

PENINA PTY LTD QUOTATION AND TERMS OF SUPPLY

1. The price for the Works set out in this Quotation are valid for [30] days from the date of this Quotation. This Quotation may be subject to revision or withdrawal if not accepted by the Purchaser in writing within [30] days of the date of this Quotation.
2. This Quotation only applies to the Works and no additional work is to be implied or inferred to form part of the Quotation.
3. Prior to the Company accepting any order from a Purchaser in response to this Quotation, the Company reserves the right to change, modify or alter the construction or design of the Works if, in the Company's sole discretion, such change, modification or alteration is in the interests of the Company.
4. By signing this Quotation, the Purchaser agrees to be bound by these terms and to order and purchase the Works pursuant to these terms.
5. Once the Purchaser has signed and returned this Quotation to the Company, the Company will notify the Purchaser of whether it accept or rejects the Purchaser's order. If the Company does not accept the Purchaser's order, this Quotation and terms will be automatically terminated.
6. All Intellectual Property Rights in the Works remain vested in the Company.
7. The Purchaser agrees to keep confidential, and not to use or disclose, any Confidential Information of the Company provided to or obtained by the Purchaser before or after entry into these terms.
8. Except where the Company undertakes in writing to obtain a permit, licence or approval, all permits, licences and approvals required or reasonably requested by the Company for the performance of the Works shall be obtained by the Purchaser, at the Purchaser's cost. The Purchaser shall ensure that all permits, licences and approvals are obtained within such time as is required, having regard to these terms, to ensure there is no delay or disruption to the Company's performance of the Works.
9. Unless it is expressly stated in the Quotation that the Company shall complete the Works within a set duration or by a set date, the Company shall not be obliged to complete the Works within any set duration or by any set date. If any event or circumstance which is outside of the Company's reasonable control causes a delay or disruption to the Company's performance of the Works, including without limitation, any act or omission of the Purchaser, failure or delay in the supply or delivery of Materials (including a supply or delivery by the Company's subcontractors or suppliers), any shortage of supply of Materials, any industrial disturbances, industrial disputes, strikes, lockouts, inclement weather, physical natural disasters (including without limitation floods, fires and earthquakes), an epidemic or quarantine restriction, acts or omissions of any authority, agency or government, war, insurrection, or terrorism, then the Company's obligations under the Contract shall be suspended for the duration of the delay or disruption. If the Contract requires the Works to be completed within a set duration or by a set date, then that duration or set date shall be deemed extended by the period that the Company's obligations are suspended in accordance with this clause 9.
10. Where the Works involve the provision of labour by the Company, the Company shall only be obliged to carry out the Works during Normal Working Hours. If the Company reasonably undertakes the Works at times outside of the Normal Working Hours (including without limitation pursuant to an instruction given by the Purchaser), then the additional costs of undertaking the Works at those times shall be added to the price in this Quotation and must be paid for by the Purchaser in accordance with clause 18.
11. The Purchaser must, at its cost and expense, provide suitable access to and possession of the site, all proper foundations, all necessary structures and any other amenities and services reasonably required, or requested, by the Company, to perform the Works (including, without limitation, power, light, water, suitable protection, including security, for the plant and equipment used by the Company on site and any Materials placed by the Company on site from the time of delivery). In so far as the Purchaser is required to supply power and light, the Purchaser must ensure that supply of 240V, 415V power and light shall be within convenient working distance from usage points as required by the Company.
12. The Purchaser acknowledges that if it issues any instructions (including without limitation for any additional work or any alteration to the Works) or fails to promptly issue an instruction when reasonably required or requested by the Company, then the Company may incur extra costs, expenses, losses or damages. The Purchaser acknowledges that if it causes or contributes to any delay or disruption in the Company's performance of the Works it may result in the Company incurring extra costs, expenses, losses or damages. Any extra costs, expenses, losses or damages referred to under this clause 12 shall be added to the price in this Quotation and must be paid by the Purchaser in accordance with clause 18.
13. Where the Contract includes supply by the Company of any Materials and the Company has an entitlement to costs, expenses, losses or damages under clause 12 or its obligations are suspended under clause 9, then without limitation to those clauses, the Company may recover any additional storage, demurrage and insurance costs and expenses, which shall be added to the price in this Quotation and must be paid by the Purchaser in accordance with clause 18.
14. The Contract shall be subject to the laws of Queensland and the jurisdiction of Queensland courts and courts competent to hear appeals from them. The parties agree the *Sale of Goods (Vienna Convention) Act 1986* (Qld) will have no application to any matter in connection with the Contract, including without limitation the sale of any Materials.
15. On delivery of any Materials to site, the Purchaser takes full risk in the Materials, including without limitation, responsibility for maintenance, security and insurance of the Materials. If the Works only requires the supply of Materials, then the Works are deemed to be complete upon dispatch of all Materials to the site.
16. The Purchaser is responsible for the risk in, and insurance of, the Works and Materials at the site. Until the Company has been paid in full under the Contract for the Works, within 5 days of a request by the Company, the Purchaser must provide evidence of a policy of insurance covering the Works and Materials at the site. If the Purchaser fails to provide evidence to the reasonable satisfaction of the Company within 5 days, then the Company may suspend performance of the Works. Any extra costs, expenses, losses or damages incurred as a result of a suspension under this clause 16 shall be added to the contract price and must be paid by the Purchaser in accordance with clause 18. If the Contract requires the Works to be completed within a set duration or by a set date, then that duration or set date shall be deemed extended by the period that the Company's obligations are suspended in accordance with this clause 16.
