

LJ Manton T/A Element ICT

Standard terms and conditions for Quotations & Offers

Revision 1.2, June 2020

1. Defined Terms

"Offeree" the party purchasing the Goods and/or Services listed in the Offer

"Offeror" and "Seller" means LJ Manton T/A Element ICT ABN 66 389 412 395

"Buyer" means any person, body corporate or entity which purchases or orders the Goods or Services from the Seller.

"Conditions" means these terms and conditions for the supply of the Goods and or Services by the Seller to the Buyer, as amended or varied in writing by the Seller.

"Contract" means a contract between the Seller and the Buyer for the sale of the Goods or Services defined in any such Offer or Quotation

"Contract Variation" or "CV" means a documented variation to any Offer or Quotation agreed between duly authorised representatives of both the Offeror and Offeree

"DOA" means Goods which are determined to be Dead on Arrival, failing to power on or boot into an otherwise fully operative condition and per specification and expected operating characteristics of such Good

"Event" means Goods or services delivered on a time limited basis for the purpose of providing corporate or personal entertainment

"Goods" means all Goods delivered by the Seller to the Buyer or to be delivered by the Seller to the Buyer

"Live Production" means Goods, Services or Software provided to facilitate an Event where Element ICT also provides electronic mixing, editing, recording, relay or broadcast of audio or visual sources to an audience of larger than 200 persons

"Offer" means a Quotation duly outlining the scope of Goods and Services to be supplied along with all relevant terms, dependencies, exclusions, offer acceptance criteria and other applicable terms

"Services" means all professional, installation, commissioning, software based or modelling services to be rendered by the Seller to the Buyer, or by a suitably qualified 3rd party sub-contracted to the Seller for the purposes of rendering of such service

2. Quotation Terms and Approval:

- 2.1. All quotations given by the Offeror are subject to acceptance by the customer within the defined validity period of such quotation which is typically 7 calendar days, but which may be varied by the Offeror from time-to-time
- 2.2. Quotations may only be accepted through the issue of a valid Purchase Order to the same, or in writing, by post or e-mail to sales@elementict.com.au and stating the quotation reference in full
- 2.3. For all quotations which exceed \$10,000 a formal Statement of Work (SOW) will be drafted specifying where applicable and amongst other inclusions; Goods to be supplied, Services to be rendered, Warranty offered and other detailed terms, conditions, dependencies, exclusions and
- 2.4. Unless agreed by an authorised Officer, no works shall commence until such time a valid Purchase Order has been received and acknowledged, or a quotation acceptance been received by post or e-mail and confirming to the conditions outlined in clause b,) above
- 2.5. The Offeror will perform all works, deliver Goods and render Services as detailed in the supplied quotation and in accordance with relevant OH&S Acts, Regulations, Codes of Practice and other Published Standards which may be applicable to the Goods and or Services to be rendered.
- 2.6. The Offeror reserves the right to refuse requests to purchase or procure at its own discretion and without prejudice

3. Additional Works or Variations to Agreed Works

- 3.1. The Offeror shall not be obliged to perform or undertake any additional works nor deliver Goods or Services not specifically mentioned in the supplied Quotation and agrees only to undertake works, deliver Goods or render Services described within such Quotation or SOW.
- 3.2. Where a scope of works becomes dependent on factors or conditions outside of the direct control of the Offeror or its agents, or where the scope of works is amended or extended at request of the Offeree, the Offeror shall be entitled to submit a Contract Variation for the same under the reasonable expectation that such CV be reasonably assessed and subsequently accepted in a timely manner, or alternatively to suspend work and submit a price or CV for of any such additional work or variation.
- 3.3. If the Offeree should subsequently fail to approve for the Offeror to proceed this Contract shall be deemed at an end and the Offeree shall be entitled to payment for all Goods supplied and Service rendered in part or in whole at the date of suspension of the work, anything to the contrary hereinbefore and subsequently contained notwithstanding.

