

Standard Terms and Conditions

**1. Definitions**

- 1.1 In this document:
- (a) **AAT** means the Administrative Appeals Tribunal.
  - (b) **Account Customer** means a customer that has completed a credit application and that has an existing account with Auscript.
  - (c) **Auscript** means Auscript Australasia Pty Limited ABN 72 110 028 825.
  - (d) **Federal Court** means the Federal Court of Australia.
  - (e) **Force Majeure** means any delay by Auscript in carrying out its obligations under this agreement or any act necessary for the discharge of or compliance with such obligations which is beyond the reasonable control of Auscript.
  - (f) **Formal** means that, in producing a Transcript, colloquialisms and speech anomalies may be omitted while evidence is represented in full.
  - (g) **General** means that, in producing a Transcript, all evidence is typed verbatim but speech anomalies of persons not giving evidence may be omitted.
  - (h) **Legal Proceeding** means the legal proceeding listed on the Order Form.
  - (i) **Order Form** means any Order Form which incorporates these terms and conditions including:
    - (1) any order form on which these terms and conditions are printed;
    - (2) any order form which refers to these terms and conditions as located on Auscript's website;
    - (3) in the case of an electronic order, the electronic order form completed by You which incorporates these terms and conditions.
  - (j) **Poor Quality Audio** means a sound recording rated '2' or lower according to Auscript's Audio Quality policy, which is available upon written request.
  - (k) **Pricing Schedule** means the list of prices set out in the Order Form.
  - (l) **Recording** means:
    - (1) a sound recording which is created by Auscript at Your request other than a recording of proceedings made in the Federal Court or AAT (**Auscript Recording**); otherwise
    - (2) a sound recording made by You or someone else which You provide to Auscript for transcription (**Client Recording**).
  - (m) **Transcript** means the written literary work which has been or will be created by Auscript in relation to the Legal Proceeding, Recording or other matter referred to in the Order Form.
  - (n) **You** means the person listed in the Order Form being the person who has ordered, or may order, a Transcript from Auscript.
  - (o) **Verbatim** means that, in producing a Transcript, every spoken word and utterance is typed as it is said.
- 1.2 In this document, unless the contrary intention appears:
- (a) Reference to:
    - (1) this document or another document includes any variation or replacement of it notwithstanding any change in the identity of the parties;
    - (2) one gender includes the others;
    - (3) the singular includes the plural and the plural includes the singular;
    - (4) a person, partnership, corporation, trust, association, joint venture, unincorporated body, government body or other entity includes any other of them;
    - (5) a party includes the party's executors, administrators, successors, substitutes (including a person who becomes a party by novation) and permitted assigns;
    - (6) any statute, ordinance, code or other law includes regulations and other instruments under any of them and consolidations, amendments, re-enactments or replacements of any of them;
    - (7) money is to Australian dollars, unless otherwise stated;
    - (8) a time is a reference to Brisbane time unless otherwise specified;
    - (9) the words "include", "including", "such as", "for example" and similar expressions are not to be construed as words of limitation.
  - (b) 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.
  - (c) Headings are for convenience only and do not affect the interpretation of this agreement.

**2. Order and payment process – Transcript only**

- 2.1 By completing and giving an Order Form to Auscript, You request that Auscript provide you with either :
- (a) the Transcript; or
  - (b) an estimate of Auscript's fees for producing the Transcript.
- 2.2 If You are not an Account Customer, Auscript will provide you with an Estimate of Auscript's fees for producing the Transcript even if you have not requested it.
- 2.3 If Auscript provides You with an Estimate of Auscript's fees for producing the Transcript, 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. At the time that the Estimate is given, these variables are unknown;
  - (b) Accordingly, the Estimate is not binding on Auscript. Auscript reserves the right to charge for producing the Transcript in accordance with the Pricing Schedule;
  - (c) Auscript will request that:
    - (1) You complete, sign and return the Estimate form to Auscript, and that by doing so You confirm that You agree:
      - (A) to all of the terms and conditions set out in this document; and
      - (B) to pay all of Auscript's fees for producing the Transcript, calculated in accordance with the Pricing Schedule; and
    - (2) unless you are an Account Customer, You prepay the full amount of Auscript's Estimate of Auscript's fees for

