

# Spark & Cannon's Terms of Sale Agreement

## 1. Definitions

- **Account Holder** – means You, provided you have completed a Credit Application Form which has been received and accepted by Spark & Cannon.
- **Australian Law** – means any statute or other legislative provision, any common law or rule of equity or either of the above.
- **Balance** – means the difference between the deposit paid and the remaining balance owing to Spark & Cannon for provision of the Services.
- **Claim** – means a representation by You that our product is not of an acceptable quality. It does not include a claim for loss or damage.
- **Client Recording** – means a recording or words undertaken or prepared by You or provided by You to Spark & Cannon for the purposes of provision of services.
- **Credit Application Form** – means the form of application for approval for credit account with Spark & Cannon provided by You.
- **Credit Limit** – means the amount of credit that Spark & Cannon will provide to You, if You are an account holder, for services.
- **Deposit** - means an amount determined by Spark & Cannon.
- **Non-Account Holder** – means You where You have not provided to Spark & Cannon a completed Credit Application Form or such credit application.
- **Order** - means any specific order placed by you for particular services.
- **Order Form** – means the Request for Services form provided by You to Spark & Cannon seeking services.
- **Pre-Recorded Transcription** – means transcript prepared by Spark & Cannon of a recording provided by You or a third party.
- **Estimate of Cost** – means an estimation of the likely charges payable by You to Spark & Cannon for services based on any, all or a combination of output produced (e.g. number of pages or words, hours in attendance or charges received) which basis will be expressed as the Estimate of Cost.
- **Real-time Writer** – means transcript prepared onsite using a stenographer.
- **Record & Transcribe** – means transcript prepared from a recording created by Spark & Cannon.
- **Recording Service** – means audio file prepared by Spark & Cannon.
- **Spark & Cannon** – means “Spark & Cannon Australasia Pty Limited ABN 37007916056”.
- **Spark & Cannon Recording** – means a recording of words undertaken/prepared by Spark & Cannon.
- **Trade Account** – means a pre-approved trade credit account with Spark & Cannon.
- **Transcript** – means the product of the Pre-recorded Transcription, Record & Transcribe or Real-time Writer.
- **Services** – means Pre-recorded transcription, Recording Services, Record & Transcribe or Real-Time Writer.
- **Verbatim** – every utterance is typed.
- **You** – means the organization/individual nominated in the Contact Details section of the Order Form.

## 1.2 Interpretation

Unless the context otherwise requires:

- (a) a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any subordinate legislation issued under that legislation or legislative provision;
- (b) the singular includes the plural and vice versa;
- (c) a reference to an individual or person includes a corporation, partnership, joint venture, association, authority, trust, state or government and vice versa;
- (d) a reference to any gender includes all genders;
- (e) a reference to a recital, clause, schedule, annexure or exhibit is to a recital, clause, schedule annexure or exhibit of or to these Terms and Conditions;
- (f) any reference to "\$" is to the lawful currency for the time being of the Commonwealth of Australia;
- (g) a recital, schedule, annexure or a description of the parties forms part of this Terms and Conditions;
- (h) a reference to any agreement or document is to that agreement or document (and, where applicable, any of its provisions) as amended, notated, supplemented or replaced from time to time;
- (i) a reference to any party to these Terms and Conditions or any other document or arrangement includes that party's executors, administrators, substitutes, successors or permitted assigns;
- (j) a covenant on the part of two or more persons binds them jointly and each of them severally;
- (k) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning; and
- (l) a reference to any professional body, association or institute includes any succeeding body, association or institute serving similar objects.

## 1.3 Headings

In these Terms and Conditions, headings are for convenience of reference only and do not affect interpretation.

## 2. Order and payment process

### Estimate of Cost

- 2.1 If requested by You, Spark & Cannon will provide an estimate of cost either verbally or in writing.
- 2.2 Spark & Cannon's Estimate of Cost is based on assumptions (some of which You may have given to Spark & Cannon) including but not limited to the duration of the recording, the number of pages/words produced per hour of recording, the quality of the audio and any other relevant factors. You acknowledge and accept that:
  - (i) There are variables at the time the Estimate of Cost is given that cannot be confirmed;
  - (ii) The Estimate of Cost is not fixed and Spark & Cannon reserve the right to charge based on the actual or Services provided, which can vary.
  - (iii) Spark & Cannon will do all things reasonably necessary to provide an accurate Estimate of Cost.