4. Pricing

- 4.1. Prices quoted for all Goods and Services are subject to variation by the Offeror, and are valid only for the express purposes of the self-contained Offer or Quotation to which they relate and for the time period within which such Offer may be accepted, Goods delivered, and Services rendered
- 4.2. Pricing may be amended by the Offeror if a significant error of fact or omission can be shown in the original Offer
- 4.3. Any variations, extensions or amendments to these Terms & Conditions will be deemed to have been received by the Offeree if they are forwarded to the last known active e-mail or postal address of the Offeree

5. Delay

- 5.1. The Offeror shall endeavour to deliver Goods and render Services in-line with the terms of such Offer or SOW and in any case in a reasonable timeframe apart from delays caused by Force Majeure events
- 5.2. The Offeree notes and accepts that as part of this Offer a range of other material events may delay the provision of Goods or Services and may include delay due to illness or incapacity of key staff members of sub-contractors, injury; material supplies delays, delays in accessing site or in receiving dependant information from the Offeree

6. Damage and or Loss of Goods in Transit

- 6.1. The Offeror does not accept any responsibility for shortages or for Goods damaged in transit unless such shortage or damage on the delivery note if examined, or, if the Goods have been signed for as not examined, notified within 48 hours and reported by separate notice in writing to the Offeror within 3 working days of receipt of the Goods by the Offeree or the Offeree's agent.

7. Force Majeure

- 7.1. The Offeror will endeavour to give delivery at the rate or within the time specified in the Contract, notwithstanding anything to the contrary expressed or implied in this Contract. The Offeror shall not be liable for any loss or damage which may be sustained by the Offeree through failure on the part of the Offeror to deliver at the rate or within the time specified in this Contract, for any loss or damage incurred by reason of act of God, war, riots, fires, strikes, lockouts, cessation of labour, trade disputes, breakdowns, accidents of any kind or any other cause whatsoever beyond the control of the Offeror whether similar to these aforesaid or not. The Offeror shall be entitled to recover all monies owing to them in respect of deliveries made or services performed prior to such failure. The time of any such suspension will be added to the time of original Contract.

8. Cancellation or Modification of Orders:

- 8.1. Cancellation of an order, in whole or part cannot be accepted without the Offeror's consent in writing which shall only be given on a full indemnity provided by the Offeree to the Offeror.
- 8.2. Cancellation of an order will only be entertained prior to delivery of the products/services.
- 8.3. In the event that the Offeree cancels an order, the Offeree agrees to pay a restocking fee of 25% of the value of the Goods and/or services quoted plus any freight or other charges incurred by the Supplier up to that point.
- 8.4. The Offeror reserves the right to withdraw from any contracted works prior to the commencement of works. Should deposit terms apply, any deposit monies received by the Offeror from the client shall be refunded within 10 working days
- 8.5. No modification to this Offer shall be accepted unless subsequently document in a revised Offer or CV and duly accepted by an authorised officer of the Offeree

9. Offerees Obligations

- 9.1. The Offeree must inform the Offeror as to any specific conditions, procedures or legislative requirements which must be complied to by the Offeror and its contracted third-parties, and any such conditions, procedures, site access or legislative requirements must be duly informed by the Offeree to the Offeror for the purposes of completing a duly assessed Offer or Statement of Work capable of reflecting and estimating the impact of any such conditions, procedures, site access or legislative requirements.
- 9.2. The Offeree must notify the Offeror of any scope, site, requirements, exclusions or dependencies that may have changed since the time of initial Offer and may not reasonably expect the Offeree to supply Goods or render Services at the offered price of such scope, site access, requirements, exclusions or dependencies have not been notified to and duly accepted by the Offeror

