

Terms and Conditions

1. General

- 1.1 These terms and conditions together with any terms and conditions contained in an Order Form (**Terms**) govern our provision of Services to You.
- 1.2 Your access to and use of our Services constitutes Your agreement with us to these Terms as at the time of that access or use. If You do not accept these Terms, You must refrain from using the our Services. We reserve the right to change these Terms at our discretion without notice.
- 1.3 If you access our Services via the Auscript Website, these Terms will be in addition to the terms and conditions contained on the Auscript Website. The extent of any inconsistency, these Terms will apply.

2. Amendments to terms and conditions

- 2.1 We reserve the right to amend these Terms from time to time. Amendments will be effective immediately upon the placement of a notification of such amendment on the Auscript Website or notification to you in accordance with clause 17.13 below. Your continued use of the Services or submission of an Order Form will represent an agreement by You to be bound by the Terms as amended.
- 2.2 Notwithstanding clause 1.1, any term appearing on an Order Form and/or Estimate which is not drafted by Auscript is expressly excluded.

3. Order and payment process

- 3.1 By completing and giving an Order Form to Auscript, You request that Auscript provide You with the Services.
- 3.2 If You are not an Account Client, Auscript may provide You with an Estimate of Auscript's fees for producing the Transcript even if You have not requested it.
- 3.3 If Auscript provides You with an Estimate of Auscript's fees for providing the Services, You agree that:
 - (a) Auscript's Estimate is based on specific assumptions (some of which You may have given to Auscript) such as the average length of sittings, average number of pages produced per day and other relevant factors, which at the time that the Estimate is given are unknown;
 - (b) the Estimate is not binding on Auscript, and Auscript reserves the right to charge for producing the Transcript in accordance with the Pricing Schedule;
 - (c) Auscript will request that:
 - (i) You complete, authorise and return the Order Form to Auscript, and that by doing so You confirm that You agree:
 - (A) to these Terms; and
 - (B) to pay all of Auscript's fees for producing the Transcript, calculated in accordance with the Pricing Schedule; and
 - (ii) unless You are an Account Client, You will prepay the full amount of Auscript's Estimate for producing the Transcript prior to Auscript commencing production of the Transcript;
 - (d) If specified in the Order Form, You will prepay the full amount of Auscript's Estimate for providing Services prior to Auscript commencing providing Services. If Auscript's actual fees for producing the Transcript exceed the amount of Your prepayment, You must pay Auscript the difference;
 - (e) subject to clause 3.3(g):
 - (i) if Auscript's fees for producing the Transcript are less than the amount of Your prepayment, Auscript will refund the difference to You; and
 - (ii) if an Order is no longer required and You notify Auscript subsequent to making the pre-payment but in advance of Auscript commencing or completing production of the Transcript, such that either no fees are applicable (where no steps towards production have commenced) or where reduced fees are applicable (where steps towards production have commenced, but where the full Transcript is not completed) Auscript will refund the difference to You;
 - (f) refunds under clause 3.3(e) will not be issued until all outstanding invoices are paid in full; and
 - (g) Auscript may offset all or part of any refund under clause 3.3(e) against any outstanding amounts payable by You to Auscript.

- 3.4 You acknowledge that:
- (a) Proceedings are charged on a per hour basis and if a Proceeding rolls over into the following hour You will be charged for the full next hour. If Proceedings sit for less than three hours, a minimum of three hours will be charged.
 - (b) A standard Proceeding day is heard between the hours of 8am and 5pm. Any Proceeding that sits outside of these hours will incur an hourly after-hours charge (**Hourly Overtime Fee**) of the amount specified in the Order Form per hour. For the avoidance of doubt, Public Holiday, Saturday, and Sunday sittings are charged at the hourly after-hours charge described in this clause 3.4(b); and
 - (c) Auscript will charge all sundry costs, including taxis and reasonable travel and accommodation for Proceedings where applicable and where Auscript considers that the costs are reasonably incurred to provide the Services.
- 3.5 If the Services involve producing a Transcript from a Client Recording, You acknowledge that the fees set out in any Estimate assume that the entire Recording can be clearly and easily heard by the transcribers. Auscript will charge additional fees for producing Transcripts from Poor Quality Recordings.
- 3.6 If any part of the Recording is Poor Quality:
- (a) You will be notified in writing as soon as practicable after it becomes apparent to Auscript that the Recording is of a Poor Quality and before the Transcript is prepared; and
 - (b) You must notify us within 2 days whether You wish to proceed with the transcription otherwise, Auscript will invoice You upon completion of the Transcript.

