature of the order, the Client will be required to pay as follows by the required due date or agreed date, unless agreed to otherwise in writing, before Australian Television Archive will commence any activities on Digitisation & Preservation work.
- (a) pay 100% of the invoice total upfront, or
- (b) pay a designated percentage amount upfront and the remainder at completion, or
- (c) pay the total amount at the completion of the order,

The payment option will be discussed with the Client when the order is confirmed.

### 5.3 Timeframe (Standard & Rush/Priority Orders)

Australian Television Archive will always endeavor to complete the Digitisation & Preservation order as promptly as possible.

- 5.3.1 For standard orders Australian Television Archive will provide the Client with an estimated completion timeframe when the order is accepted and confirmed. This is strictly an estimate and Australian Television Archive will not be held liable due to unforeseen circumstances otherwise out of our control which may delay completion.
- 5.3.2 A "Rush/Priority" service is available where orders require a faster turnaround and/or completion by a specified deadline (date/time). This date must be mutually agreed upon both by Australian Television Archive and the Client. Additional fees apply.
- 5.3.3 The Client gives Australian Television Archive permission to contact them at any time while the order is active to further clarify requirements and/or provide feedback and for any digitisation & preservation related matters.
- 5.3.4 The Digitisation & Preservation work will be considered completed when Australian Television Archive has advised the customer that the work is complete. Any additional requests beyond this will be considered a new order and will incur an additional charge.
- 5.3.5 The Client understands that in some cases due to technical limitations of aging film and/or videotape formats, there are some aspects outside our control which can result in visual artifacts or other disturbances on screen. The client agrees they will not hold Australian Television Archive liable where this occurs. All Digitisation and Preservation activity fees are non-refundable.

### 5.4 Modification to Order / Change of Mind

Australian Television Archive endeavors to provide services that meet and exceed a client's needs and expectations.

- 5.4.1 Any changes to the order by the Client will only be accepted at the discretion of the Australian Television Archive and will not be binding unless accepted by the Australian Television Archive.
- 5.4.2 The Client understands that any changes to the order after the order has been accepted may incur an additional fee. Costs may include charges, expenses, commissions and reasonable profits owed to or incurred by Australian Television Archive as the result of an accepted order. All such costs incurred as part of the change shall be covered by the Client.
- 5.4.3 Minor changes to the order by the Client may be considered part of the original order, at the discretion of the Supplier.
- 5.4.4 Any significant changes to the order, as deemed by the Supplier, will be considered a new request and the Client will incur an additional fee.

### 5.5 Cancellation of Order

- 5.5.1 The Client will incur a charge of 25% of the invoiced price if the order is terminated after the invoice has been raised but prior to commencement of Digitisation & Preservation Services.
- 5.5.2 The Client will forfeit any advance payment (50% deposit) in lieu of compensation to Australian Television Archive, plus an additional pro-rata payment based upon the time already spent on the order, if the order is cancelled after digitisation has commenced. This is to cover assessment, materials resources, purchased and allocated, setup and administration costs and any applicable expenses that Australian Television Archive may have incurred or are due to incur for the order.

- 5.5.3 The Client has no right to request to cancel any approved order without Australian Television Archives written consent, and payment from Client of all charges, expenses, commissions and reasonable profits owed to or incurred by Australian Television Archive as the result of a confirmed order.
- 5.5.4 In rare circumstances, circumstances beyond the control of either party may result in the need for the order of goods or services to be cancelled. This event must be confirmed in writing before the order can be cancelled.

### 5.6 Delivery of Goods

- 5.6.1 It is the responsibility of the Client to deliver the media assets for digitisation to the Supplier. Australian Television Archives will not be liable for any losses due to external delivery services (such as late delivery, damage during transit and loss of items). It is the Clients responsibility to ensure that they have taken adequate steps to cover for such losses.
- 5.6.2 Australian Television Archive will supply the completed digital files to the Client via Hard Drive storage, USB, or online file download. If any additional copies are requested, in any format, additional charges may apply.
- 5.6.3 If a client loses or accidentally deletes the files delivered by Australian Television Archive at the completion of the job. Australian Television Archive may be able to provide the Client and additional copy for an additional fee, providing:
- (a) the file is still stored digitally with Australian Television Archive, and
- (b) providing the request from the "Client" has been made within 30 days from the date of completion.
- 5.6.4 Unless otherwise agreed in writing, delivery of the Goods shall take place at the address specified by the Client on, or as close as possible to the date required by the Client. The Client shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery.
- 5.6.5 Unless specifically instructed by the Client, Australian Television Archives has the right to choose its own carrier for return of media assets to the Client.
- 5.6.6 Once the media assets have left the premises, Australian Television Archives will not be liable for any losses due to external delivery services (such as late delivery, damage during transit and loss of items). It is the Clients responsibility to ensure that they have taken adequate steps to cover for such losses.
- 5.6.7 If Australian Television Archive is unable to deliver the Goods because of actions or circumstances under the control of the Client, then the Supplier shall be entitled to place the Goods in storage until such times as delivery may be effected and the Client shall be liable for any expense associated with such storage.

