

## Commercial Terms

This is what is known as the "small print." I have tried to write it in really plain English, so both you and I can understand what it means.

If we agree, you and I will enter into a contract, where we agree to the things written on this page and on other, agreed pieces of paper. "You" means whoever "you" are. You might be a real person, or you might be a company, or simply a business. "I" means me, Andrew Charles Neale. I am a real person, with "Electric Triode" as my registered business name. I am also trading as "Neale Amplifiers". My ABN number is 39 038 759 218, and I am registered for business in South Australia.

### 1. Offer

I am offering to design and build equipment or provide a service, as generally described in the proposal, for you. The conditions of my offer, including the price I want to be paid, have been written down. If you or I want to change anything about the proposal, we will need to talk about it, and agree to the changes we both like. If there is something left over that either of us doesn't like, then we will need to talk some more. We must agree with each other before we can enter into a contract.

### 2. Acceptance

If you like my offer, you can accept it by placing an order with me. If the order is a verbal one, it will automatically include everything written on this page. If it is one of your written orders, and you have some words that I don't like or haven't read before, we will need to talk some more. This is probably no big deal, but we can't just have my set of words and your set of words, in case they say different things. We must both agree before we have a contract.

### 3. Consideration

This is what we are going to do for each other. Legal folk talk about exchange of benefits and burdens, but at the end of the day I'm going to design and build you something or do some other service, and you're going to pay me for it. We need to decide which day, and how much, and write that down somewhere. That can be on another piece of paper, and we can each have a copy. Unless I have written or said otherwise, all my prices are in Australian dollars and include GST.

### 4. Legal Capacity

This means that you and I are legally able to enter into a contract. Both of us have to be solvent and sober to do this. This means we have to have at least a dollar to our names, and not be pissed as newts. If you are a company, then your directors will guide your legal capacity. If you are drunk, insane, or bankrupt, then we will not have a contract. If you are under 18, then you must pay me cash if you want the goods or services to be provided. Alternatively, you can get somebody else (a legally capable adult) to guarantee your contract obligations.

### 5. Consent

This means that you and I must really, truly, agree with each other about the things we are going to do for each other. It means that both of us need to be really careful that we haven't made any mistakes. Legal phrases like common mistake, mutual mistake, and unilateral mistake are relevant here. What they all mean, in their varied and different ways, is that we both need to be very clear about what we are each doing in the contract.

I have been very careful that I have told you all true things, and that I haven't misrepresented anything that you are going to rely upon. As far as I know, everything I have written or said is true, or at least is my own opinion. If you think that I have misrepresented anything, then it would be nice if you told me about it first, so we can get it sorted out together. Otherwise, the South Australian *Fair Trading Act 1987* will establish our legal entitlements.

### 6. Intellectual Property

All the good ideas that I have while dealing with you remain mine. I can do whatever I like with them. Anything that I have written down is copyright ©, and belongs to Electric Triode, which is another name for me and my business. Anything that you come up with while dealing with me remains yours, and you too can do what you like with it.

If there is anything of yours that I would like to use, I will need to ask your permission first, and vice versa. You don't have to give me permission, and I don't have to give you permission. However, there are probably many ideas that will be good for both of us, and we will keep talking to each other as the ideas develop.

I've got some techniques of my own scattered throughout my amplifiers, and I'd like to keep them my own. You are not allowed to take the amplifier apart to find out how it's made. If you let anybody else take an Electric Triode product apart with the intention of building another version, then please don't even think that Clause 9 (Manufacturer's Warranty) will operate. It won't.

### 7. Remedy

This is what can happen if either you or I breach the contract. A damages remedy is something that can legally be imposed to make good a loss or injury either of us might suffer. Any loss or injury has to be genuine, and has to come directly from something done or not done under the contract. Anything else is a penalty, which will be thrown out in the courts. If something bad does happen in the contract between us, then we both have to do our best to sort it out. The best way to do this is to talk to each other.

There are a bunch of consequences for both of us if bad stuff happens. That's why I've got business insurance, which provides public liability and product liability cover to the total of \$5 million for any one event. If you are a business, you must have your own insurance in place as well. If you don't, then you are on your own.

