



SILVER TRAK DIGITAL

TERMS OF TRADE

PROFILE AND ACCEPTANCE

Buff Dubs trading as Silver Trak Digital (“Company”) and incorporating DAMsmart operates within the technology and services sector for the media and entertainment industry. The following Terms of Trade will be deemed to have been accepted and be effective from the first date of receipt by the “Company” of Client (“You” or “Your”) service order, file or data (whether in physical or electronic form) and direction to commence service.

You acknowledge and agree that the Company may engage DAMsmart in the provision of goods and services hereunder. These Terms of Trade will supersede any previous terms of trade. No conditions outside of those listed below will be accepted unless specified and agreed by the Company in writing.

1. DEFINITIONS

“Company”	Buff Dubs Pty Ltd ACN 112 643 348 trading as Silver Trak Digital
“Client/Customer”	An entity or individual (referred to herein as “You” and “Your”) availing themselves of the services provided by the Company
“Cloud”	Digital environment based and built on replicated computer servers
“Cloud Services”	Those services provided and supported by the Company’s Media Room Application
“DAMsmart”	Silver and Ballard (Australia) Pty Ltd ACN 067 210 851 , a related body corporate of Buff Dubs Linear Tape Open – a tape-based storage device, written in a storage software format
“LTO”	Linear Tape Open – Digital tape format used for long term data storage
“Services”	Services offered and agreed to by the Company and may include: broadcast duplication, optical media burning, authoring and mastering, disc replication, digitisation, DCP creation, QC reporting, transcoding, digital delivery and/or media asset management.
“MAM”	Media Asset Management (Media Room)
“Acceptance”	T&Cs will be deemed to have been accepted by You requesting services to be performed
“GST”	Goods and Services Tax – as specified under Government Act 1999 and as otherwise amended from time to time

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“Digital Storage”	Retention of content within a “cloud” based environment
“Physical Storage”	Retention of physical media items within secure premise environment
“Transactions”	Any use of content for the purposes of viewing, delivery, specified transcoding, security enhancements, QC, restoration, or other service pertaining to the handling of specific

2. ADDITIONAL TERMS

- 2.1. These Terms should be read in conjunction with other publicly available Policies and Usage Terms listed on our respective Websites – Specifically **Privacy Policy, Terms of Use** and other Statements or Conduct Codes

3. PRICING

- 3.1. Prices supplied by the Company will remain valid for a period not greater than 60 days and may be subject to review after this initial period, unless otherwise agreed in writing. You will be notified of any price revision that may affect the provision of proposed supply of goods and services.
- 3.2. Price stated in list, proposal or quotation are exclusive of Goods and Service Tax (GST) or other taxes. Total invoice price will show GST (or other) as an express addition of Tax – currently 10% on goods and services, but subject to government legislation.

4. INVOICING

- 4.1. An invoice for supplied good and services will be issued upon completion of agreed works unless deposit or progressive payments have been otherwise agreed in writing against which partial or final invoice will be issued at or on agreed date.
- 4.2. Invoice for retained content (physical or digital) or for “Cloud Services” will be issued on or about the first or second working day of the month, one month in arrears for the retention of content along with all ‘transaction’ costs impacting or affecting the retained content.

5. TERMS OF PAYMENT

- 5.1. The total amount payable by You to the Company for the quoted or “Cloud Services” works is the price shown on the tax invoice issued by the Company.
- 5.2. Unless otherwise agreed in writing payment for works will be strictly 14 days from date of Invoice for goods or services or as agreed per COD basis . Payment can be made by Electronic Funds Transfer, Credit Card or company cheque.

- 5.3. Subject to *Clause 10.1* all goods and services supplied remain the sole property of the Company until final payment has been received. Content retained by the Company pending payment will not be released until payment has been made or suitable agreement for payment has been reached.
- 5.4. The Company retains the right to seek payment of outstanding invoices and apply an interest charge of 10% per annum calculated monthly to unpaid invoice amounts outstanding for longer than 30 days.
- 5.5. The Company may also engage mercantile collection and/or seek legal recourse – all interests, fees and commissions for such actions will be Your (Client) responsibility and added to final settlement of account.