17. The Purchaser is liable for and indemnifies the Company from and against, all loss or damage (including legal costs) incurred or suffered by the Company however caused in connection with any use of the Works other than in accordance with the directions of the Company or any personal injury, death or property damage in connection with the provision or use of the Works or damage to property in connection with the provision, resale or use of the Works.
18. Payment for the Works or as otherwise required under these terms must be made to the Company by the Purchaser within 7 days of the date of the Company's invoice. Full payment of the amount stated in the invoice must be made by the Purchaser without any deduction or set off. The Company may at its option, and at any time, include amounts in an invoice for Materials ordered which have not yet been delivered to site or incorporated in the Works.
19. The price in this Quotation is based on current rates of exchange, freight, insurance, duty, primage and cartage and additional expenses incurred by variations in the foregoing shall be added to the price and must be paid by the Purchaser in accordance with clause 18.
20. Any words capitalised in clause 20 and not already defined in these terms have the meaning given to those words in the GST Act.
 - (a) If a Supply made under or in connection with these terms is a Taxable Supply, then at or before the time any part of the consideration for the Supply is payable:
 - A. the Recipient must pay the GST Act Supplier an amount equal to the GST for the Supply, in addition to and in the same manner as the consideration otherwise payable under this agreement for that Supply; and
 - B. the GST Act Supplier must give the Recipient a Tax Invoice for the Supply.
 - (b) For clarity, the GST payable under this clause is correspondingly increased or decreased by any subsequent adjustment to the amount of GST for the Supply for which the GST Act Supplier is liable, however caused.
 - (c) If either party has the right under these terms to be reimbursed or indemnified by another party for a cost incurred in connection with this agreement, that reimbursement or indemnity excludes any GST component of that cost for which an Input Tax Credit may be claimed by the party being reimbursed or indemnified, or by its Representative Member, Joint Venture Operator or other similar person entitled to the Input Tax Credit (if any).
 - (d) Where a Tax Invoice is given by the GST Act Supplier, the GST Act Supplier warrants that the Supply to which the Tax Invoice relates is a Taxable Supply and that it will remit the GST (as stated on the Tax Invoice) to the Australian Taxation Office.
 - (e) Where a Supply made under or in connection with these terms is a Progressive or Periodic Supply, this clause applies to each component of the Progressive or Periodic Supply as if it were a separate Supply.
21. Subject to clause 28, no warranties shall be implied into these terms and the Company shall only be liable for defects in the Works to the extent they are caused by the Company in the provision of the services or are in Materials manufactured by the Company (excluding any Materials which form part of the Works but which are not manufactured by the Company). The Company shall use reasonable endeavours to pass on the benefit of the warranty (if any) provided to the Company by other manufacturers of Materials.
22. The Purchaser warrants it has relied entirely on its own expertise in selecting the Works (including all Materials forming part of the Works), that it is satisfied the Works will be suitable for its purposes and that it has not relied on any representation made by the Company in connection with the Works suitability for any purpose.
23. Subject to clause 28, the Company's liability for defects it is responsible for under these terms is limited to the replacement or repair, at its option, of such parts of the Works as have been returned to the Company's offices, or if return is impractical, identified in a written notice by the Purchaser to the Company. If in the reasonable opinion of the Company, the Company is not responsible for the Works returned or which are the subject of a notice by the Purchaser, then the costs incurred by the Company in inspecting the Works for defects (including without limitation any testing of Materials, transport of Materials and site attendances) shall be paid to the Company by the Purchaser in accordance with clause 18.
24. The warranty period for any defects in the Works expires twelve (12) months after the date the Works are completed by the Company. Subject to clause 28, the Company shall not be liable for any defects after the expiration of the warranty period.
25. The warranty under clause 24 shall be void if the Works have not been operated, used and maintained by competent and qualified tradesmen and strictly in accordance with all instructions given by the Company in connection with the Works.
26. The Company accepts no liability for damage to the Works due to fair wear and tear, normal deterioration of the Works including, without limitation, rusting, erosion, electrolytic action or corrosion of any other kind or any damage caused by the Purchaser or third parties (including, without limitation, due to incorrect power supply). Notwithstanding any other provision of these terms and subject to clauses 27 and 28, the Company's liability to the Purchaser is limited to 10% of the price stated in the Quotation regardless of whether such liability arises for breach of contract, in tort (including negligence), in equity or otherwise.
27. The Company shall not be liable to the Purchaser for any indirect, economic or consequential losses, loss of profits, loss of revenue, loss of bargain, lost opportunities, including opportunities to enter into arrangements with third parties, loss or corruption of data, failure to realise expected profits or savings, loss of production, loss of reputation or loss of goodwill, arising out of or in connection with the Works.
28. If the *Competition and Consumer Act 2010* (Cth) or any other legislation provides that there is a guarantee in relation to any good or service supplied by the Company in connection with these terms and the Company's liability for failing to comply with that guarantee cannot be excluded but may be limited, then clauses 26 and 27 do not apply to that liability and instead the Company's liability for such failure is limited to (at the Company's election), in the case of a supply of goods, the Company replacing the goods or supplying equivalent goods or repairing the goods, or in the case of a supply of services, the Company supplying the services again or paying the cost of having the services supplied again.
29. The Purchaser must not resupply or attempt to resupply any Materials, or products in the nature of the Materials, to any third party during the Term.
30. In this clause, the words 'Proceeds', 'Purchase Money Security Interest', 'Financing Statement', 'Security Interest' and 'Financing Change Statement' have the meaning given to them in the *Personal Properties Securities Act 2009* (Cth) (PPSA).