### Non-account holders

- 2.3 You must complete, sign and forward to Spark & Cannon a Request for Services form.
- 2.4 Upon receipt of your Order by Spark & Cannon You agree to be bound by these Terms and Conditions.
- 2.5 You acknowledge and warrant that you are placing this request on behalf of your firm/company and you are authorised to do so and do so in the capacity as a principal and not in any capacity as an agent.
- 2.6 Spark & Cannon is providing goods and services to you on the essential condition that Spark & Cannon is providing them to you as the principal and not to you as an agent.
- 2.7 You agree to pay all of Spark & Cannon's fees for providing the Services in the manner provided herein:
- (i) To prepay the Deposit prior to Spark & Cannon providing any of the Services.
  - (ii) The Balance must be paid to Spark & Cannon upon the receipt by You of a Tax Invoice for the Balance less the Deposit.
- 2.8 You acknowledge Spark & Cannon are not required to provide any Transcript to you prior to payment of the Balance.
- 2.9 If Spark & Cannon's charges for services is less than the Deposit, Spark & Cannon will refund the difference to You within 14 days of Spark & Cannon's invoice.

### Account holders

- 2.10 If you are an Account Holder, Spark & Cannon will provide you annually with Your annual pricing for the various Services for that year and agrees that such pricing will not change without prior written notice to You and Your Credit Limit.
- 2.11 You must complete and forward to Spark & Cannon a Request for Services form.
- 2.12 You agree to be bound by these Terms and Conditions upon provision of Your Request for Services form.
- 2.13 You acknowledge and warrant that You are placing this request on behalf of your firm/company and do so in the capacity as a principal and not in any capacity as an agent.
- 2.14 Spark & Cannon are providing goods and services to You on the essential condition that Spark & Cannon are providing them to you as the principal and not to you as an agent.
- 2.20 You agree to pay all of Spark & Cannon's fees for providing the Services.
- 2.21 You will make payment to Spark & Cannon not later than 14 days after a Tax Invoice has been rendered to You.
- 2.22 Should You exceed Your Credit Limit Spark & Cannon may require You to pay to Spark & Cannon an amount equal to Your Credit Limit or another amount before Your order is processed.
- 2.23 Spark & Cannon may provide You with interim Tax Invoices in respect of Services and require payment prior to providing further Services or Transcript.
- 2.24 You acknowledge Spark & Cannon are not required to provide any Transcript should You be Default.

2.25 You are in default of these Terms and Conditions if:

- (a) You have not within 14 days, time being of the essence, made payment of any Tax Invoice issued by Spark & Cannon to You;
- (b) You fail to perform or observe Your obligations under any provision of these Terms and Conditions within 3 days after notice of breach has been provided to You;
- (c) execution is levied against any of Your assets;
- (d) You (not being a company) becomes bankrupt or Your estate is assigned or You enter into a deed of arrangement for the benefit of creditors; or
- (e) You (being a company):
  - (i) becomes insolvent under administration as defined in section 9 of the Corporations Act, or action is taken which would have this result;
  - (ii) informs Spark & Cannon, or creditors generally, that You are insolvent;
  - (ii) enter or attempt or resolve to enter into a scheme of arrangement, deed of company arrangement, or composition with, or assignment for the benefit of all or any claims of its creditors or it proposes a reorganisation, moratorium, or other administration involving any of Your creditors;
  - (iii) have a receiver, receiver and manager, administrator, or manager of any of Your assets appointed;
  - (iv) are the subject of a court application:
    - (a) to be wound up or dissolved, and that application is not stayed, discontinued or withdrawn within 10 days; or
    - (b) for a liquidator, receiver, receiver and manager, agent in possession to be appointed in respect of all or any part of Your assets or undertaking;
  - (v) are wound up or dissolved by a court order or resolution;
  - (vi) go into liquidation (other than a voluntary liquidation for the purposes of re-organisation to which Spark & Cannon has consented in writing) or a provisional liquidator is appointed;
  - (vii) take any step to obtain, or are granted, protection by Your creditors under any applicable laws;
  - (viii) experience any event or circumstance which, in the opinion of Spark & Cannon, would have a materially adverse effect on Your ability or willingness to perform Your obligations under these Terms and Conditions;
  - (ix) make a statement from which it may be reasonably deduced that You are, the subject of an event described in section 459C(2)(b) of the Corporations Act;
  - (x) have an execution or any other process of any court or authority levied against You or any of Your property, which is not satisfied, stayed, discontinued or withdrawn within 10 days;
  - (xi) suspend payment generally or are unable to pay Your due debts;
  - (xii) cease or threaten to cease to carry on business;
  - (xiii) fail to comply with a statutory demand in accordance with section 459F of the Corporations Act (or the corresponding provisions of any similar enactment in any place);

