

Events In Tents - Terms & Conditions of Hire

1. Definitions

- 1.1 **"Charges"** means the cost of the hire of the Equipment (plus any GST where applicable) as agreed between the Owner and the Hirer subject to clause 5 of this Contract.
- 1.2 **"Confidential Information"** means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, **"Personal Information"** such as: name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 1.3 **"Contract"** means the terms and conditions contained herein, together with any quotation, Hire form, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.4 **"Cookies"** means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website and can be accessed either by the web server or the client's computer. **If the Hirer does not wish to allow Cookies to operate in the background when using the Owner's website, then the Hirer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to making enquiries via the website.**
- 1.5 **"Equipment"** means all Equipment supplied on hire by the Owner to the Hirer (and where the context so permits shall include any incidental supply of Services such as erection of marquees). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation forms as provided by the Owner to the Hirer. The Equipment shall include any accessories and consumables which may be items that:
- (a) are used and not returned after issuance from the Owner's stores; or
 - (b) become incorporated into other goods and lose their identity; or
 - (c) cannot be used for their intended purpose without extinguishing or transforming their substance.
- 1.6 **"GST"** means Goods and Services Tax as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).
- 1.7 **"Hirer"** means the person/s, entities or any person acting on behalf of and with the authority of the Hirer requesting the Owner to provide the services as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Hirer, is a reference to each Hirer jointly and severally; and
 - (b) if the Hirer is a partnership, it shall bind each partner jointly and severally; and
 - (c) if the Hirer is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (d) includes the Hirer's executors, administrators, successors and permitted assigns.
- 1.8 **"Minimum Hire Period"** means the Minimum Hire Period as described on the invoices, quotation, authority to hire, or any other forms as provided by the Owner to the Hirer.
- 1.9 **"Owner"** means Events In Tents Pty Ltd T/A Events In Tents, its successors and assigns or any person acting on behalf of and with the authority of Events In Tents Pty Ltd T/A Events In Tents.
- 1.10 **"Site"** means the location/s at which the Equipment is to be operated.

2. Acceptance

- 2.1 The parties acknowledge and agree that:
- (a) they have read and understood the terms and conditions contained in this Contract; and
 - (b) the parties are taken to have exclusively accepted and are immediately bound, jointly and severally, by these terms and conditions if the Hirer places an order for or accepts delivery of the Equipment.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 The Hirer acknowledges that the hire of Equipment on credit shall not take effect until the Hirer has completed a credit application with the Owner and it has been approved with a credit limit established for the account.
- 2.5 In the event that the hire of Equipment requested exceeds the Hirer's credit limit and/or the account exceeds the payment terms, the Owner reserves the right to refuse delivery.
- 2.6 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 14 of the Electronic Transactions (Queensland) Act 2001 or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Errors and Omissions

- 3.1 The Hirer acknowledges and accepts that the Owner shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- (a) resulting from an inadvertent mistake made by the Owner in the formation and/or administration of this Contract; and/or
 - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by the Owner in respect of the Equipment hire and/or services.
- 3.2 In circumstances where the Hirer is required to place an order for the Equipment, in writing, or otherwise as permitted by these terms and conditions, the Hirer is responsible for supplying correct order information such as, without limitation, measurements and quantity, when placing an order for the Equipment ("**Hirer Error**"). The Hirer must pay for all Equipment it orders from the Owner notwithstanding that such Equipment suffer from a Hirer Error and notwithstanding that the Hirer has not taken or refuses to take Delivery of such Equipment. The Owner is entitled to, at its absolute discretion to waive its right under this sub-clause in relation to Hirer Errors.

4. Change in Control

- 4.1 The Hirer shall give the Owner not less than fourteen (14) days prior written notice of any proposed change of ownership of the Hirer and/or any other change in the Hirer's details (including but not limited to, changes in the Hirer's name, address, contact phone or fax number/s, change of trustees, or business practice). The Hirer shall be liable for any loss incurred by the Owner as a result of the Hirer's failure to comply with this clause.