4. Payment of invoices

- 4.1 Auscript may issue invoices electronically, via post or by delivery.
- 4.2 You agree to pay each invoice rendered by Auscript within 7 days of the date of Auscript's invoice. If you are not an Account Client, or if so stated in an Order Form, commencement of the Services may not occur until payment has been received.
- 4.3 If payment of an invoice is not received within the period set out in clause 4.2, Auscript may take whatever action it considers necessary to collect the outstanding debt and You agree to indemnify Auscript for all costs of and incidental to these actions.
- 4.4 In the event you are entitled to a refund in accordance with these Terms, Auscript will issue you a revised invoice and will refund you the amount within 7 days of the date of the invoice.

5. Additional changes, cancellation and amendment of Services

- 5.1 For all Services other than Real Time Services, You must provide Auscript a minimum of 48 hours' notice prior to commencement of the Proceedings of cancellation, settlement, and/or postponement of the Proceedings. For Real Time Services, You must provide at least 72 hours' notice to cancel such Services.
- 5.2 If You fail to provide the notice specified in clause 5.1, a 'Cancellation Fee' in the amount specified in the Order Form will be charged. If Auscript has engaged the services of third parties to assist with the provision of any of the Services, and those third parties impose cancellation fees on Auscript as a result of Your cancellation of the Services, You shall also be responsible for payment of such fee upon demand from Auscript.
- 5.3 Re-location of recording equipment to a different room or venue will incur a 'Relocation Fee' in the amount specified in the Order Form.
- 5.4 Amendments to sitting times, dates of Proceedings, Services required, location of Proceedings, or any other details requested in the Order Form must be notified to Auscript in accordance with clause 17.13. It is not sufficient to verbally inform an Auscript staff member of changes. If You do not notify us in writing, Auscript may be unable to accommodate Your request.

6. Real time Services

- 6.1 The provisions in this clause 6 will only apply if you are receiving Real Time Services.
- 6.2 You agree to provide notice to Auscript with the number of users, and the name and email address of each user, that will be using Auscript's Real Time Services (**Authorised Users**), at least 48 hours in advance of the commencement of the Proceedings. Any additional users requested by You outside of this period may be granted access at an additional cost as reasonably determined by Auscript.
- 6.3 Auscript will provide each Authorised User with access credentials and a link to the software (**Software**) necessary for Auscript to provide Real Time Services, and Auscript may also provide user manuals and guidance, training, and software support (**Materials**), as well as laptops or other hardware (**Equipment**) as reasonably required to allow you to use the Real Time Services. Materials and Equipment will be provided at the costs set out in the Estimate or the Order Form or otherwise on Auscript's standard rates or as set out in the Pricing Schedule.

