

Terms & Conditions (short term)

1. Definitions

'Equipment' means the items hired out by the Owner to the Hirer. 'GST' means any statutory tax including any Goods and Services Tax within the meaning of the *A New Tax System (Goods and Services Tax) Act 1999* ('GST'), duty or impost levied in respect of the hire of the Equipment for which the Owner has not, in writing, allowed in calculating the Hire Charges. 'Hirer' means any person who requests the Owner to hire Equipment for it, including its employees and agents. 'Owner' means No Fuss Events Pty Ltd ABN 94 006 077 649 T/As No Fuss Event Hire, its employees and agents. 'Terms' means these terms and conditions. 'Hire Charges' means any fees and costs payable by the Hirer to the Owner for the hire of Equipment. 'Hire Period' means the start & end date for the Equipment hire; 'security interest' has the meaning under the PPSA. 'PPSA' means *Personal Property Securities Act 2009* (Cth).

2. Basis of Agreement

- (a) Unless otherwise agreed by the Owner in writing, the Terms apply exclusively to every Hire Contract or agreement between the parties. The Owner may vary or amend the Terms at any time.
- (b) Any quotation, price schedule or list provided by the Owner to the Hirer is only valid for the period indicated by the Owner and constitutes an invitation to treat only. If labour and cartage services are to be provided on weekends or public holidays, applicable penalty rates (and the Owner's usual margin) are added to the Hire Charges regardless of whether they are included in the quotation, unless otherwise agreed.
- (c) The Owner and Hirer enter into a binding agreement for the hire of Equipment and any associated installation or removal services, cartage or supply of materials on the basis of the Terms and the Owner's quotation, price schedule or list (**Hire Contract**) when (as the case may be):
 - i. the Owner and Hirer enter into a written hire contract prepared by the Owner in respect of the quotation;
 - ii. the Owner accepts, in writing, a purchase order or other written offer from the Hirer;

- iii. the Hirer makes payment to the Owner in respect of an order accepted by the Owner; or
 - iv. the Owner provides the Hirer with the Equipment.
- (d) The Owner may in its absolute discretion refuse to accept any offer.
 - (e) The Hirer must provide the Owner with any information necessarily required by the Owner to process the Hirer's order, including but not limited to the Equipment quantity and type, the Hire Period and the premises on which the Equipment will be located or installed (**Site**).
 - (f) the Hire Charges may include additional amounts invoiced by the Owner to the Hirer for:

1. any change to the Hire Contract agreed between the Owner and Hirer as otherwise permitted under these Terms;
2. additional installation and removal costs incurred because of conditions at the Premises being different to those anticipated based on the Hirer's instructions or otherwise;
3. any insurance policy excess and related fees incurred by the Owner with its insurer in respect of the Equipment because of a claim or potential claim on the policy in connection with the Hirer's hire of the Equipment; and/or

loss caused by any failure by the Hirer to perform its obligations under the Terms including repair costs and loss of income pending repair of the Equipment after the Hire Period.

3. Payment, Default

- (a) The Hirer agrees to pay the Hire Charge and any other charges, including charges for loss, damage and repairs or any tax, GST, duty, levy, or other expenses paid or payable by the Owner arising out of the Equipment hire.
- (b) Unless otherwise specified by the Owner in writing, all Hire Charges including taxes and duties must be paid prior to delivery of the Equipment.
- (c) Subsequent charges for loss, damage, repairs or other expenses are to be paid within seven days of the Owner's invoice.

- (d) If the Hirer defaults in payment by the due date of any amount payable to the Owner or in the performance of any of the Terms or if the Hirer becomes insolvent or bankrupt or enters into any scheme of arrangement or any assignment or composition with or for the benefit of its creditors or any class of its creditors generally, or has a trustee, liquidator, administrator, receiver or manager or similar functionary appointed in respect of its assets, then the Owner may, without prejudice to any of its other rights:
- charge the Hirer compounding interest on any sum due at the prevailing rate pursuant to the *Penalty Interest Rates Act 1983* (Vic) for the period from the due date until the date of payment in full;
 - charge the Hirer for, and the Hirer must indemnify the Owner from, all loss of income, expenses and costs (including without limitation all legal costs and expenses) incurred by it resulting from the default and in taking action to enforce compliance with the Terms or to recover any Equipment;
 - cease or suspend supply of any further Equipment to the Hirer; and
 - terminate any contract with the Hirer.
- (e) The Hirer acknowledges and agrees that the Owner may pay a rebate, commission or other financial benefit to event organizers or like suppliers in connection with the hiring of the Equipment to the Hirer.