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5. Charges and Payment

- 5.1 At the Owner's sole discretion, the Charges shall be either;
- (a) as indicated on invoices provided by the Owner to the Hirer upon placement of an order for the Equipment; or
 - (b) the Owner's quoted Charges (subject to clause 5.2) which shall be binding upon the Owner provided that the Hirer shall accept in writing the Owner's quotation within fourteen (14) days.
- 5.2 The Owner reserves the right to change the Charges in the event of a variation to the Owner's quotation. Variations will be charged for on the basis of the Owner's quotation, and will be detailed in writing, and shown as variations on the Owner's invoice. The Hirer shall be required to respond to any variation submitted by the Owner within five (5) working days. Failure to do so will entitle the Owner to add the cost of the variation to the Charges. Payment for all variations must be made in full at the time of their completion.
- 5.3 At the Owner's sole discretion:
- (a) a reasonable deposit (in the form of a bond) shall be required at the commencement of this Contract in accordance with any quotation provided by the Owner or as notified to the Hirer prior to the placement of an order for the Equipment, which shall be refunded to the Hirer by within thirty (30) days of the return of the Equipment, provided that the Hirer has complied with their obligations hereunder. The deposit may be used to offset any applicable Charges payable by the Hirer under clause 16.1, and any outstanding balance thereof shall be due as per clause 5.4.; and/or
 - (b) a booking reservation fee of twenty-five percent (25%) of the Charges shall be payable as per the confirmed quote or invoice of all hire Equipment and final scope of works, with the balance payable seven (7) days before the confirmed event date, as per clause 5.4(a) unless other arrangements have been agreed to.
- 5.4 Time for payment for the Equipment being of the essence, the Charges will be payable by the Hirer on the date/s determined by the Owner, which may be:
- (a) at least seven (7) days before delivery of the Equipment or confirmed event date, whichever is the earlier; or
 - (b) for approved Hirers made by instalments in accordance with the Owner's payment schedule; or
 - (c) the date specified on any invoice or other form as being the date for payment; or
 - (d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Hirer by the Owner.
- 5.5 Payment may be made by electronic/on-line banking, or by any other method as agreed to between the Hirer and the Owner.
- 5.6 The Owner may in its discretion allocate any payment received from the Hirer towards any invoice that the Owner determines and may do so at the time of receipt or at any time afterwards. On any default by the Hirer the Owner may re-allocate any payments previously received and allocated. In the absence of any payment allocation by the Owner, payment will be deemed to be allocated in such manner as preserves the maximum value of the Owner's Purchase Money Security Interest (as defined in the PPSA) in the Equipment.
- 5.7 The Hirer shall not be entitled to set off against, or deduct from the Charges, any sums owed or claimed to be owed to the Hirer by the Owner nor to withhold payment of any invoice because part of that invoice is in dispute. Once in receipt of an invoice for payment, if any part of the invoice is in dispute, then the Hirer must notify the Owner in writing within three (3) business days, the invoice shall remain due and payable for the full amount, until such time as the Owner investigates the disputed claim, no credit shall be passed for refund until the review is completed. Failure to make payment may result in the Owner placing the Hirer's account into default and subject to default interest in accordance with clause 20.1.
- 5.8 Unless otherwise stated the Charges does not include GST. In addition to the Charges the Hirer must pay to the Owner an amount equal to any GST the Owner must pay for any supply by the Owner under this or any other agreement for the hire of the Equipment. The Hirer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Hirer pays the Charges. In addition, the Hirer must pay any other taxes and duties that may be applicable in addition to the Charges except where they are expressly included in the Charges.
- 5.9 Receipt by the Owner of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.

6. Hire Period

- 6.1 Hire Charges shall commence from the time the Equipment departs from the Owner's premises and will continue until the return of the Equipment to the Owner's premises, and/or until the expiry of the Minimum Hire Period, whichever last occurs.
- 6.2 The date upon which the Hirer advises of termination shall in all cases be treated as a full day's hire.
- 6.3 No allowance whatsoever can be made for time during which the Equipment is not in use for any reason, unless the Owner confirms special prior arrangements in writing. In the event of Equipment breakdown provided the Hirer notifies the Owner immediately, hiring Charges will not be payable during the time the Equipment is not working, unless the condition is due to negligence or misuse on the part of or attributable to the Hirer.
- 6.4 Off-hire receipts will only be issued when the Equipment has been either collected by the Owner or returned to the Owner's premises.

7. Delivery

- 7.1 Delivery ("Delivery") of the Equipment is taken to occur at the time that:
- (a) the Hirer or the Hirer's nominated carrier takes possession of the Equipment at the Owner's premises; or
 - (b) the Owner (or the Owner's nominated carrier) delivers the Equipment to the Hirer's nominated address even if the Hirer is not present at the address.
- 7.2 The cost of Delivery will be payable by the Hirer in accordance with the quotation provided by the Owner to the Hirer, or as otherwise notified to the Hirer prior to the placement of an order for the Equipment.
- 7.3 The Hirer shall provide vehicle and trolley access to facilitate the loading and unloading of the Equipment. Additional Charges may apply where stairs, stairwells, unlevelled and unstable ground is present.
- 7.4 The Owner may deliver the Equipment by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.
- 7.5 Any time specified by the Owner for Delivery of the Equipment is an estimate only and the Owner will not be liable for any loss or damage incurred by the Hirer as a result of Delivery being late. However, both parties agree that they shall make every endeavour to enable the Equipment to be supplied at the time and place as was arranged between both parties. In the event that the Owner is unable to supply the

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Equipment as agreed solely due to any action or inaction of the Hirer, then the Owner shall be entitled to charge a reasonable fee for re-supplying the Equipment at a later time and date, and/or for storage of the Equipment.