- 6.4 Auscript grants You, and each Authorised User, a non-exclusive, non-transferable licence to use the Materials and Equipment for the sole purpose of obtaining Real Time Services. You agree that all Authorised Users will cease to use Materials and Equipment once the Real Time Services have been completed.
- 6.5 You agree that use of the Materials and Equipment are also subject to the terms and conditions of the provider of the Software (such terms to be presented to You when you first access the Software). You agree to indemnify Auscript against any loss or damage arising from any failure to comply with any third party terms and conditions.
- 6.6 You agree that the link to the Software and the access credentials of Authorised Users must not be used by anyone other than an Authorised User. You are responsible for all activities carried out by each Authorised User. If You suspect there has been unauthorised use of any access credentials, please notify Auscript immediately.
- 6.7 You agree that an active internet connection is required for Auscript to provide Real Time Services. If Auscript is not providing the internet connection, you agree to ensure a connection adequate for Auscript to provide the Services is available at all times.
- 6.8 Where Auscript has provided You and/or Authorised Users with pre-configured Equipment, the Equipment must be returned to Auscript once Services have been provided in the same condition as it was provided to You. This includes deletion of all information, data, documents, etc (**Information**) installed, created, or put onto the Equipment by You when using the Equipment as part of the Real-Time Services. If the Equipment is not returned in the same condition as provided to You, as reasonably determined by Auscript, then You will be charged the reasonable costs of repair or replacement. All Information is deleted from the Equipment upon return to Auscript.
- 6.9 You warrant that You have obtained all necessary consents and permissions required for Auscript to provide the Real Time Services and perform its obligations under these Terms and indemnify us for any third party claim in relation to the provision of the Real Time Services.

7. Transcript style

- 7.1 All Transcripts prepared by Auscript will be in Auscript's default format and style.
- 7.2 Variance to Auscript's default transcript style must be mutually agreed. Additional costs may be applicable if a change to the transcript style is requested.

8. Turnaround Times

- 8.1 Auscript will use its best endeavours to produce and deliver the Transcript to Your nominated delivery address in accordance with the turnaround time set out in the Order Form (**Turnaround Time**).
- 8.2 You acknowledge that:
 - (a) a minimum of 10 Business Days' advanced confirmation is required prior to commencement of Real Time Services;
 - (b) a minimum of 2 Business Days' notice is required for all recording and transcription on all same day, next day, 3 day, 5 day, 10 day, 15 day, and 20 day turnarounds;
 - (c) the Turnaround Time for Client Recordings commences on the date Auscript confirms the order for next day, 3 day, 5 day, 10 day, 15 day and 20 day turnarounds;
 - (d) for Client Recordings, the quality of the Recording (and in particular any Poor Quality Recording) may affect Auscript's ability to produce and deliver the Transcript within the Turnaround Time;
 - (e) Unless agreed prior, where proceedings conclude after 4:30PM, everything up to 4:30PM will be delivered by 6PM. The remainder will be delivered by 9:30AM on the following day.
 - (f) in the case of external IT or communications outages that are outside of Auscript's control, Auscript cannot guarantee delivery of the relevant Service within the specified Turnaround Time; and
 - (g) where the Transcript is considered to be revisable by a commissioner or third party, the Turnaround Time only applies to the time in which Auscript delivers the unrevised Transcript to the commissioner or third party, and delivery of the revised Transcript to You will be dependent on the time by which the commissioner or third party revises the Transcript and returns this to Auscript as per any prior written arrangement with Auscript.
- 8.3 Notwithstanding the above timeframes, You agree that Auscript is not liable for any loss, damage or injury sustained by You or anyone else directly or indirectly as a consequence of Auscript's failure to produce and deliver a Transcript in accordance with the Turnaround Time.

9. Delivery of Transcripts

Auscript will:

- (a) provide You with one copy of the Transcript, in electronic format; and
- (b) where the Services relate to an Auscript Recording, provide You with one copy of the Recording.

10. Intellectual Property

- 10.1 You acknowledge and agree that Intellectual Property Rights in the Services remains the property of Auscript (or its licensees).
- 10.2 The Intellectual Property Rights in any Recording will remain with You or the relevant facilitator or participant in the Proceedings and You grant, or have procured that the relevant third party has granted, to Auscript a licence to use such Intellectual Property Rights for the purposes of providing the Services. Where the Intellectual Property Rights in any Auscript Recording or Transcript vests in a third party, You agree to comply with any restrictions placed on the use of those Intellectual Property Rights by the third party. You agree that you have obtained all necessary consents from participants in the Proceedings to allow the Recording and transcription of the Proceedings.