- (d) if Auscript's fees for producing the Transcript exceed the amount of Your prepayment, you must pay the difference to Auscript within 14 days of Auscript's invoice;
  - (e) if Auscript's fees for producing the Transcript are less than the amount of Your prepayment, Auscript will refund the different to you within 14 days of Auscript's invoice.
- 2.4 If you are an Account Customer and have not requested an Estimate of Auscript's fees for producing the Transcript, then by completing and giving the Order Form to Auscript, you agree:
- (a) to all of the terms and conditions set out in this document; and
  - (b) to pay all of Auscript's fees for producing the Transcript, calculated in accordance with the Pricing Schedule; and
  - (c) that:
    - (1) if Auscript's fees for producing the Transcript exceed \$5,000, Auscript will invoice you in increments of \$5,000 and upon completion of the Transcript;
    - (2) otherwise, Auscript will invoice you upon completion of the Transcript;
  - (d) to pay each invoice rendered by Auscript within 14 days of Auscript's invoice.
- 2.5 Where the Transcript is to be produced from a Client Recording, You acknowledge that the fees set out in the Pricing Schedule assume that the entire Recording can be clearly and easily heard by the transcriber. If any part of the Recording is Poor Quality Audio, Auscript reserves the right to charge additional fees for producing the Transcript which will be notified to you in writing as soon as practicable after it becomes apparent to Auscript that the Recording contains Poor Quality Audio and before the Transcript is prepared.

**3. Order and payment process – Auscript Recording and Transcript**

- 3.1 By completing and giving an Order Form to Auscript, You request that Auscript :
- (a) create an Auscript Recording and provide you with a Transcript of that Recording;
  - (b) an Estimate of Auscript's fees for creating an Auscript Recording and providing you with a Transcript of that Recording.
- 3.2 If You are not an Account Customer, Auscript will provide you with an Estimate of Auscript's fees for creating the Auscript Recording and providing you with a Transcript of that Recording even if you have not requested it.
- 3.3 If Auscript provides You with an Estimate of Auscript's fees for creating the Auscript Recording and providing you with a Transcript of that Recording, 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. At the time that the Estimate is given, these variables are unknown;
  - (b) Accordingly, the Estimate is not binding on Auscript. Auscript reserves the right to charge for creating the Auscript Recording and providing you with a Transcript of that Recording in accordance with the Pricing Schedule;
  - (c) Auscript will request that:
    - (1) You complete, sign and return the Estimate form to Auscript, and that by doing so You confirm that You agree:
      - (A) to all of the terms and conditions set out in this document; and
      - (B) to pay all of Auscript's fees for creating the Auscript Recording and producing a Transcript of that Recording, calculated in accordance with the Pricing Schedule; and
    - (2) unless you are an Account Customer, You prepay the full amount of Auscript's Estimate of Auscript's fees for creating the Auscript Recording and producing a Transcript of that Recording prior to Auscript commencing Recording and production of the Transcript;
  - (d) if Auscript's fees for creating the Auscript Recording and providing you with a Transcript of that Recording exceed the amount of Your prepayment, you will pay the difference to Auscript within 14 days of Auscript's invoice;
  - (e) if Auscript's fees for creating the Auscript Recording and providing you with a Transcript of that Recording are less than the amount of Your prepayment, Auscript will refund the different to you within 14 days of Auscript's invoice.
- 3.4 If you are an Account Customer and have not requested an Estimate of Auscript's fees for creating the Auscript Recording and providing you with a Transcript of that Recording, then by completing and giving the Order Form to Auscript, you agree:
- (a) to all of the terms and conditions set out in this document; and
  - (b) to pay all of Auscript's fees for creating the Auscript Recording and providing you with a Transcript of that Recording; and
  - (c) that:
    - (1) if Auscript's fees for creating the Auscript Recording and providing you with a Transcript of that Recording exceed \$5,000, Auscript will invoice you in increments of \$5,000 and upon completion of the Transcript;
    - (2) otherwise, Auscript will invoice you upon completion of the Transcript;
  - (d) to pay each invoice rendered by Auscript within 14 days of Auscript's invoice.

**4. Transcript style**

- 4.1 All Transcripts prepared by Auscript for Federal Court and AAT matters will be Formal Transcripts.
- 4.2 All other Transcripts prepared by Auscript will be Verbatim Transcripts, unless You specifically request otherwise in the Order Form.