8. Insurance

- 8.1 The Hirer shall produce a Certificate of Currency ("COC") for an appropriate policy of insurance that covers:
- (a) loss of, or damage to the Equipment (including, but not limited to, accident, fire, theft and burglary, transporting and all other usual risks and will effect adequate Public Liability Insurance covering any loss, damage or injury to property (including to underground services or other obstructions) arising out of the Equipment), its accessories and spare parts;
 - (b) any consequential loss of revenue or other expenses which may be incurred by the Owner (including lost rental fees, transport and salvage costs associated with the recovery of the Equipment its accessories and/or appraisal costs or storage fees); and
 - (c) damage to third party property, personal injury or death.
- 8.2 The COC must be provided to the Owner prior to the supply of Equipment.
- 8.3 In the case that the Owner deems that the Hirer has been in violation of the terms and conditions of the hire Contract the Hirer will forfeit any insurance cover, thus being responsible for the full cost of replacing the equipment or the full cost of repair, being whichever the lesser amount is.
- 8.4 The Hirer is liable to pay for accidental damage to the Equipment where it is not deemed fair wear and tear for normal use. If damage has occurred the Hirer will be charged the repair or replacement cost.
- 8.5 In the event that any of the Owner's Equipment sustains damage from a natural disaster including cyclone or flood damage but not limited to these, the Hirer is responsible for all damage as stated in section 8.1 unless any other section of the terms and conditions have been broken. The Hirer is responsible in the event of a natural disaster, to take necessary steps to ensure Equipment is safe at all times otherwise the Hirer risks forfeiting any insurance cover as set out in the hire Contract.
- 8.6 The insurance excess is the Hirer's responsibility at all times and is payable immediately.
- 8.7 The Hirer acknowledges that:
- (a) goods transported in the hired Equipment are carried and stored at the Hirer's sole risk and not at the risk of the Owner; and
 - (b) the Owner is under no obligation to arrange insurance of the Equipment and it remains the Hirer's responsibility to ensure that the Equipment is insured adequately.
- 8.8 The Owner shall not waive the Owner's rights to claim against the Hirer for loss, theft or damage to the Equipment or where any cleaning or repair of the Equipment is required including if the loss, theft, damage, cleaning or repair:
- (a) has arisen as a result of the Hirer breaching a clause of this hire Contract (including clause 16.3);
 - (b) has been caused by a negligent act or omission by the Hirer;
 - (c) has been caused by the Hirer's failure to use the Equipment for its intended purpose or in accordance with the Owner's instructions or the manufacturer's instructions;
 - (d) occurs to the Equipment whilst it is located, used, loaded, unloaded, transported on or over water, wharves, bridges, or vessels of any kind;
 - (e) has been caused by a failure to service or properly maintain the Equipment;
 - (f) has been caused by the overloading of the Equipment or any components thereof;
 - (g) is caused by vandalism;
 - (h) is caused by the wilful actions of the Hirer, their employees, sub-contractors or agents, or guests;
 - (i) unexplained disappearances of the Equipment and/or accessories; or
 - (j) if the Equipment is collected or returned to the Owner in a state of excessive poor condition that will incur direct costs to the Owner in excess of the Equipment hire or replacement costs (if applicable) to return the Equipment to a reusable condition. The return condition of hired Equipment being excessively wet, covered in mould, mud or sand, smoke, damage and cooking oils and fats residues is present.

9. Risk

- 9.1 The Owner retains ownership of the Equipment nonetheless all risk for the Equipment passes to the Hirer on Delivery.
- 9.2 The Hirer accepts full responsibility for the safekeeping of the Equipment and indemnifies the Owner for all loss, theft, or damage to the Equipment howsoever caused and without limiting the generality of the foregoing whether or not such loss, theft, or damage is attributable to any negligence, failure, or omission of the Hirer.
- 9.3 The Hirer accepts full responsibility for and shall keep the Owner indemnified against all liability in respect of all actions, proceedings, claims, damages, costs and expenses in respect of any injury to persons, damage to property, or otherwise arising out of the use of the Equipment during the hire period and whether or not arising from any negligence, failure or omission of the Hirer or any other persons.