11. Force Majeure

- 11.1 Any failure by Auscript to carry out any of its obligations under these Terms shall not be deemed to be a breach of these Terms if such failure is caused by Force Majeure.
- 11.2 If Auscript's ability to perform its obligations pursuant to these Terms is delayed, curtailed or prevented by Force Majeure:
 - (a) Auscript will give notice of the occurrence of Force Majeure to You;
 - (b) the time for carrying out of the activity affected by Force Majeure shall be extended for a period equal to the total of the periods during which such causes or their effects were operative, and for such further periods, if any, as shall be necessary to make good the time lost as a result; and
 - (c) You will have no claim against Auscript for any loss or damage sustained by You or any third party arising from the Force Majeure.

12. Warranties

- 12.1 Auscript warrants to You that the Services will comply with all applicable laws and regulations.
- 12.2 Except as provided in clause 12.1, You acknowledge and agree that Auscript has not made or given any warranties to You in relation to any Auscript Recording, the Transcript and other Services.
- 12.3 Provisions of the Australian Consumer Law and other statutes in some cases either cannot be excluded, restricted or modified or can only be restricted or modified to a limited extent. Auscript acknowledges and agrees that its goods and services come with a guarantee that cannot be excluded and the following mandatory provisions under section 102(1) of the Australian Consumer Law that must be provided to You will apply to any defective goods or services under these Terms:
 - (a) For major failures with the services, You are entitled at Your election:
 - (i) to cancel the Services contract; or
 - (ii) to request the re-supply of those Services; and
 - (iii) to a refund or compensation for the difference between what was paid for and what was supplied.
 - (b) For major failures with goods supplied to You, You are entitled at Your election to:
 - (i) a refund; or
 - (ii) the replacement of those goods or the supply of equivalent goods;
 - (c) If the failure with goods or Services does not amount to a major failure, You are entitled at Your election:
 - (i) to compensation for the difference between what was paid for and what was supplied; or
 - (ii) to the cost of replacing those goods or supplying equivalent goods; and
 - (iii) any reasonably foreseeable loss or damage from the failure in the goods or Services.
 - (d) Auscript may offset any of the amounts, goods or Services owing under this clause 12.3 against any outstanding invoices.
- 12.4 Subject to clause 12.3, and to the fullest extent permitted by law, You agree that Auscript expressly excludes all warranties implied by statute, common law or the law of equity and shall not be liable for any loss, damage or

injury sustained by You or anyone else directly or indirectly as a consequence of production by Auscript of any Auscript Recording and the Transcript or the use by You or anyone else of any Auscript Recording or the Transcript.

- 12.5 To the extent clause 12.4 does not apply or is not effective to exclude Auscript's liability under, or in connection with, these Terms, then its liability (whether under contract, tort, statute or otherwise) will be limited, cumulatively and in the aggregate, to the amount paid to us by You under the relevant Order to which the claim relates.

13. Third Party Applications

- 13.1 You acknowledge and agree that where the Services involve the use of Video Recording, Auscript may utilise Third Party Applications to assist in its delivery of the Services.
- 13.2 Auscript does not make any representations or provide any warranties whatsoever with respect to the use or functionality of any such Third Party Applications.
- 13.3 Third Party Applications are only used by Auscript in accordance with the terms and conditions of the agreement between Auscript, the Client and the provider of the Third Party Applications.
- 13.4 Auscript shall have no liability for any damage to You or any third party caused by the use of any Third Party Applications.

14. Indemnity

You indemnify Auscript (and hold Auscript, its officers, employees and contractors harmless) against any loss, injury or damage (including any legal costs or expenses) incurred by Auscript directly or indirectly as a consequence of any breach by You of these Terms, including for any claims made against Auscript by any third parties for breach of copyright or other Intellectual Property Rights or any Data Protection Laws, where such claims arise from or are related to Your use of the Transcript or the Auscript Recording.