31. While the Materials remain the property of the Purchaser, the Customer must not grant or allow another to hold a Security Interest in the Materials; the proceeds of the Materials or any goods to which the Materials are installed or affixed
32. The Purchaser must pay all costs, expenses and other charges incurred or payable by the Company in relation to the filing of a Financing Statement or Financing Change Statement on the Personal Property Securities Register in connection with these terms.
33. The Works and any part thereof shall remain the property of the Company until paid for in full. The Purchaser and Company intend this clause to secure the purchase price of the Works and create a purchase money security interest in the Works. Until payment for the Works in full is received, the Purchaser must store any Materials separately from other goods of the Purchase, so that the Materials are not mixed with those other goods and in such a manner to show they are the property of the Company. In the event of a failure by the Purchaser to make any payment when due to the Company in accordance with these terms or a material breach by the Purchaser of these terms, then the Company may, without prejudice to any other rights it may have whether at law or in equity, on reasonable written notice to the Purchaser, terminate these terms, cease all Works and enter upon the site, or location at which the Works (including the Materials) are situated, and take such steps as are reasonably necessary to remove the Works (including the Materials) from site. The Purchaser grants an irrevocable, perpetual and royalty free licence to the Company and its authorised representatives to enter upon such site, or location as may be needed and to the extent required appoints the Company as its agent for the purposes of entry onto such sites or locations for removal of the Works (including any Materials).
34. The Company is entitled to use such reasonable force and effect such changes to the Works or any structure to which the Works are attached or which obstruct retrieval any part thereof as shall be necessary to remove the Works, provided that such force or changes shall not dangerously affect the structural aspects of that site or location.
35. These terms commence on the execution of this Quotation by the last party signing and continues until terminated in accordance with clauses 36 or 37.
36. If:
 - (a) the Purchaser commits a material breach of these terms; or
 - (b) an Insolvency Event occurs in relation to the Purchaser,then the Company may terminate these terms by written notice to the Purchaser in which case these terms will terminate on the date specified in that written notice or, if no date is specified, immediately.
37. The Company may terminate these terms at any time by written notice to the Purchase in which case these terms will terminate on the date specified in that written notice or, if no date is specified, immediately.
38. The Purchaser acknowledges, by placing an order or providing any response requesting the Works in connection with this Quotation that the Purchaser shall be bound by these terms. These terms form the entire agreement between the Company and the Purchaser in connection with the Works. To the extent permitted by law, any statement, representation or promise made in any other document or discussion (including without limitation any terms or conditions proposed by the Purchaser) will not apply to the subject matter of these terms. The Purchaser acknowledges that the price in this Quotation shall in no circumstances be an offer to perform the Works other than on these terms.
39. The Purchaser agrees that as Company has no control over carrier's conditions the Purchaser accepts and abides by the conditions and stipulation's on bill of lading and similar documents.
40. The Company takes no responsibility for the storage and handling of our Purchaser's goods whilst in our possession. Every care will be taken to ensure the safe handling of the goods as per the manufacturer's recommendations but the Company is not responsible for any damage sustained. Subject to space availability storage charges may apply from nominated delivery date.
41. The Purchaser must within thirty (30) days of the date of delivery of the goods notify the Company in writing of any matter or thing by reason whereof the Purchaser alleges that the goods are not in accordance with these terms otherwise the goods shall be deemed to be in all respects in accordance with contract and the Purchaser shall be bound to accept and pay for the same accordingly.
42. DEFINITIONS