### 5.7 Use of Sub-Contractors

- 5.7.1 Sometimes due to the complexities of the order/media, Australian Television Archive may sub-contract or otherwise arrange for another person/facility to perform any part of this Agreement or discharge any of its obligations under any part of this Agreement without the prior written consent of the Client.

### 5.8 Promotions

- 5.8.1 The Supplier reserves the right to modify, update or run promotions on any service at any time.
- 5.8.2 Unless the Client advises otherwise advise us in writing, Australian Television Archive has the right to publish and communicate the deliverables in its portfolio and marketing materials for promotional and demonstrative purposes.

## 6.0 PAYMENT

### 6.1 Payment Due

- 6.1.1 As outlined under clause 5.2.1, the Client may be required to pay a deposit of the quoted amount prior to commencement of digitisation, unless alternative arrangements have been made in writing between the Client and Australian Television Archive, with the remaining balance payable upon completion, by the due date or agreed date. The Goods will only be delivered to the Client once payment has been received.

### 6.2 How to Pay

- 6.2.1 The invoice will show the options available for payment. Payment options include (a) paying by direct debit (bank deposit), or any other methods agreed at the discretion of Australian Television Archive.
- 6.2.2 All payments for delivery of Goods and Services must be made in Australian Dollars.
- 6.2.3 In the event of a delay, the Client must notify the Supplier as soon as they are aware of any issue that will cause a difficulty in paying the invoice as it may be possible to discuss alternative solutions/arrangements.
- 6.2.4 Any invoices not paid by the agreed due date on Invoice may be referred to a Debt Collection Agency.

### 6.3 Credit

- 6.3.1 Australian Television Archive currently does not offer Credit terms.
- 6.3.2 Any offer of credit in the future will be at the sole discretion of Australian Television Archive.

### 6.4 Overdue & Late Payments

- 6.4.1 Australian Television Archive shall be entitled to charge interest on overdue invoices from the date when payment becomes due from day to day until the date of

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payment at the nominated rate per annum. The nominated rate will be advised when an overdue notice is raised.

6.4.2 If payment of the price or any part thereof is not made by the due date, the Supplier shall be entitled to: (i) require payment in advance of delivery in relation to any Goods not previously delivered; (ii) require payment in advance of delivery in relation to any Goods not previously delivered or (iii) refuse to make delivery of any Digitisation & Preservation media outcomes and files without incurring any liability whatever to the Client for non-delivery or any delay in delivery.

6.4.3 Accounts which are not paid within 30 days will automatically incur a late administration fee of \$20.00.

6.4.4 Accounts which remain outstanding for 30 days after the date of invoice will incur an additional late payment fee equivalent to 5% of the invoice amount for each week payment is outstanding.

6.4.5 An account shall be considered in default if it remains unpaid for 30 days from the date of invoice or “the Client” has stated expressly that they do not intend to pay an invoice, unless prior arrangements have been made.

6.4.6 If payment is not received 30 days from the due date on the invoice, Australian Television Archive reserves the right to dispose of the Suppliers media assets and files at any point thereafter.

6.4.7 Failure to pay the invoice in full could result in remedial action.

## 6.5 Additional Charges

Additional fees may also be charged for the following:

6.5.1 Overdue invoices - any fees incurred in raising overdue invoices will be charged to the Client.

6.5.2 Debt collection - any fees incurred in collecting your overdue balance will be charged to the Client.

6.5.3 Disposing of files and media - any costs associated with disposal of goods will be charged to the Client.

## 6.6 Debt Collection

6.6.1 Australian Television Archive shall at its sole discretion suspend any and all services provided to the Client or its subsidiaries and employ debt collection measures until the total outstanding balance has been fully paid.

This includes any and all unpaid accounts due for services ordered, including, but not limited to assessment, pre-processing, digitising, storage and packaging, including loading, delivery to the address stated in the purchase order, plus bank interest calculated daily for each day payment is overdue.

6.6.2 In the event that Australian Television Archive has to engage a lawyer or debt collection agency to recover any unpaid money under this Agreement, the Client will be liable (on a full indemnity basis) for all costs spent recovering the overdue amount.