6. LATE PAYMENTS

- 6.1. Where invoice for payment for product/service remains outstanding for a period longer than 30 days past the due date and no alternate arrangements have been agreed, the Company reserves the right to suspend further services and/or physical access to any stored content, and debt recovery processes may be initiated.
- 6.2. Where invoice for payment for MAM services (Media Room) remains outstanding for a period three (3) months and no other arrangements have been entered into – the account will be considered derelict and content removed from "Cloud" storage *instant access* and transferred into *deep archive*. Storage costs will continue to accumulate with access to such content only made available against payment of all outstanding invoiced amounts together with whatever applicable data egress costs incurred to regenerate archive content.
- 6.3. **Where an account remains in arrears for a period of six (6) months and no conciliatory or negotiated settlement has been achieved despite reasonable efforts on the part of the Company; the Company reserves the right to delete all "Your" archived data from its "Cloud Services" and/or storage, without incurring any liability for any consequential loss or damages that may result from such action.**
- 6.4. The Company will accept no other claim for content delivery from other party or third party where invoice amounts remain outstanding, regardless of "Your" agreement with such party or entity.
- 6.5. All costs, fees or interest charges incurred by the Company in recovery of outstanding service fees will be charged to the Client/Customer and included in final settlement claim.

7. OUTPUT and QUALITY OF DELIVERED PRODUCT

- 7.1. It is the Client's responsibility to ensure that appropriate briefs, necessary assets and desired specification for delivered content is provided complete and in a timely manner to meet delivery deadlines.
- 7.2. The Company makes no assumptions and takes no responsibility for incorrect or incompatible delivered file type, codec, frame rate, audio spec, or other technical output where Client expectation or market determination differs to provided specification.
- 7.3. It remains the Client's responsibility to check that quality of the delivered product meets the requested standard and for any discrepancies to be reported back to the Company within 7 days of delivery.
- 7.4. The Company will not be held liable for direct or consequential damage or costs of future processing or use that may be affected by fault in delivered output quality, where such fault had not been reported to the Company for investigation within 7 days of delivery and/or potential rectification by the Company

8. RETENTION OF FILES

- 8.1. The Company will retain Client files for a period of 30 days following completion and delivery of finished product/content unless specific storage arrangement for Media Room or other storage has been agreed.
- 8.2. Amendments or edits to delivered product/content Client's file after 30 days will require new or previous file to be resent to the Company and will attract new service fees and processing.

9. WARRANTIES

- 9.1. Mutual Warranties. Each party represents and warrants that it has the legal power and authority to enter into these Terms.
- 9.2. The Company warrants that all goods and services will be provided to an accepted commercial standard and will actively seek to avoid, and where commercially viable within the Client's order and specification rectify content defects throughout the execution of the provided services. Any additional work required due to original content limitations or specification will be communicated to Client and additional charges may be incurred.
- 9.3. The Company warrants that it has the expertise, equipment and knowledge to carry out the services that are being proposed or quoted and will use its best judgement to deliver a quality product. Any encountered difficulties or limitations that may affect this delivery will be notified to You within 24 business hours of detection.
- 9.4. You warrant that materials supplied to the Company by You are free of defect and encumbrance and that You have and hold all necessary rights, consents, licenses or authorisations to appoint the Company to carry out the proposed/quoted works. And You agree that you will be held totally accountable for any material held in physical or digital form regardless of any other parties rights or ownership.
- 9.5. You will indemnify the Company, its directors, shareholders, employees, contractors and agents (and shall keep them indemnified) against all claims, losses or damage or other liability arising from any breach of your warranties or any other term of this agreement, including any actions emanating under clause 6.3 above.
- 9.6. The Company accepts no responsibility for the content provided by you in either physical or digital form and You warrant that you will not provide content of an illegal or immoral nature. We may suspend or withdraw from the provision of services if the Company considers in its sole discretion that there has been or is likely to be a breach of your warranties, without

prejudice to any rights it may have against You

- 9.7. You warrant that you will take the necessary steps to ensure that content or data sent to the Company for treatment or handling has been appropriately secured by way of copy, redundancy, duplication or other against loss or damage.

10. LIMITATION OF LIABILITY

- 10.1. The Company will not be held liable for actions or performance of any third-party service provider, telecommunications provider, Internet Service Provider or technical support other than as outlined in any agreed Service Level Agreement (SLA).
- 10.2. Due to the nature of digital content being in a form other than physical, to the extent permitted by law the Company accepts no responsibility to the perceived quality or completeness of the content received whether file or data.
- 10.3. As the future use or consequential value of a delivered product cannot be ascertained the Company's liability is limited to the extent of redoing the specified service or refunding the paid service fee.
- 10.4. The Company makes no representations that the delivered product will be prepared and delivered to any other specification to that specified in writing by the Client in the original or mutually agreed amended order.
- 10.5. Output content will reflect the quality of the original Client content unless enhancements in output have been specifically agreed as possible by the Company as a service delivery.