10. Maintenance and Handling charges

- 10.1 A maintenance and handling charge of seven and a half percent (7.5%), (calculated on hire Equipment only) shall be applied to cover any general wear and tear, cleaning, and re-stocking of all Equipment.
- 10.2 The Hirer agrees to return all broken and damaged Equipment to the Owner otherwise such Equipment shall be classified as missing and clause 16.4 shall apply.
- 10.3 The maintenance and handling charge shall not apply when the Equipment is:
- (a) damaged because of misuse, abuse, wilful or malicious acts;
 - (b) negligence or overloading of the Equipment when it is in contradiction of the instructions given to the Hirer by the Owner on the proper use of the Equipment;
 - (c) any unexplained disappearance of the Equipment;
 - (d) because of theft;
 - (e) damage whilst in transit under the care of the Hirer;
 - (f) accidental damage and damage of non-fixable items.

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11. Title

- 11.1 The Equipment is and will at all times remain the absolute property of the Owner, and the Hirer must return the Equipment to the Owner upon request to do so.
- 11.2 If the Hirer fails to return the Equipment to the Owner as is required under this Contract or when requested to do so, then the Owner or the Owner's agent may (as the invitee of the Hirer) enter upon and into any land and premises owned, occupied or used by the Hirer, or any premises where the Equipment is situated and take possession of the Equipment, without being responsible for any damage thereby caused. Any costs incurred by the Owner as a result of the Owner so repossessing the Equipment shall be charged to the Hirer.
- 11.3 The Hirer is not authorised to pledge the Owner's credit for repairs to the Equipment or to create a lien over the Equipment in respect of any repairs.

12. Personal Property Securities Act 2009 ("PPSA")

- 12.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 12.2 Upon assenting to these terms and conditions in writing the Hirer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Equipment that has previously been supplied and that will be supplied in the future by the Owner to the Hirer.
- 12.3 The Hirer undertakes to:
- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Owner may reasonably require to:
 - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 12.3(a)(i) or 12.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, the Owner for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Equipment charged thereby;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of the Owner;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Equipment in favour of a third party without the prior written consent of the Owner.
- 12.4 The Owner and the Hirer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 12.5 The Hirer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 12.6 The Hirer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 12.7 Unless otherwise agreed to in writing by the Owner, the Hirer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 12.8 The Hirer must unconditionally ratify any actions taken by the Owner under clauses 12.3 to 12.5.
- 12.9 Subject to any express provisions to the contrary (including those contained in this clause 12), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions the PPSA.
- 12.10 Only to the extent that the hire of the Equipment exceeds a two (2) year hire period with the right of renewal shall clause 12 apply as a security agreement in the form of a PPS Lease in respect of Section 20 of the PPSA, in all other matters this clause 12 will apply generally for the purposes of the PPSA.

13. Security and Charge

- 13.1 In consideration of the Owner agreeing to supply the Equipment on hire, the Hirer grants the Owner a security interest by way of a floating charge (registerable by the Owner pursuant to the PPSA) over all of its present and after acquired rights, title and interest (whether joint or several) in all other assets that is now owned by the Hirer or owned by the Hirer in the future, to the extent necessary to secure the repayment of monies owed under this Contract for provision of the Equipment on hire under this Contract and/or permit the Owner to appoint a receiver to the Hirer in accordance with the *Corporations Act 2001* (Cth).
- 13.2 The Hirer indemnifies the Owner from and against all the Owner's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Owner's rights under this clause.
- 13.3 In the event that the Hirer defaults or breaches any term of this Contract and as a result, the security provided in clauses 11.1, 12.2 and 13.1 as applicable, is deemed insufficient by the Owner to secure the repayment of monies owed by the Hirer to the Owner, the Hirer hereby grants the Owner a security interest as at the date of the default, by way of a charge, that enables the right and entitlement to lodge a caveat over any real property and or land owned by the Hirer now, or owned by the Hirer in the future, to secure the performance of the Hirer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).

14. Intellectual Property

- 14.1 Where the Owner has designed, drawn or developed Equipment or design concepts (including any CAD plans) for the Hirer, then the copyright in any designs and drawings and documents shall remain the property of the Owner. Under no circumstances may such designs, drawings and documents be used without the express written approval of the Owner.

15. Defects, Warranties and Returns, Competition and Consumer Act 2010 ("CCA")

- 15.1 The Hirer must inspect the Equipment on Delivery and must within twenty-four (24) hours of Delivery notify the Owner in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Hirer must notify any other alleged defect in the Equipment as soon as reasonably possible after any such defect becomes evident. Upon such notification the Hirer must allow the Owner to inspect the Equipment.