"Company" means Penina Pty Ltd trading as Acran, Sound Control or Acran Sound Control.

"Confidential Information" of the Company means any information:

 - (a) relating to the business and affairs of the Company;
 - (b) relating to the customers, clients, employees, sub contractors or other persons doing business with the Company;
 - (c) which is by its nature confidential;
 - (d) which is designated as confidential by the Company; or
 - (e) which the Purchaser knows or ought to know, is confidential,and all trade secrets, knowhow, financial information and other commercially valuable information of the Company.

"GST Act" means A New Tax System (Goods and Services Tax) Act 1999 (Cth).

"GST Act Supplier" means the entity making the Supply (as that term is defined by the GST Act).

"Insolvency Event" means if an administrator, liquidator, receiver, receiver and manager or other controller (as defined in the Corporations Act 2001 (Cth)) is appointed to, or over, any of the property or undertaking of the Purchaser, if the Purchaser is unable to pay its debts when they become due and payable, if the Purchaser ceases to carry on business or if the Purchaser or the Purchaser's property or undertaking becomes subject to a personal insolvency arrangement under part X Bankruptcy Act 1966 (Cth) or a debt agreement under part IX Bankruptcy Act 1966 (Cth).

"Intellectual Property Rights" means all industrial and intellectual property rights, both in Australia and throughout the world, and includes any copyright, moral right, patent, registered or unregistered trade mark, registered or unregistered design, registered or unregistered plant breeder's right, trade secret, knowhow, right in relation to semiconductors and circuit layouts, trade or business or company name, indication or source or appellation of origin or other proprietary right, or right of registration of such rights.

"Materials" means any machine, appliance, device, equipment, parts, items or other substances necessary for completion of, or incorporation into, the Works.

"Normal Working Hours" means between 7.30am and 4.00pm Monday to Friday excluding public holidays in the place the Works are to be performed and any rostered days off the Company is required to provide its employees, from time to time, under industrial relations arrangements.

"Progressive or Periodic Supply" means a Taxable Supply that satisfies the requirements of section 156-5 GST Act.

"Purchaser" means the person named in the quote attached to this Quotation.

"Quotation" means this document together with plans, drawings, specifications and other material referred to in the quote attached to this Quotation issued by the Company to the Purchaser in respect of the Works.

"Works" means the works expressly specified in the quote attached to this Quotation, including the provision of Materials and labour.