- (xiv) are subject to an investigation of Your affairs, pursuant to the provisions of Part 3 of the Australian Securities Commission Act 1989 (or the corresponding provisions of any similar enactment in any place); or
- (xv) anything occurs which is analogous to or has a substantially similar effect as any of the events specified above.

### **3. General warranties**

- 3.1 That You have capacity to enter into these Terms and Conditions.
- 3.2 That none of the events referred to in clause 2.25 (c) (d) or (e) apply to you.
- 3.3 You will advise us of any of the events referred to above apply to you.

### **4. Audio quality (pre-recorded transcription only)**

- 4.1 Where the Transcript is to be produced from a recording provided by You, You acknowledge that Spark & Cannon's fees assume that the entire recording can be clearly and easily heard by the transcriptionist.
- 4.2 If any part of any recording is poor quality audio, Spark & Cannon reserves the right to charge additional fees for producing the Transcript. In this event Spark & Cannon will notify you as soon as practicable after it becomes apparent to Spark & Cannon that additional charges will be applicable.
- 4.3 Spark & Cannon will notify You of the estimate of additional charges for the Services. Upon written or verbal confirmation from You to Spark & Cannon accepting the additional charges Spark & Cannon will proceed to provide the Services.
- 4.4 Any additional charges notified in accordance with clause 4.2, if provided, and will be paid for in accordance with Clause 2 hereof by You.

## **5. Goods and Services Tax (GST)**

- 5.1 You will be liable for any goods and services tax payable on any supply to You by Spark & Cannon.
- 5.2 Spark & Cannon will provide a Tax Invoice prior to requiring payment to Spark & Cannon.

## **6. Non-payment generally**

- 6.1 If You are in breach of Your obligations to pay the charges for the Services or any other obligations under these Terms and Conditions:
  - (a) Title in the Transcript does not pass to You until payment of any Tax Invoice issued to You by Spark & Cannon in accordance with these Terms and Conditions;
  - (b) Spark & Cannon may require You to return the Transcript;
  - (c) Spark & Cannon may refuse to provide further Services;
  - (d) Spark & Cannon may take whatever action appropriate for the recovery of any amounts remaining unpaid or return of the Transcript.

## **7. Interest and costs**

- 7.1 If You do not make payment of any charges in accordance with these Terms and Conditions, Spark & Cannon will be entitled to charge interest on any amounts outstanding at the rate of 18.5% annually, calculated daily on all outstanding monies including interest not paid but due.
- 7.2 You must pay Spark & Cannon's legal costs (on a solicitor and own client basis), the cost of all of Spark & Cannon's consultants and all other costs for or arising from any default by You under these Terms and Conditions.
- 7.3 Should any duty or impost be imposed by any State or Federal government on these Terms and Conditions You must pay all such duty or impost.

## **8. Receipt of order**

- 8.1 For Account customers, your order is considered received when the receipt of the Request for Services form has been confirmed by Spark & Cannon.
- 8.2 For non-Account customers your order is considered received from the time payment of the Deposit has been received by Spark & Cannon.

## **9. Cancelled orders**

- 9.1 If after confirmation of an Order placed by You, You notify Spark & Cannon that You wish to cancel such Order You must pay to Spark & Cannon reasonable fees and charges for the Services provided to that point in time including but not limited to all work completed up to and including the cancellation time including time and materials used or specially acquired to complete the Order.
- 9.2 Any cancellation of an Order must be in writing.

## **10. Transcript style**

- 10.1 All Transcript prepared by Spark & Cannon will be prepared where false starts, stuttering and speech anomalies may be removed unless a Verbatim Transcript is specifically requested.