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- 15.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (Non-Excluded Guarantees).
- 15.3 The Owner acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 15.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, the Owner makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Equipment. The Owner's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 15.5 If the Hirer is a consumer within the meaning of the CCA, the Owner's liability is limited to the extent permitted by section 64A of Schedule 2.
- 15.6 If the Owner is required to rectify, re-supply, or pay the cost of re-supplying any services or Equipment under this clause or the CCA, but is unable to do so, then the Owner may refund any money the Hirer has paid for the services or Equipment but only to the extent that such refund shall take into account the value of any services or Equipment and consumables which have been provided to the Hirer which were not defective.
- 15.7 If the Hirer is not a consumer within the meaning of the CCA, the Owner's liability for any defect or damage in the services or Equipment is:
- (a) limited to the value of any express warranty or warranty card provided to the Hirer by the Owner at the Owner's sole discretion;
 - (b) limited to any warranty to which the Owner is entitled, if the Owner did not manufacture the Equipment;
 - (c) otherwise negated absolutely.
- 15.8 Notwithstanding clauses 15.1 to 15.7 but subject to the CCA, the Owner shall not be liable for any defect or damage which may be caused or partly caused by, or arise as a result of:
- (a) the Hirer failing to properly maintain or store any Equipment;
 - (b) the Hirer interfering with the Equipment in any way without the Owner's written approval to do so;
 - (c) the Hirer using the Equipment for any purpose other than that for which it was designed;
 - (d) the Hirer continuing the use of the Equipment after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - (e) the Hirer failing to follow any instructions or guidelines provided by the Owner;
 - (f) fair wear and tear, any accident, or act of God.
- 15.9 The Owner may in its absolute discretion accept surplus Equipment for return prior to the function in which case the Owner may require the Hirer to pay handling fees of up to five percent (5%) of the value of the Equipment hire applicable, plus any freight costs.

16. Hirer's Responsibilities

- 16.1 The Hirer acknowledges and accepts that the installation and dismantling of marquees are subject to suitable weather conditions (including, but not limited to the local wind conditions and prevalent and/or forecasted weather). Where such conditions are not suitable or are deemed to be dangerous to proceed with the installation, the Owner reserves the right to cancel the event in the interest of safety and the Hirer shall indemnify the Owner of any loss or damages as a result of such cancellation.
- 16.2 Once the marquee is erected, should strong wind, rain or storm conditions arise during the time of any event, then the Hirer shall be responsible to vacate the marquee, furthermore, where sloping ground allows for rain runoff to enter the marquee, the Owner shall not be held responsible or liable for any damages that may occur as weather conditions are outside the control of the Owner. No refund shall apply in these circumstances.
- 16.3 The Hirer shall:
- (a) satisfy itself at commencement/erection that the Equipment are suitable for its purposes;
 - (b) at all times, keep the Equipment within their control, not assign the benefit of this Contract nor be entitled to lien over the Equipment;
 - (c) not fix any of the Equipment in such a manner as to make it legally a fixture forming part of any freehold;
 - (d) subject to clause 18, ensure that all persons assembling or disassembling the Equipment are suitably instructed;
 - (e) only use the Equipment in suitable weather conditions, where there are no heavy winds or weather warnings;
 - (f) be fully responsible for ensuring that the ground on which the Equipment will be assembled is stable, dry, clear of sharp or damaging objects, will not cause any damage to the Equipment and is not prone to flooding;
 - (g) ensure that the Equipment are a safe distance from other obstructions such as trees, which may damage the Equipment or the waterproofing of the Equipment by contact and/or rubbing;
 - (h) upon erecting the Equipment, ensure all lines are tight in order to avoid sagging, which may compromise the water tightness of the Equipment;
 - (i) use the Equipment properly, safely, and as intended, including using all ground sheets, guy ropes, poles, zips and any other safety structures;
 - (j) maintain and return the Equipment dry, clean, empty (where applicable), and in the same state as when received by the Hirer. In the event the Equipment are lost, not returned, damaged (including bent pegs), or unclean in any way, then cleaning, repair and/or replacement charges may apply in the amount that the Owner reasonably determines;
 - (k) ensure the Equipment remains free from unauthorised access, use or other interference by any third party or otherwise;
 - (l) not alter or make any additions to the Equipment including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment;
 - (m) not exceed the recommended or legal load and capacity limits of the Equipment;
 - (n) not use or carry any illegal, prohibited or dangerous substance in or on the Equipment;
 - (o) not use aerosols and chemicals, including hairspray and insect repellent, inside or near the Equipment. These substances will damage the waterproofing coating on the Equipment (where applicable);
 - (p) agree that, if necessary, to clean any Equipment or soft materials belonging to the Owner only with a soft damp cloth. The Hirer further agrees to never use soap, detergents, chemicals, abrasives or rough brushes or fabrics to clean the Materials, as these will damage the waterproof coating. The Hirer accepts that under no circumstances are the Equipment (where applicable) to be machine washed, tumble-dried or wrung out;
 - (q) not to rest items on the canvas surface of the Equipment, as this can damage the waterproofing seal;
 - (r) not allow pets inside or around the Equipment;