15. Privacy

- 15.1 Each party must comply with all applicable Data Protection Laws with respect to the use and handling of any information submitted by You on an Order Form or on the Auscript Website or otherwise contained in a Transcript or Auscript Recording.
- 15.2 You indemnify Auscript for any claim brought by any third party in connection with any act or omission by Auscript in relation to a third party's Personal Information to the extent that such act or omission resulted directly from Your instructions or Your breach of these Terms (including any breach by You of Data Protection Laws).
- 15.3 By agreeing to these Terms, You acknowledge and agree to the terms of our privacy policy available on the Auscript Website. Any information we collect about You via an Order Form or the Auscript Website will only be used, handled and disclosed in accordance with our privacy policy.

16. Retention of Recordings and Transcripts

- 16.1 Subject to clause 16.2, Auscript retains physical Client Recordings and other physical documents You provide us at least until Services have been provided.
- 16.2 If Client Recordings or other documents are given to us in electronic format, these are retained as described in clause 16.3.
- 16.3 Auscript retains Auscript Recordings, Transcripts and the information described in clause 16.2 for a period of at least 90 days from the last day upon which Services are provided. This allows You time to review the Transcript, and to raise any queries with Auscript. Auscript may charge You a reasonable retrieval fee if You request a review of the Auscript Recording or Transcript.

17. Miscellaneous

- 17.1 You agree that:
- (a) all amounts expressed in the Pricing Schedule and any Estimate are exclusive of GST, unless otherwise stated; and
 - (b) all terms in this clause 17.1 and in clause 17.2, unless otherwise defined, have the same meaning as those terms have in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and/or associated Commonwealth legislation, regulations and publicly available rulings (**the GST Law**).
- 17.2 If a party (**the Supplier**) is obliged pursuant to the GST Law to pay an amount of GST in respect of a Taxable Supply made by the Supplier to another party (**the Recipient**), the Recipient shall pay the Supplier on demand that amount of GST upon production of a valid Tax Invoice by the Supplier in addition to the moneys otherwise payable by the Recipient to the Supplier on account of that Taxable Supply.
- 17.3 These Terms shall be governed by and constructed in accordance with the laws of Queensland.

- 17.4 The parties each irrevocably and unconditionally submit to the non-exclusive jurisdiction of the Courts of Queensland whether State or Federal and each waives any immunity or any objection it may have to any action in those Courts and to a claim that any action has been brought in an inconvenient forum or to those Courts not having jurisdiction.
- 17.5 If there is any inconsistency between these Terms and any terms contained in any Order Form, subject to clause 2.2, the terms set out in the Order Form will take priority to the extent of any inconsistencies.
- 17.6 All legislation which varies, prevents or prejudicially affects the exercise by Auscript of any right, power or remedy conferred upon it under these Terms to the extent permitted by law is excluded.
- 17.7 A right in favour of Auscript under these Terms or an Order Form, subject to any express provision of these Terms to the contrary, may be waived prospectively or retrospectively by writing signed by Auscript. No other act, omission or delay will constitute a waiver of a right.
- 17.8 A single or partial exercise or waiver by Auscript of any right relating to these Terms will not prevent any other exercise of that right or the exercise of any other right.
- 17.9 The rights and remedies provided under these Terms are cumulative and not exclusive of any rights or remedies provided by law.
- 17.10 If any provision of these Terms shall be or be determined to be illegal, invalid, void or voidable the legality or validity of the remainder of these Terms will not be affected and will continue in full force and effect.
- 17.11 You cannot assign Your rights and obligations under these Terms.
- 17.12 The person that signs any Order Form or Estimate on Your behalf warrants that they have the authority to bind You to these Terms.
- 17.13 If You wish to contact us in writing, or if any condition in these Terms requires You to give us notice in writing, You can send this to us by email at clientservices@auscript.com.au. We will confirm receipt of this by contacting You in writing, normally by email. If we have to contact You or give You notice in writing, we will do so by email or by pre-paid post to the address You provide to us on the Order Form.

18. Definitions

In these Terms:

Account Client means a Client that has completed a credit application and that has an existing account with Auscript.

Audio Quality Policy means Auscript's audio quality policy which may be amended from time to time and is available upon written request.

Audio Recording means the recording, reproducing, broadcasting or streaming of audible sound.