4. Termination of Hire

- The Owner may in its sole discretion, but with cause, terminate the hire at any time and the Hirer shall have no claims in the event of such termination.
- The Hirer may terminate the hire of the Equipment by:
 - not collecting or accepting delivery of the Equipment;
 - returning the Equipment to the Owner during normal working hours; or
 - notifying the Owner that the Equipment is ready for collection, provided that the Hirer keeps the Equipment safe until collection.
- Unless otherwise agreed by the Owner, if the Equipment hire is terminated by the Hirer as referred to in clause 4(b), the Hirer will still be liable for the full Hire Charges in accordance with the Hire Contract.
- Upon termination of hire, the Owner is entitled to take possession of the Equipment immediately and for this purpose the Hirer

irrevocably appoints the Owner as his agent and authorizes the Owner to:

- enter upon any land or premises upon which the Equipment is situated or where the Owner has any reason to believe that the Equipment may be situated; and
 - remove the Equipment whether it is affixed to the land or premises, connected to property or equipment not owned by the Owner, in use by the Hirer or any other person or containing property not owned by the Owner.
- (e) If the Equipment is not returned or ready for pick-up by the Owner at the expiration or termination of the Hire Period, the Hirer shall pay the daily rate based on a pro rata calculation from the price in the Hire Contract for every additional day or part thereof that the Equipment is retained by the Hirer unless otherwise specified by the Owner in writing.
- (f) The Hire Contract automatically terminates one day before the 12-month anniversary of the first date of hire, and the Hirer must return the Equipment to the Owner.

5. Delivery

- The Owner will arrange for the delivery of the Equipment to the address specified in the Hire Contract, unless otherwise agreed. The Owner will use its reasonable endeavours to meet any estimated dates for delivery but will not be liable for any loss or damage suffered by the Hirer for failure to meet any estimated date.
- The Owner's delivery docket shall be prima facie of the contents stated in it and the Hirer may not lodge a claim with the Owner for non-delivery or that the Equipment were not clean, in good condition or proper working order unless the Hirer provides written notice of the discrepancy or defect to the Owner within seven days of delivery or expected delivery.
- Should the Hirer alter its installation or delivery requirements prior to, during, or after installation or delivery, the Hirer is liable for all extra costs of the Owner's employees and cartage.

6. The Hirer's Obligations

- The Hirer will:
 - bear responsibility for the Equipment hired from the time of its delivery until collection by or return to the Owner;

- ii. upon installation, delivery or collection of the Equipment immediately examine the Equipment to satisfy itself as to the condition of the Equipment.
- (b) The Hirer:
 - i. acknowledges that it has duly examined the Equipment and has satisfied itself as required;
 - ii. acknowledges that it has not in any way relied upon the skill or judgment or any representation made by or on behalf of the Owner in respect of the Equipment, its purpose, suitability or performance;
 - iii. agrees to use, care for and store the Equipment in a proper, safe, secure and prudent manner and only use it for the purpose and capacity for which it was designed;
 - iv. acknowledges that it does not have rights, title or interest in the Equipment except for those rights granted by the Owner under the Terms;
 - v. may not claim any lien or interest in the Equipment to secure any liquidated or un-liquidated debt or obligation that the Owner may owe to the Hirer;
 - vi. must not:
 - a. remove, deface or obliterate any identifying plate, mark or number;
 - b. without the prior written approval of the Owner, modify or remove any part of the Equipment;
 - vii. will ensure that all Equipment is returned (or by prior agreement with the Owner made ready for collection by the Owner) subject only to fair wear and tear during the Hire Period, in a clean, dry and properly packed condition in accordance with any instructions given by the Owner and if being collected, is readily accessible
- (c) The Hirer must not sell, offer for sale, assign, mortgage, pledge, permit any lien to exist over, encumber, create a charge or security interest or dispose of the Equipment or its interest under the Terms in any way.
- (d) The Hirer must not remove or re-locate the Equipment or re-hire out the Equipment to a third party without the written consent of the Owner.
- (e) The Hirer will pay for all cleaning or drying costs and for any damage to the Equipment.