**5. Intellectual Property**

- 5.1 You acknowledge and agree as follows :
- (a) **Federal Court and AAT matters** – where you have requested that Auscript produce the Transcript of a matter in the Federal Court or AAT:
    - (1) copyright in the Transcript is and remains the property of the Commonwealth of Australia (**the Commonwealth**);

	(2)	the Commonwealth has granted to Auscript a licence to use the copyright in the Transcript for certain purposes;		
	(3)	Auscript reserves all rights it has in respect of the Transcript pursuant to its agreement with the Commonwealth, which include the right to :	7.3	In any event, 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 the Transcript in accordance with the Turnaround Time.
	(A)	produce, reproduce, perform or publish the Transcript;		
	(B)	make any translation of the Transcript;		
	(C)	make any record of the Transcript;		
	(D)	communicate the Transcript to the public by any means.	8.	<b>Force Majeure</b>
(b)	<b>In all other cases</b> – in all other cases, :		8.1	Any failure by Auscript to carry out any of its obligations under this agreement shall not be deemed to be a breach of this agreement if such failure is caused by Force Majeure.
(1)	<b>(Auscript Recordings)</b> copyright in any Auscript Recording is and remains the property of Auscript and Auscript reserves all rights in respect of any Auscript Recording, including the right to :		8.2	If Auscript's ability to perform this agreement is delayed, curtailed or prevented by Force Majeure:
(A)	produce, reproduce, perform or publish any Auscript Recording;		(a)	Auscript will give notice of the occurrence of Force Majeure to You; and
(B)	make any translation of any Auscript Recording;		(b)	the time for carrying out 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)	make any record of any Auscript Recording;		(c)	You will have no claim against Auscript for any loss or damage arising from the Force Majeure.
(D)	communicate any Auscript Recording to the public by any means;			
(2)	<b>(Transcript)</b> subject to you complying with clause 5.3, Auscript will transfer to You copyright in any Transcript prepared by Auscript in accordance with this agreement (other than the Transcript of a matter in the Federal Court or AAT).		9.	<b>Warranties</b>
5.2	You can separately purchase the copyright in an Auscript Recording. Auscript will provide details of its price for the sale of the copyright in an Auscript Recording upon request.		9.1	Auscript warrants to You that the Transcript is an original work and that Auscript is the owner or licensee of the copyright in any Auscript Recording and the Transcript.
5.3	If you reproduce or disseminate any Transcript prepared by Auscript in accordance with this agreement (other than the Transcript of a matter in the Federal Court or AAT) you must ensure that one or both of the following are clearly visible on the Transcript:		9.2	You acknowledge and agree that :
(a)	Auscript's logo; or		(a)	Auscript has not made or given any warranties to You in relation to any Auscript Recording and the Transcript; and
(b)	The following words "transcript produced by Auscript".		(b)	any and all implied warranties in relation to the Auscript Recording and the Transcript (whether arising under the <i>Trade Practices Act 1974</i> (Cth) or any such other legislation that may operate in relation to the provision of any Auscript Recording and the Transcript ( <b>Implied Warranties</b> )) are excluded to the fullest extent permitted by law.
6.	<b>Your rights in respect of Federal Court and AAT Transcripts</b>		9.3	To the extent that Auscript is unable to exclude the operation of Implied Warranties, Auscript's liability for any breach of any Implied Warranty is limited to: in the case of any Implied Warranty relating to goods, at Auscript's election:
6.1	In consideration of you paying Auscript's fees for producing the Transcript of a matter in the Federal Court or AAT, Auscript will:		(1)	the replacement of those goods or the supply of equivalent goods;
(a)	provide you with 1 copy of the Transcript, in either electronic or hard copy format (as requested by You in the Order Form) ( <b>Your Copy of the Transcript</b> );		(2)	the cost of replacing those goods or supplying equivalent goods.
(b)	grant to you a non-exclusive sub-licence in respect of Your Copy of the Transcript on the terms set out in clause 6.2.		(b)	in the case of any Implied Warranty relating to services, at Auscript's election :
6.2	For the purposes of clause 6.1, the sub-licence granted by Auscript entitles You: to use Your Copy of the Transcript for Your own personal use;		(1)	the re-supply of those services;
(a)	if You are a barrister, to make and provide copies of Your Copy of the Transcript only to:		(2)	the cost of re-supplying those services.
(1)	Your employees;		9.4	Subject to clause 9.3, 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 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.
(2)	Your client;		10.	<b>Indemnity</b>