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- (s) notify the Owner immediately by telephone of the full circumstances of any breakage or accident. The Hirer is not absolved from the requirements to safeguard the Equipment by giving such notification;
- (t) indemnify and hold harmless the Owner in respect of all claims (including, but not limited to loss, damage or injury) arising out of the Hirer's use of the Equipment.
- 16.4 Immediately on request by the Owner the Hirer will pay:
- (a) the new list price of any Equipment that is for whatever reason destroyed, written off or not returned to the Owner. The Hirer shall accept the Owner's report on all missing Equipment;
- (a) all costs incurred in cleaning the Equipment;
- (b) all costs of repairing any damage caused by:
- (i) the ordinary use of the Equipment;
- (ii) the negligence of the Hirer or the Hirer's agent;
- (iii) vandalism, or (in the Owner's reasonable opinion) in any way whatsoever other than by the ordinary use of the Equipment by the Hirer.
- (c) the cost of fuels and consumables provided by the Owner and used by the Hirer;
- (d) any:
- (i) lost hire fees the Owner would have otherwise been entitled to for the Equipment, under this, or any other hire agreement;
- (ii) costs incurred by the Owner in picking up and returning the Equipment to the Owner's premises if the Hirer does not return the Equipment to the Owner's premises or any pre-agreed pickup location when it was originally agreed that the Hirer would do so;
- (iii) insurance excess payable in relation to a claim made by either the Hirer or the Owner in relation to any damage caused by, or to, the hire Equipment whilst the same is hired by the Hirer and irrespective of whether charged by the Hirer's insurers or the Owner's.
- 17. The Owner's Right of Entry and Inspection**
- 17.1 The Owner reserves the right to inspect the Equipment at any time during the hire period.
- 17.2 The Hirer authorises the Owner, its agents and representatives, at all times without notice to enter onto, and to remain on, (at all necessary times) any premises where the Equipment is located in order to inspect and/or collect the Equipment without being liable in any way for trespass. The Hirer also assigns the Owner all the Hirer's rights to enter onto, and remain on such premises until the Equipment has been inspected and/or collected.
- 18. Assembly and/or Disassembly by the Owner**
- 18.1 These terms and conditions shall be applicable where the Owner assembles and/or disassembles the Equipment:
- 18.2 The Hirer will be responsible for:
- (a) ensuring that there is adequate access, time and space for set-up, delivery, pack-up, pick-up and that the designated area is safe and free of obstructions or hazards;
- (b) ensuring that the appropriate permissions to use the site, and install and remove the Equipment, are granted, and informing any site owner of the potential property disturbance which may arise from the Equipment or the setup thereof;
- (c) locating, marking and protecting any underground utilities, other surfaces and objects.
- 18.3 The Owner will under no circumstances be held liable for damage to items left in, or around, the Equipment.
- 18.4 In the event of any delays due to free access being unavailable, the Hirer shall reimburse the Owner for all associated costs (including, but not limited to, lost hire fees and labour costs, which will be charged at reasonable, or at the Owner's prevailing, rates.
- 18.5 The risk of security and all weather related risk remains with the Hirer until the Equipment is actually disassembled by the Owner.
- 18.6 **Marquees and Temporary Structures**
- (a) marquees and other temporary structures installed and dismantled are subject to the current weather conditions prevailing at the time. The Owner reserves the right to notify the Hirer (as soon as it is reasonable able), if the Owner considers under the ABCB (Australian Building Codes Board) Temporary Structures Standards that due to current or impending severe weather (wind or rain), too dangerous to erect the Equipment and/or may cause damage to the erected Equipment or during the installation/dismantle of the Equipment; and
- (b) the Owner (at their sole discretion) reserves the right to cancel Delivery (in accordance with clause 19.2) if it is considered that the safety of any person/s or property may be at risk or considerable damage may be incurred to all parties concerned. However, if adverse weather is to occur during an event held by the Hirer (including, but not limited to, flooding of the site or other such effects from the weather, etc.), it shall be the responsibility of the Hirer to ensure the safety of all personnel present and exit the marquee/temporary structure pending the conditions. Subject to clause 25.7, in this instance the Hirer acknowledges and accepts that no refund will be granted and all hire charges shall remain due and payable.
- 19. Cancellation**
- 19.1 Without prejudice to any other remedies the parties may have, if at any time either party is in breach of any obligation (including those relating to payment) under these terms and conditions ("**the Breaching Party**") the other party may suspend or terminate the supply of Equipment on hire to the other party, with immediate effect, by providing the Breaching Party with written notice. Neither party shall be liable for any costs associated with a party suspending/cancelling the Contract under this clause 19.1.
- 19.2 If the Owner, due to reasons beyond the Owner's reasonable control, is unable to deliver any Equipment to the Hirer, the Owner may cancel any Contract to which these terms and conditions apply or cancel Delivery of the Equipment at any time before the Equipment are delivered by giving written notice to the Hirer. On giving such notice the Owner shall repay to the Hirer any money paid by the Hirer for the Equipment to be hired. The Owner shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 19.3 The Hirer may cancel Delivery of the Equipment by written notice served within forty-eight (48) hours of placement of the order. If the Hirer cancels Delivery in accordance with this clause 19.3, the Hirer will not be liable for the payment of any costs of the Owner, except where a deposit is payable in accordance with clause 5.3. Failure by the Hirer to otherwise accept Delivery of the Equipment shall place the Hirer in breach of this Contract.
- 19.4 After the forty-eight (48) hour period has lapsed in accordance with clause 19.3, a cancellation fee applicable, shall be calculated in the event a cancellation occurs:
- (a) over one (1) month and prior to one (1) week before the confirmed event date, then fifty percent (50%) of the price shall be payable; or