7. Events

If the Equipment is to be used for the conduct of a public or private event at the Site (**Event**), the Hirer:

- (a) takes full responsibility, at its own expense, for the conduct of the Event including:
 - i. management of the Site and its environs;
 - ii. the provision of all necessary utilities, services and facilities;
- (b) must conduct the Event with all due care, prudently and in a professional manner including:
 - i. monitoring weather conditions;
 - ii. keeping the Event patrons, staff and facilities safe and secure;
- (c) must comply with all laws applicable to the Event including:
 - i. obtaining any necessary permits or approvals;
 - ii. requirements for the use of the Equipment for the Event;
- (d) must provide the Owner with any required event management plan, risk assessment or safety or evacuation or other plan required by law for the Event, and the Hirer acknowledges that:
 - i. the Owner is not required to approve or give any advice or assistance to the Hirer in connection with the preparation of the plans;
 - ii. to the extent permitted by law, the Owner is not liable for any such approval, advice and assistance that may be given to the Hirer;
- (e) must, if the Owner agrees to set up or install the Equipment:
 - i. promptly accurately set out or mark the Site;
 - ii. promptly make the Site fully accessible to the Owner;
 - iii. promptly inform the Owner of the nature and location of all relevant utilities, communications and facilities;
 - iv. reimburse the Owner on request for any charges incurred by the Owner for:
 - a. any consultants such as engineers;
 - b. any application for a siting or other permit or approval that the Owner has agreed to submit;
 - v. not alter or obstruct:
 - a. the siting of the Equipment by the Owner,
 - b. the Equipment in its 'as erected' state (by the Owner);

- points and pathways;
without the prior written approval of the Owner or in an emergency upon consultation with the Owner;
- vi. not prevent or interfere with the set up or installation of the Equipment by the Owner.

8. Loss of or Damage to Equipment

- (a) The Hirer acknowledges that the Owner may inspect the Equipment at any time during the period of hire, whether notice of such inspection is given to the Hirer or not, and the Hirer shall provide all assistance and co-operation necessary to facilitate such inspection of the Equipment. The Hirer shall indemnify the Owner in relation to any action of trespass or any other action or claim by a third party against the Owner in the course of the Owner exercising its right to inspect or recover the Equipment.
- (b) If the Equipment is lost, breaks down or is damaged, the Hirer must immediately notify the Owner of the details. Notification shall not absolve the Hirer from its obligations under the Terms.
- (c) In the event that the Equipment breaks down or becomes unsafe to use, the Hirer shall immediately stop using the Equipment and take all steps necessary to prevent the Equipment from sustaining any further damage. The Hirer must also take all steps necessary to prevent injuries from occurring to any person or property as a result of the condition of the Equipment and must not repair or attempt to repair the Equipment without the Owner's prior written consent.
- (d) If the Equipment is lost or damaged and the loss of or damage to the Equipment is caused by the Hirer or the breach of any of these Terms by the Hirer, the Hirer shall without limitation be liable for the following:
 - i. any costs incurred by the Owner in repairing or replacing the Equipment;
 - ii. Hire Charges for the Equipment until the Equipment is repaired or replaced; and
 - iii. any other costs whatsoever incurred or loss suffered by the Owner as a result of the damage to or loss of the Equipment.

9. Release and Indemnity

- (a) The Hirer agrees to use, operate and possess the Equipment at the Hirer's risk and the Owner has no responsibility or liability for any loss or damage to any property of

the Hirer by reason of the use or possession of the Equipment by the Hirer.

- (b) To the full extent permitted by law, the Hirer releases and discharges the Owner (including its directors, shareholders, officers, agents and employees) from all claims and demands; including:
 - i. any loss or damage whatsoever and whenever caused to the Hirer or its agents or employees whether by way of death of, or injury to, any person of any nature or kind, accident or damage to property, delay, financial loss or otherwise, arising directly or indirectly from or incidental to a breakdown of, or defect in, the Equipment or any accident to or involving the Equipment; contact with underground cables, pipes, services or other obstructions and/or all necessary surface repairs;
 - ii. the use, operation, repair, maintenance or storage (whether occasioned by the negligence of the Owner or otherwise) of the Equipment; and/or
 - iii. any other occurrence which may otherwise be suffered or sustained in, upon or near the Equipment.
- (c) The Hirer hereby releases the Owner from, and agrees to indemnify the Owner in respect of any third party claims, action, suits, demands, costs and expenses for damage or injury to person or property arising directly or indirectly out of the hire or use of the Equipment by the Hirer or the Terms.
- (d) The indemnities and assumptions of liability contained in this clause will continue in full force and effect, notwithstanding the termination of the Hire Contract.
- (e) Nothing in the Terms excludes, restricts or modifies any right or remedy or any guarantee, term, condition, warranty, undertaking, implied or imposed by any law which cannot be lawfully excluded or limited.
- (f) Where any law impose a guarantee, term, condition, warranty, undertaking in relation to the Terms on the Owner that is non-excludable, the Owner's liability will be limited to:
 - i. the repair or replacement of the Equipment;
 - ii. the supply of equivalent Equipment; or
 - iii. the costs of repairing or replacing the Equipment.