(3)	any barrister that You have briefed in relation to the matter before the Court,		10.1	You indemnify Auscript (and hold Auscript harmless) against any loss, injury or damage (including any legal costs or expenses incurred) incurred by Auscript directly or indirectly as a consequence of any breach by You of these terms and conditions.
(c)	for use in the Legal Proceeding before the Court; if You are a barrister, to make and provide copies of the Your Copy of the Transcript only to:		10.2	It is not necessary for Auscript to make any payment before enforcing the right of indemnity conferred by subclause 10.1.
(1)	Your employees;		11.	<b>Miscellaneous</b>
(2)	Your client;		11.1	You agrees that :
(3)	your instructing solicitors,		(a)	all amounts expressed in the Pricing Schedule and any Estimate are exclusive of GST, unless otherwise stated; and
(d)	for use in the Legal Proceeding before the Court; if You are or represent a media organisation, to use Your Copy of the Transcript to report on the Legal Proceeding.		(b)	all terms in this clause 11.1 and in clause 11.2, unless otherwise defined, have the same meaning as those terms have in the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth) and / or associated Commonwealth legislation, regulations and publicly-available rulings ( <b>the GST Law</b> ).
6.3	Except as expressly provided in clauses 6.2(b) and 6.2(c), you must not :		11.2	If a party ( <b>the Supplier</b> ) 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 ( <b>the Recipient</b> ), 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.
(a)	alter Your Copy of the Transcript;		11.3	This agreement shall be governed by and construed in accordance with the laws of Queensland.
(b)	share Your Copy of the Transcript with any other person or permit any person (other than a person mentioned in clauses 6.2(b) or 6.2(c)) to inspect, or have any form of access (whether electronic or otherwise) to, Your Copy of the Transcript;		11.4	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.
(c)	licence, assign or otherwise grant any interest in Your Copy of the Transcript; nor		11.5	All legislation which varies, prevents or prejudicially affects the exercise by Auscript of any right, power or remedy conferred upon it under this agreement to the extent permitted by law is excluded.
(d)	reproduce, publish, translate, broadcast, transmit or use Your Copy of the Transcript in any way except as expressly set out in this document.		11.6	A right in favour of Auscript under this agreement, subject to any express provision of this agreement 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.
6.4	Where You are or represent any media organisation, you further agree:		11.7	A single or partial exercise or waiver by Auscript of any right relating to this agreement will not prevent any other exercise of that right or the exercise of any other right.
(a)	Your Copy of the Transcript will only be used for the purposes of reporting on the Legal Proceeding; and		11.8	The rights and remedies provided under this agreement are cumulative and not exclusive of any rights or remedies provided by law.
(b)	no part of the Transcript will be copied or made available to any other person except for that purpose; and		11.9	If any provision of this agreement shall be or be determined to be illegal, invalid, void or voidable the legality or validity of the remainder of this agreement will not be affected and will continue in full force and effect.
(c)	no part of the Transcript will be provided by You to any of the parties to the Legal Proceeding.		11.10	You cannot assign Your rights and obligations under this document.
6.5	You must take all steps necessary to safeguard the Your Copy of the Transcript and prevent it (unless required to do so by law) from being reproduced, adapted, performed, published, translated, heard, broadcast, transmitted or used in any way which might be an infringement of any copyright in the Transcript.		11.11	The person that signs any Order Form or Estimate on Your behalf warrants that they have the authority to bind You to these terms and conditions.
6.6	If at any time You learn of any infringement or threatened infringement of the copyright in the Transcript You must immediately notify Auscript in writing giving particulars of the infringement.			
7.	<b>Turnaround times</b>			
7.1	Auscript will use its best endeavours to produce and deliver the Transcript in accordance with the turnaround time set out in the Order Form ( <b>Turnaround Time</b> ).			
7.2	You acknowledge that :			
(a)	in the case of Client Recordings, the quality of the Recording (and in particular, any Poor Quality Audio) may affect Auscript's ability to produce and deliver the Transcript within the Turnaround Time;			
(b)	<b>in the case of matters heard and recorded in the Federal Court or AAT</b> , the unscheduled completion of Legal Proceedings after 4:15 pm in the state in which Legal Proceedings are taking place, may impact upon the pre-arranged transcript delivery time;			
(c)	<b>In the case of orders for transcript received after the specified deadline</b> (10am on the day of the proceedings, in the state in which the proceedings are taking place) the next possible turnaround (and associated folio rate) will apply;			