10. Suitability of product / software / service:

- 10.1. It is the Offeree's responsibility to check and confirm that the Goods, Software or Services ordered are fit for purpose and suitable for the environment in which they are to be used/deployed.
- 10.2. Once an order is placed with the Supplier, if the Offeree wishes to change the order, either by product or service type, quantity or through other material changes to the scope as originally offered, changes will only be considered by the Supplier if the order has not been dispatched.
- 10.3. In the event that the changes are accepted by the Supplier, the Offeree agrees to pay a restocking fee of 20% of the value of the Goods and/or services quoted plus any freight or other charges incurred by the Supplier
- 10.4. The Offeree also agrees to pay any additional costs associated with ordering any new Product or Service offered through an additional quotation or a CV to the initially accepted quotation

11. Warranty:

- 11.1. All Goods are warranted for a period of 1 year from delivery unless an improved warranty is offered by the Seller or its Agents
- 11.2. Subject to clause 10 all Services are warranted as conforming to the specification and / or requirements supplied or outline in any such Offer or Quotation for a period of 90 days
- 11.3. All bespoke or in-house designed Software is warranted as conforming to the specification and / or requirements supplied or outline in any such Offer or Quotation for period of 90 days

12. Errata:

- 12.1. Any errors and omissions made in the preparation of this sales quotation are excluded. In the event that errors or omissions are made the Offeror reserves the right to cancel and reissue this quotation.

13. Damages or Loss:

- 13.1. Subject to any terms and conditions, the Offeror shall not be liable for any loss or damage of any kind including, due to delay or failure to deliver the Goods or Services offered. Without limiting the general this includes consequential damages or losses.

14. Payment

- 14.1. Unless otherwise expressly documented or agreed to by an a duly authorised officer of the Offeree, all invoices submitted for Goods supplied or Services rendered shall be due for payment on delivery unless project milestones or an alternate payment schedule has otherwise been agreed.
- 14.2. As a variance to clause 14.1, and for Services, Goods or Software relating to Live Productions or Events, payment in full is required prior to provision of service or delivery of Goods unless alternate payment methods have been agreed by a duly authorised officer of the Offeree
- 14.3. If the customer fails to pay the purchase price as said above The Offeror shall be entitled (without prejudice to any other right) to commence recovery action for such monies due without prejudice to other rights or remedies which may be available to the Offeror under relevant law or legislation.
- 14.4. The price quoted will be paid in full upon delivery of Goods or the completion of Services without any deductions unless otherwise agreed in writing by all parties.
- 14.5. Payment cannot be withheld for any complaints or issues which may arise. If you do have any complaints it is important to notify us within 5 working days via phone call or email, in order that the Offeror be given adequate opportunity to formulate a remedy suitable for the resolution of any such complaint

- 14.6. Any fees relating to dishonoured payments shall be passed to the Offeree
- 14.7. No fee shall be payable for payments made by EFT however the Offeror reserves the right to levy a fee of 1.7% on all payments made by credit card
- 14.8. EFT payments should be remitted quoting the supplied invoice reference and with a confirmation e-mail subsequently sent to accounts@elementict.com.au
- 14.9. Consequences for withholding or refusal to pay where works and the supplying of any Goods or services have been issued may result legal proceedings at the expense of the Offeree under relevant legislation and applicable law
- 14.10. Should the Offeror incur legal and/or other expenses including any such expenses to any agency or supplier in obtaining or attempting to obtain payment of any amount due by the Offeree, the Offeree is liable for the payment of those expenses and interest at 8% per annum for all overdue payments
- 14.11. In consideration of any grant of credit, the Customer expressly undertakes to pay all such interest in the Goods supplied shall remain the Company and shall not pass to the applicant until all monies owing by the applicant to the Company. Together with any collection, repossession and/or legal costs incurred have been paid in full including GST where applicable.

15. Validity of Terms and Conditions:

- 15.1. The parties agree that in the event that a term or condition is ruled invalid the remaining terms and conditions will remain in force.
- 15.2. Any Goods supplied to the Offeror which are subject to restrictions or provisions imposed by manufacturers' licence conditions are supplied to the Offeree by the Offeror subject to any such licence restrictions or provisions.