## 7.0 STORAGE AND DELIVERY

### 7.1 File Storage

7.1.1 Australian Television Archive will retain any raw video footage and other files and materials created as part of the Digitisation & Preservation work for up to 30 days after the order has been completed, following which Australian Television Archive will have the right to delete, erase and/or dispose of the material.

7.1.2 All Client Digitisation & Preservation and digital media files will be removed from the Australian Television Archive storage system after 30 days from date of completion of order, unless alternate arrangements have been made in writing.

7.1.3 There will be an additional charge for storage if the Client makes a request for extension for access beyond the regular storage period.

7.1.4 If the Client wish to purchase the raw media or another digital copy (that is otherwise not included as part of the order) prior to them being deleted, erased or disposed by us, the Client must let the Supplier know as soon as possible so that the Supplier can provide a quote.

## 8.0 INDEMNITY & LIMITED LIABILITY

### 8.1 Limitation of Liability

8.1.1 Under no circumstances shall Australian Television Archive be liable to the Client for an indirect or consequential loss suffered by the Client relying on the information included in the order prepared by Australian Television Archive including (without limitation) loss of profit, loss of contracts or pure economic loss.

8.1.2 The Client agrees to defend, indemnify, and hold Australian Television Archive, its subsidiaries, affiliates, officers, agents, and other partners and employees, harmless from any loss, liability, claim, or demand, including reasonable attorney’s fees, made by any third party due to or arising out of your use of the Services in violation of this Agreement and/or arising from your breach of any provision of this Agreement.

## 9.0 DATA PROTECTION & INTELLECTUAL PROPERTY

### 9.1 Communication

9.1.1 All communication between Australian Television Archive and the Client shall be via email, social media messages and/or in writing only. Telephone calls or verbal communication will not be considered for order confirmation.

9.1.2 Communications between the Client and Australian Television Archive use electronic means, whether thru visiting the website or otherwise use the Service or send the Supplier e-mails, or whether the Supplier posts notices on the website or communicates with you via e-mail. For contractual purposes, you (a) consent to receive communications from Australian Television Archive in an electronic form; and (b) agree

that all terms and conditions, agreements, notices, disclosures, and other communications that Australian Television Archive provides to you electronically satisfy any legal requirement that such communications would satisfy if it were in writing. The foregoing does not affect your statutory rights.

## 9.2 Intended Use

9.2.1 Australian Television Archives is providing a Digitisation and Preservation service. It is the responsibility of Client to ensure that they hold all the relevant, licenses, permits, rights and permissions from the relevant copyright owner(s) for duplication and digitisation of the material.

9.2.2 Australian Television Archives will not be liable for any losses or damages arising from breach of copyright by the Client.

## 9.3 Acceptable Use

9.3.1 Australian Television Archive may use the information it obtains relating to the Client, including your IP address, name, mailing address, email address and use of the Site, for its internal business and marketing purposes.

9.3.2 Unless you otherwise advise us in writing, we have the right to publish and communicate the Deliverables in our portfolio and marketing materials for promotional and demonstrative purposes.

9.3.3 All information contained in the Australian Television Archive website is intended for general information purposes only. Australian Television Archive endeavors to keep the information up-to-date and ensure that it is correct, however, it makes no warranties of any kind concerning the accuracy, completeness, suitability, reliability, or availability of the information contained in this website, or any products, services, links, or graphics that may be found on the Supplier website.

## 9.4 Confidentiality

9.4.1 Each Party agrees not to directly or indirectly use or disclose any Confidential Information belonging to the other Party without first obtaining the first Party’s prior written consent except to the extent that the disclosure is required by law or the disclosure is made to legal or accounting advisors.

## 10.0 UNFORESEEN CIRCUMSTANCES

10.1.1 Australian Television Archive shall not be liable for any failure or delay in supply or delivery of products/services where such failure or delay is wholly or partly due to any cause or circumstances whatsoever outside the reasonable control of Australian Television Archive. Including but not limited to war, natural disasters, pandemics, strikes, lockouts, industrial disputes or unrest, government restrictions or transport delays, fire, bush fire, power outages, failure attributable to hosting suppliers, breakdown of plant, theft, vandalism, riots, civil commotions, accidents of any kind or act of terrorism.

10.1.2 If the performance of any of the Suppliers obligations under this Agreement is prevented, restricted or interfered with by reason of an Unforeseen Event, we:

- upon giving prompt notice to you, are excused from such performance to the extent of such prevention, restriction or interference; and
- are not liable for any Loss suffered by you by reason of compliance with (a) above.

## 11.0 MODIFICATIONS TO THE TERMS & CONDITIONS

11.1.1 Any variation to these Terms and Conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing by the Supplier.

If questions relating to our privacy policy remain, simply contact us and we will respond promptly.