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- (b) less than one (1) month and one (1) week prior to the confirmed event date, then seventy-five percent (75%) of the price shall be payable;
or
- (c) within one (1) week prior to the confirmed event date, then the full price shall be payable.

20. Default and Consequences of Default

- 20.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and one half percent (2.5%) per calendar month (and at the Owner's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 20.2 If the Hirer owes the Owner any money, the Hirer shall indemnify the Owner from and against all costs and disbursements:
 - (a) incurred; and/or
 - (b) which would be incurred and/or
 - (c) for which by the Hirer would be liable;in regard to legal costs on a solicitor and own client basis incurred in exercising the Owner's rights under these terms and conditions, internal administration fees, the Owner's contract fees owing for breach of these terms and conditions, including, but not limited to, contract default fees and/or recovery costs (if applicable), as well as bank dishonour fees.
- 20.3 Further to any other rights or remedies the Owner may have under this Contract, if the Hirer has made payment to the Owner, and the transaction is subsequently reversed, the Hirer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Owner under this clause 20 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Hirer's obligations under this Contract.
- 20.4 Without prejudice to the Owner's other remedies at law the Owner shall be entitled to cancel all or any part of any order of the Hirer which remains unperformed and all amounts owing to the Owner shall, whether or not due for payment, become immediately payable in the event that:
 - (a) any money payable to the Owner becomes overdue, or in the Owner's opinion the Hirer will be unable to meet its payments as they fall due;
or
 - (b) the Hirer has exceeded any applicable credit limit provided by the Owner;
 - (c) the Hirer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Hirer or any asset of the Hirer.

21. Compliance with Laws

- 21.1 The Hirer and the Owner shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Equipment.

22. Privacy Policy

- 22.1 All emails, documents, images or other recorded information held or used by the Owner is Personal Information, as defined and referred to in clause 22.3, and therefore considered Confidential Information. The Owner acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1988 ("the Act") including the Part IIIC of the Act being Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB) and any statutory requirements, where relevant in a European Economic Area ("EEA"), under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). The Owner acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Hirer's Personal Information, held by the Owner that may result in serious harm to the Hirer, the Owner will notify the Hirer in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Hirer by written consent, unless subject to an operation of law.
- 22.2 Notwithstanding clause 22.1, privacy limitations will extend to the Owner in respect of Cookies where the Hirer utilises the Owner's website to make enquiries. The Owner agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Hirer's:
 - (a) IP address, browser, email client type and other similar details;
 - (b) tracking website usage and traffic; and
 - (c) reports are available to the Owner when the Owner sends an email to the Hirer, so the Owner may collect and review that information ("collectively Personal Information")If the Hirer consents to the Owner's use of Cookies on the Owner's website and later wishes to withdraw that consent, the Hirer may manage and control the Owner's privacy controls via the Hirer's web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 22.3 The Hirer agrees for the Owner to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) about the Hirer in relation to credit provided by the Owner.
- 22.4 The Hirer agrees that the Owner may exchange information about the Hirer with those credit providers and with related body corporates for the following purposes:
 - (a) to assess an application by the Hirer; and/or
 - (b) to notify other credit providers of a default by the Hirer; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Hirer is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Hirer including the Hirer's repayment history in the preceding two (2) years.
- 22.5 The Hirer consents to the Owner being given a consumer credit report to collect personal credit information relating to any overdue payment on commercial credit.