## 11. Intellectual property

- 11.1 Spark & Cannon will transfer to you the copyright of any Transcript prepared subject to the Terms and Conditions contained herein having first been complied with. The transfer is subject to any heading page containing Spark & Cannon's name being maintained with all future copies of the Transcript.

## 12. Turnaround times

- 12.1 Spark & Cannon undertakes to use its best endeavours to prepare and deliver the Transcript in accordance with the turnaround time requested.
- 12.2 You agree that Spark & Cannon will not be liable for any loss, damage or injury suffered by you or anyone else directly or indirectly as a consequence of Spark & Cannon's late or non-delivery of goods or services due to any force majeure (something arising outside of the control of Spark & Cannon).

## 13. Quality

- 13.1 Spark & Cannon will use its best endeavours to produce an accurate Transcript.
- 13.2 Transcript production is dependent on audio quality.

## 14. Claims

- 14.1 You must inspect Transcript supplied by Spark & Cannon within 14 days from delivery.
- 14.2 Any claims against Spark & Cannon must be in writing within fourteen (14) days. Claims after 14 days will not be accepted. Claims are to be made in writing to the:

General Manager  
Spark & Cannon  
Level 1, 445 Hay Street  
Perth WA 6000

## 15. Release

- 15.1 You agree that Spark & Cannon is not liable for any loss, damage or injury sustained by You or any other party as a consequence of relying on or use of the Transcript, unless liability is specifically a requirement of an Australian law.
- 15.2 To the extent possible You agree that any implied warranty under any Australian Law is expressly negated in these Terms and Conditions.
- 15.3 If liability arises under Australian Law, you agree that at the election of Spark & Cannon, we can replace the goods or the supply of equivalent goods; re-supply the services or the supply of equivalent services; or compensate you financially for the cost of the goods or services.
- 15.4 Any liability or right to compensation is limited to the value of the Services invoiced in respect of any relevant Order.

## 16. Indemnity

- 16.1 You indemnify Spark & Cannon against any loss, injury or damage incurred by Spark & Cannon directly or indirectly as a consequence of any breach by you of these Terms and Conditions or the improper use of any Transcript.
- 16.2 It is not necessary for Spark & Cannon to receive payment before enforcing the right of indemnity.

## 17. General

- 17.1 These Terms and Conditions are governed by the law in force in Western Australia, and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction

of the courts of Western Australia and courts of appeal from them. Each party waives any right it has to object to an action being brought in those courts including, without limitation, by claiming that the action has been brought in an inconvenient forum or that those courts do not have jurisdiction.

- 17.2 The agreement constituted by these Terms and Conditions constitutes the entire agreement of the parties about its subject matter and supersedes all previous agreements, understandings and negotiations on that subject matter.
- 17.3 Each party acknowledges that it has not been induced to enter into these Terms and Conditions by any promise or representation, warranty or undertaking given or made by another party unless such promise, representation, warranty or undertaking is contained in these Terms and Conditions.
- 17.4 An agreement, representation or warranty on the part of or in favour of two or more persons binds or is for the benefit of them jointly and severally.
- 17.5 Each party warrants for itself that it has full power and authority to enter into these Terms and Conditions and that party has been duly authorised and represents a proper exercise of power of that party.
- 17.6 Each party warrants for itself that it has full power and authority to enter into these Terms and Conditions and that party has been duly authorised and represents a proper exercise of power of that party.
- 17.7 Each representation, covenant and obligation under these Terms and Conditions shall continue in full force and effect until such representation, obligation or covenant is satisfied or completed.
- 17.8 In the interpretation of these Terms and Conditions no rules of construction shall apply to the disadvantage of one party on the basis that that party put forward the deed or any part thereof.
- 17.9 The illegality, invalidity or unenforceability of any provision of these Terms and Conditions shall not affect the legality, validity or enforceability of any other provision or part provision of these Terms and Conditions and any provision or part provision of these Terms and Conditions which is illegal, invalid or unenforceable shall be severed from the remainder of these Terms and Conditions.
- 17.10 These Terms and Conditions shall bind the parties, their respective related companies and any executor, administrator, receiver, liquidator, trustee in bankruptcy, heir, successor or permitted assign thereof.