10. Damage Waiver

The Hirer agrees to pay a damage waiver, as set out in the attached Hire Contract to the Owner to cover the costs associated with the normal wear and tear to the Equipment. The damage waiver does not apply to or cover any other damage to or loss of Equipment including, without limitation:

- (a) damage resulting from overloading, exceeding rated capacity, misuse, abuse or improper servicing of Equipment;
- (b) damage or loss due to disappearance of the Equipment;
- (c) damage caused by the use or operation of Equipment in contravention of any of these Terms; and/or
- (d) damage to, or loss of, the Equipment from any unknown cause.

11. Insurance

The Hirer will maintain at its own expense all appropriate policies of insurance, and provide to the Owner a certificate of currency prior to collection or delivery of the Equipment and/or on request for:

- (a) theft and damage to the Equipment hired in an amount not less than the full replacement cost of the Equipment;
- (b) public liability (\$20 million for Events, otherwise \$10 million);
- (c) property and casualty insurance coverage in amounts necessary to fully protect the Owner and its employees and its Equipment against all claims, loss or damage whatever.

12. Force Majeure

If the Owner is unable at any time to perform any of its obligations whether wholly or partly by reason of any cause beyond its control (including without limitation, acts of God, inclement weather, strikes, lockouts, fires riots, civil commotion or unrest, interference by civil or military authorities or act of war) the Owner may give written notice to that effect to the Hirer, giving full particulars of such force majeure in which case the obligations of the Owner under these Terms shall, to the extent that they are affected by the force majeure, be suspended during the term of the force majeure. The Owner shall not be liable for any loss or damage suffered by the Hirer as a result of any delays caused by such force majeure events.

13. Dispute Resolution

- (a) A party (**Initiating Party**) claiming that a Dispute has arisen must give the other party (**Recipient Party**) a notice setting out brief details of the Dispute (**Dispute Notice**). Within 5 Business Days of service of a Dispute Notice, the Recipient Party must give the Initiating Party a notice setting out brief details of the Recipient Party's position on the Dispute (**Reply Notice**).
- (b) If Dispute and Reply Notices are given, the parties will enter into good faith discussions with the objective of settling the Dispute. At least one meeting of the authorised representatives must take place within 10 Business Days of service of a Reply Notice.
- (c) If the Dispute continues to be unresolved, the parties must submit the Dispute to mediation in accordance with the Australian Commercial Disputes Centre (**ACDC**) Guidelines for Commercial Agreements.
- (d) The parties will agree on the appointment of mediator. If the Parties do not agree on the mediator to be appointed within 10 Business Days of either Party referring the Dispute to mediation, then the mediator is to be appointed by the ACDC.
- (e) The costs and expenses of the mediator will be shared by the parties equally.
- (f) This dispute resolution clause will not be a bar to the commencement of legal proceedings or taking of immediate action where the Owner consider in its sole discretion that it is necessary to do so.

14. Miscellaneous

- (a) If any of the Terms becomes void or unenforceable for any reason then that part will be severed from the Terms to the intent that all other parts that do not become void or unenforceable will remain in full force and effect and be unaffected by any severance of other parts.
- (b) Failure by the Owner to insist upon strict performance of any of the Terms, or to exercise in whole or in part any right that it may have under the Terms or at law, shall not be deemed to be a waiver of any rights that the Owner may have and shall not be deemed a waiver of any subsequent breach by the Hirer of any of the Terms.
- (c) The Terms shall be governed by and construed in accordance with the laws of the State of Victoria.

- (d) A notice must be in writing and handed personally or sent by email, facsimile or by post.

prepaid mail to the last known address of the addressee. Notices sent by pre-paid post are deemed to be received within 4 days of posting. Notices sent by facsimile or email are deemed received on confirmation of successful transmission.

- (e) No rule of construction applies to the disadvantage of the Owner because it was responsible for the preparation of the Terms.

15. Cancellation Terms

If the Hirer seeks to cancel the Hire Contract between it and the Owner, the following payments shall apply:

- a. if cancelled within 30 days of the Bump In or Contract Commencement Date, the Hirer shall pay 50% of the total contract price (inclusive of GST);
- b. if cancelled within 15 days of the Bump In or Contract Commencement Date, the Hirer shall pay 65% of the total contract price (inclusive of GST);
- c. if cancelled within 7 days of the Bump In or Contract Commencement Date, the Hirer shall pay 80% of the total contract price (inclusive of GST);
- d. if cancelled within 1 day of the Bump In or Contract Commencement Date, the Hirer shall pay 100% of the total contract price (inclusive of GST);
- e. in the event of the Hire Contract involving a full Tour, the relevant date for the operation of the above cancellation periods shall be the first date of the first show within the Tour Bump In.