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- 22.6 The Hirer agrees that personal credit information provided may be used and retained by the Owner for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Equipment; and/or
 - (b) analysing, verifying and/or checking the Hirer's credit, payment and/or status in relation to the provision of Equipment; and/or
 - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Hirer; and/or
 - (d) enabling the collection of amounts outstanding in relation to the Equipment.
- 22.7 The Owner may give information about the Hirer to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
 - (b) allow the CRB to create or maintain a credit information file about the Hirer including credit history.
- 22.8 The information given to the CRB may include:
- (a) Personal Information as outlined in 22.3 above;
 - (b) name of the credit provider and that the Owner is a current credit provider to the Hirer;
 - (c) whether the credit provider is a licensee;
 - (d) type of consumer credit;
 - (e) details concerning the Hirer's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
 - (f) advice of consumer credit defaults (provided the Owner is a member of an approved OAIC External Disputes Resolution Scheme), overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Hirer no longer has any overdue accounts and the Owner has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
 - (g) information that, in the opinion of the Owner, the Hirer has committed a serious credit infringement;
 - (h) advice that the amount of the Hirer's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 22.9 The Hirer shall have the right to request (by e-mail) from the Owner:
- (a) a copy of the Personal Information about the Hirer retained by the Owner and the right to request that the Owner correct any incorrect Personal Information; and
 - (b) that the Owner does not disclose any Personal Information about the Hirer for the purpose of direct marketing.
- 22.10 The Owner will destroy Personal Information upon the Hirer's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 22.11 The Hirer can make a privacy complaint by contacting the Owner via e-mail. The Owner will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Hirer is not satisfied with the resolution provided, the Hirer can make a complaint to the Information Commissioner at www.oaic.gov.au.

23. Service of Notices

- 23.1 Any written notice given under this Contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
 - (b) by leaving it at the address of the other party as stated in this Contract;
 - (c) by sending it by registered post to the address of the other party as stated in this Contract;
 - (d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;
 - (e) if sent by email to the other party's last known email address.
- 23.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

24. Trusts

- 24.1 If the Hirer at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust or as an agent for a trust ("Trust") then whether or not the Owner may have notice of the Trust, the Hirer covenants with the Owner as follows:
- (a) the Contract extends to all rights of indemnity which the Hirer now or subsequently may have against the Trust, the trustees and the trust fund;
 - (b) the Hirer has full and complete power and authority under the Trust or from the Trustees of the Trust as the case may be to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Hirer against the Trust, the trustees and the trust fund. The Hirer will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
 - (c) the Hirer will not during the term of the Contract without consent in writing of the Owner (the Owner will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
 - (i) the removal, replacement or retirement of the Hirer as trustee of the Trust;
 - (ii) any alteration to or variation of the terms of the Trust;
 - (iii) any advancement or distribution of capital of the Trust; or
 - (iv) any resettlement of the trust fund or trust property.

25. General

- 25.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable, that provision shall be severed from this Contract, and the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 25.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Queensland, the state in which the Owner has its principal place of business and are subject to the jurisdiction of the courts in Brisbane, Queensland.

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- 25.3 The Owner may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Hirer's consent provided the assignment does not cause detriment to the Hirer.
- 25.4 The Hirer cannot assign or licence without the written approval of the Owner.
- 25.5 The Owner may elect to subcontract out any part of the provision services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Hirer agrees and understands that they have no authority to give any instruction to any of the Owner's sub-contractors without the authority of the Owner.
- 25.6 The Hirer agrees that the Owner may amend their general terms and conditions for subsequent future contracts with the Hirer by disclosing such to the Hirer in writing. These changes shall be deemed to take effect from the date on which the Hirer accepts such changes, or otherwise at such time as the Hirer makes a further request for the Owner to provide Equipment on hire to the Hirer.
- 25.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including but not limited to, any Government imposed border lockdowns (including, worldwide destination ports), etc., ("Force Majeure") or other event beyond the reasonable control of either party. This clause does not apply to a failure by the Hirer to make a payment to the Owner, once the parties agree that the Force Majeure event has ceased.
- 25.8 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.
- 25.9 The rights and obligations of the parties will not merge on completion of any transaction under this Contract, and they will survive the execution and delivery of any assignment or other document entered, for the purpose of, implementing any transaction under this Contract.
- 25.10 If part or all of any term of this Contract is or becomes invalid, illegal or unenforceable, it shall be severed from this Contract and shall not affect the validity and enforceability of the remaining terms of this Contract.