### 8. Design Warranty

This means that I give you a promise that any designs I come up with will work, and do the things they are meant to do. I will tell you the conditions in which the products should be used. If you go and use them in some other environment, like underwater, in the middle of a desert, in the middle of a snow-storm or outside in the rain, or high up a mountain or in an aeroplane, I can tell you now, the products probably won't work properly. If you do something like this, then you are on your own.

### 9. Manufacturer's Warranty

If it doesn't work, I'll fix it. Now, there are some conditions to this, as follows:

a) if it doesn't work, and it's my fault because I didn't build it right, or a part broke because it was a bad part, I'll fix it, or arrange for it to be fixed, and I'll pay for it to be fixed. I'll do this for a period of three (3) years after I deliver it to you. You just need to get it back to me, to the place where I work.

b) if it doesn't work because you dropped it, put it out in the rain or got it wet, or did something that it wasn't designed for, then I'll fix it, but I'll ask you to pay for it. Generally speaking, if you look after it sensibly, then it won't break. But if you are going to do something really silly with it, or you're just not sure about the consequences, then you should ask me first. Otherwise you are on your own.

c) I won't pay for speakers you blow up because you've gone volume crazy. I buy the speakers from somebody else, and they will normally offer a one year warranty for fixing duds. Depending on the amount of time that has passed, and the circumstances regarding breakage, we may be able to claim something from the Original Equipment Manufacturer, or OEM, as I call them. The same goes for other major assemblies that I buy in, like reverb tanks and so on.

d) I won't pay for broken power tubes or rectifiers either. The life of power tubes and power rectifiers depends on how hard and how often you play. I have designed the equipment operating points to be within the ranges specified by the guys who originally designed these electron tube valve things, as published in their design centres. The tubes are therefore working as they were designed to work. Lots of people who make amps don't do this, for reasons of their own. I do, and hopefully the power tubes will last 2,000 - 3,000 hours, which is what they are meant to do. If you look after an amplifier, the little signal tubes should last about 10,000 - 50,000 hours. These are pretty nifty little devices, and despite what a lot of people think, can last for a very long time. You should always replace a dropped tube, though.

I burn each amplifier in for 48 hours before I deliver it, so the tubes it is delivered with are known to be good. However, they can be fragile little beasties, so please use some common sense. Wait for stuff to cool down before you move it, and use the standby switch when powering up. I have a stock of replacement tubes, and can get more. Just ask. Did I say don't drop your tubes?

e) if it doesn't work, and you have tried to fix it but don't know what you are doing, then I can clean up the mess, but you'll need to pay for it.

Just a word of caution here. Valve amplification uses high voltages. If you don't know anything about high voltages, please don't try to fix it yourself. If you are not sure whether you know anything about high voltages, just answer these two short questions: 1) What is the function of blue smoke in a valve amplifier? 2) What do you sit on when working on an exposed valve amplifier circuit? If you don't know the correct answers to both these questions, don't even think of working on the amplifier. Find someone who does know what they are doing. Call me first, would be best. Also, keep the pets and kiddies away. These things can get hot to touch. Did I say don't drop your tubes?

### 10. Fitness for Purpose

The amplifier products manufactured by me are designed for the purpose of musical instrument amplification only. They are not much good for anything else. If you try to do anything else with one of my amplifiers, then I'm sorry, but you are on your own. Electric Triode will not be responsible in any way for any loss or damage caused by improper use of the equipment. My warranty is limited to replacement or repair of faulty equipment only. No consequential damages will be accepted. You are responsible for your ears and your audience's ears. If it's too loud, turn the volume down. Please use common sense, and protect your hearing. And don't drop your tubes.

### 11. Discharge

The contract is over when I've delivered a working amplifier that meets the details in the proposal, and when you have paid for it in full. There are a bunch of other ways to finish a contract, but they will only apply if you and I have really messed things up and can't sort it out for ourselves. Some clauses will survive the contract. Clause 9 will last for three years (excluding fair wear and tear), while Clauses 6, 7, 10 and 12 will remain until Electric Triode ceases to exist.

### 12. Law

This contract is governed by the law of South Australia, which is where I live, and where I currently do my business. Any legal activity will need to take place in South Australian courts, which means you will get to drink some South Australian wine if you come here with a lawyer in tow. The wine is a good idea. The lawyer probably means we both blew it somewhere along the way.

### 13. Title

This means the product remains my property until you pay for it in full. Once you have paid for it, it's yours. Please enjoy many years of musical pleasure.