11. INSURANCE

- 11.1. The Company warrants that it maintains as current commercial insurances in accordance with normal commercial practices (viz.: Property Insurance, Workers' Compensation Insurance and Public Liability Insurance).
- 11.2. While the Company exercises all care and diligence in carrying out agreed services, responsibility for suitable insurance coverage over the value of provided item and content(s) remains Your responsibility. To the extent permitted by law, the Company will not be held liable for damages other than at its discretion the resupply of services or physical device or paying the cost of comparable goods or services; where possible, should any defect, loss or destruction occur, whether at the Company premises or in transit.

12. OWNERSHIP OF PHYSICAL ITEMS, DIGITAL MEDIA AND DATA

- 12.1. You retain exclusive ownership of all data, information or material that you provide to the Company. The Company is not granted any proprietary rights in the data and You have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness and intellectual property ownership or right to use of data. Nothing in this *clause 10.1* will limit or displace Your obligation to pay all amounts owed by you in accordance with these Terms of

Trade and any relevant invoice.

12.2. The Company retains the exclusive ownership of all goods and services produced by the Company until such time as full invoiced fees have been satisfactorily paid as outlined in *Clause 5* above.

12.3. Ownership of material items, content or data remains with You as the incumbent who will have sole responsibility for diligent payment of invoiced service fees. In the event of content or data transfer to another party it is Your responsibility to notify the company within 14 days of transfer of the new 'ownership' arrangements.

Responsibility for payment of outstanding accounts remains with You until such time that the transferee assumes in writing full responsibility for content or data, and on-going payment of fees in accordance with these Terms of Trade.

12.4. Access rights to content and data remains with You with the exclusion of rights as a result of action covered under *Clause 6* above and the Company disclaims any responsibility for individuals' access as assigned and managed by You.

13. TERMINATION OF AGREEMENT

13.1. Acceptance of proposal, quotation and/or placement of service order will constitute acceptance of these terms and conditions and for subsequent delivery of goods and services provided by the Company. The Company retains the right to terminate the services agreement in the event that:

- (a) there has been a breach of these terms and conditions;
- (b) it is subsequently discovered that You have no legal right or authorisation to request or continue the service proposed;
- (c) payment of duly invoiced fees has not been paid in accordance with Clauses 5 and 6; or
- (d) an instruction has been received from authorised legal entity to cease and desist.

13.2. Where You cancel or terminate the agreement for reasons other than non-performance, loss of deposits or invoicing for works to date will result.

13.3. Termination for Convenience can and will occur where You have notified the Company in writing that no further benefit or need for the service provided is required. In such circumstance all outstanding invoices and/or accrued fees must be immediately paid

13.4. In the case of "Cloud Services" termination of service will require thirty (30) days notice from the end of the preceding month. You are responsible for data removal by way of download or deletion, with such download cost being included in final invoice.

14. FORCE MAJEURE

- 14.1. The Company shall not be liable to You for any delay or failure in performance under this agreement arising out of a cause beyond its control and without its fault or negligence. Such causes may include, but are not limited to fires, floods, earthquakes, strikes, unavailability of necessary utilities, acts of God, acts of declared or undeclared war, acts of regulatory agencies, government declared pandemics or national disasters.
- 14.2. The foregoing implication shall not excuse a party from:
- (a) Safeguarding its systems, data or facilities;
 - (b) Taking actions to prevent computer network or system security breaches
 - (c) The release of Confidential Information or:
 - (d) Losses due to fraudulent activity

15. DISPUTES AND RESOLUTIONS

- 15.1. Informal Resolution. In the event of any controversy or claim arising out of or relating to these Terms, the parties will consult and negotiate with each other and, recognising their mutual interests, attempt to reach a satisfactory solution to both parties. If the parties do not reach settlement within a period of sixty (60) days, either party may pursue relief. All negotiations pursuant to this clause 15.0 will be confidential unless otherwise agreed in writing.
- 15.2. Any question of quality or non-performance should be raised to the relevant production area for resolution within 7 days of goods or service delivery. Where a satisfactory resolution cannot be reached You must raise the matter in writing to the Chief Operating Officer or Managing Director for response.
- 15.3. Matters raised in writing will be responded to within 48 hours of receipt detailing the next course of action.
- 15.4. Nothing in these Terms of Trades will restrict a party from commencing legal proceedings in relation to any matter covered within these Terms.
- 15.5. These Terms of Trade are subject to and governed by the laws of New South Wales. The courts of that state will have exclusive jurisdiction over dispute arising hereunder.

16. Other

- 16.1. If any term of these Terms of Trade is invalid, illegal, or incapable of being enforced, such term shall be excluded to the extent of such invalidity, illegality, or unenforceability and all other terms shall remain in full force and effect.

- 16.2. These Terms of Trade will be governed by the laws of the State of **New South Wales**, Australia and subject to the jurisdiction of the courts of that State.

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