Auscript means Auscript Australasia Pty Limited ABN 72 110 028 825.

Auscript Recording means a Recording created by Auscript of Proceedings.

Auscript Website means the website maintained at the www.auscript.com.au domain name.

Australian Consumer Law means Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

Business Day means a day that is not Saturday, Sunday, or public holiday in Queensland, Australia.

Certification Services means a service whereby Transcripts might be sound checked against the original Recording or a certification page is added to the Transcript, stipulating that the Transcript produced as a true and correct record of proceedings by Auscript.

Client means a person or organisation using the services of Auscript.

Client Recording means a Recording made by You or someone else which You provide to Auscript for Transcription.

Data Protection Laws means all applicable laws relating to data protection, the processing of personal information and privacy, including the *Privacy Act 1988* (Cth).

Estimate means the estimate of fees provided by Auscript to You in relation to the provision of Services.

Force Majeure means any delay by Auscript in carrying out its obligations under these Terms or any act necessary for the discharge of or compliance with such obligations which is beyond the reasonable control of Auscript.

Intellectual Property Rights means all industrial and intellectual property rights throughout the world, whether registered, unregistered or unregistrable, including all copyrights, patents, trademarks, service marks, designs, confidential information, trade secrets, know how, data and databases, systems and domain names.

Order Form means any form requesting Services, including online, email, fax, mail or in person in the format required by Auscript.

Poor Quality means a Recording rated '2' or lower according to Auscript's Audio Quality Policy.

Pricing Schedule means the list of prices set out in the Order Form or the Auscript Website.

Proceeding means the legal proceeding listed on the Order Form for which Auscript is to provide Services.

Real Time Services is a Transcript solution that displays the live Transcript into each participating real-time user's computer, allowing them to view the transcribed dialogue as it takes place, and make annotations in real-time using Transcript analysis software.

Recording means an Audio Recording and/or Video Recording as the context permits.

Services means but is not limited to Recording, Transcripts, Certification Services, Real Time Services and provision of Recordings.

Third Party Application means any third party recording or streaming application used by Auscript in the provision of the Services.

Transcript means the written literary work which has been or will be created by Auscript, following the relevant court style guide, in relation to the Proceeding, Recording or other matter referred to in the Order Form.

Turnaround Time has the meaning set out in clause 8.1.

Video Recording means the recording, reproducing, broadcasting or streaming of moving visual images.

We, us and our, are a reference to Auscript, regardless of whether the defined words are in title or lower case.

You means the person listed in the Order Form being the person who has ordered, or may order, a Transcript from Auscript. This definition applies whether the defined word is in title or lower case.

19. Interpretation

In these Terms, unless the contrary intention appears:

- (a) Reference to:
 - (i) these Terms or another document includes any variation or replacement of it notwithstanding any change in the identity of the parties;
 - (ii) one gender includes the others;
 - (iii) the singular includes the plural and the plural includes the singular;
 - (iv) a person, partnership, corporation, trust, association, joint venture, unincorporated body, government body or other entity includes any of them;
 - (v) a party includes the party's executors, administrators, successors, substitutes (including a person who becomes a party by novation) and permitted assigns;
 - (vi) any statute, ordinance, code or other law includes regulations and other instructions under any of them and consolidations, amendments, re-enactments or replacements of any of them;
 - (vii) money is to Australian dollars, unless otherwise stated; and
 - (viii) a time is a reference to Brisbane time unless otherwise specified.
- (b) The words "include", "including", "such as", "for example" and similar expressions are not to be construed as words of limitation.
- (c) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
- (d) Headings are for convenience only and do not affect the interpretation of these Terms.
- (e) A provision of these Terms must not be construed to the disadvantage of a party merely because that party or its advisers were responsible for the preparation of these Terms or the inclusion of the provision in these Terms.
- (f) If an act is required to be done on a particular day it must be done before 5.00pm on that day or it will be considered to have been done on the following Business Day.
- (g) Where a notification is not received between 9am and 5pm will be deemed to have been received at 9am on the next Business Day.