

## **TERMS & CONDITIONS**

### **1. Definitions**

In these Terms and Conditions of Hire the following terms have the following meanings:

'**Booking Fee**' means, the amount of deposit (part payment) required to secure the booking;

'**Claims**' means any claim, legal action or liability for damages or compensation; liability to pay any fine or penalty; expenses, including repair and legal costs; consequential losses; and injury, including personal injury and death;

'**Contract**' means the contract to hire the Equipment, constituted by the Order, these Terms, any Special Terms and such other documents or written communications which evidence the agreement between the Owner and the Hirer;

'**Equipment**' means all properties which the Owner agrees to hire to the Hirer subject to the terms of the Contract;

'**Hire Period**' means the period for which the Equipment is hired, as shown on the Order or subsequently agreed between the Owner and Hirer;

'**Hirer**' means the person, persons or company to whom the Order is addressed and shall include their legal representative, administrators, and successors and or permitted assignees;

'**Invoice**' means the tax invoice including GST issued to the Hirer.

'**Order**' means the form used by the Owner for the placement of orders to hire Equipment;

'**Owner**' means 'Wow Marquees Hire Pty Ltd (ACN 161 972 729)' and includes its servants or

Agents; '**Period of Hire**' means the period of time from the commencement date shown on the Quotation or Invoice or the time the equipment is delivered to the Hirer whichever is the later until the date when the Equipment is scheduled to be returned to the Owner;

'**PPSA**' means the *Personal Properties Securities Act* 2009;

'**Price**' means the price for hiring the Equipment, as shown on the Quotation or Invoice or subsequently agreed between the Owner and Hirer;

'**Quotation**' means the price given to the Hirer for hiring the Equipment;

'**Site**' means the premises that the Hirer specifies as the delivery address for the Equipment;

'**Special Terms**' means any terms (other than these Terms) which are specified in the Order, or subsequently agreed in writing between the Owner and Hirer; and

'**Terms**' means these terms, as amended from time.

### **2. Hire**

(a) The Owner agrees to hire the Equipment to the Hirer, and the Hirer agrees to accept the hire of the Equipment for the Period of Hire, on and subject to the terms and conditions of the Contract.

(b) Any extension of the Period of Hire shall be on the same terms as contained in the Contract unless otherwise agreed in writing by the parties.

### **3. Quotation**

Unless otherwise stated in writing the Owner's Quotation will be valid for a period of up to seven (7) days from the date of issue.

### **4. Hiring Cost**

The Hirer must pay to the Owner in full without deduction or set-off, the Price for hiring the Equipment as well as all costs incurred by the Owner (including labour costs):

(a) for any taxes, duties, or charges including GST payable in respect of these Terms or arising from the supply of or the Hirer's use of the Equipment;

(b) for delivery and pick-up of the Equipment, including any additional costs for delivery or pick-up to other than street level;

(c) for providing any service to the Hirer outside of ordinary weekday work hours;

(d) if the Site is not adequately prepared for delivery and/or installation of the Equipment;

(e) if the Owner cannot obtain access to the Site;

(f) arising from a variation to the Contract;

(g) arising from a failure of the Hirer or their representative to be in attendance on the agreed date for delivery or collection of the Equipment;

(h) in cleaning the Equipment where it has been returned in an unclean state;

(i) in enforcing any provision of the Contract against the Hirer; and

(j) for replacement of any Equipment not returned by the Hirer or available for collection by the Owner at the end of the Period of Hire, or at the Owner's election 100% of the daily

rate applicable under the Contract for each day or part thereof that the Equipment remains unreturned.

### **5. Booking – the Contract**

(a) Acceptance of the Quotation is subject to receipt of the Order (for credit account Hirers) or payment of a non-refundable Booking Fee by EFT, credit card, cash or cheque (for non-credit account Hirers). The Booking Fee will be 50% of the Price. **If the total Price is less than \$1500, full payment is required without deduction or set-off at the time of booking and will be treated as a Booking Fee.**

(b) The Hirer's credit card details are to be provided at the time of booking as a security bond for all Equipment. The Hirer is deemed to have accepted the Contract upon paying the Booking Fee.

### **6. Cancellation of the Contract**

(a) If the Hirer cancels a booking more than seven (7) days before the agreed delivery date, any payment made will be credited against a subsequent booking made by the Hirer provided that the subsequent booking is made within 12 months of the original event date. The Owner may elect to waive or vary this cancellation clause at its absolute discretion

(b) If the Hirer cancels a booking less than seven (7) days but more than 48 hours before the agreed delivery date, any payment made will be forfeited.

(c) If the Hirer cancels a booking less than 48 hours before the agreed delivery date, full payment must be made.

### **7. Freight and Return of Equipment**

(a) The Hirer may elect to pick up and subsequently return the Equipment to the Owner's premises or have the Owner deliver and subsequently collect the Equipment from the Hirer's premises.

(b) If the Hirer elects to pick up and subsequently return the Equipment, the Hirer agrees to provide their current credit card details and a copy of their current Drivers Licence to the Owner.

(c) If the Hirer seeks to have the Owner deliver the Equipment every endeavour will be made to complete delivery at the time or date stated but no liability can be accepted for late delivery or non-delivery. Unless otherwise stated the Owner will not accept cancellation of an order due to late delivery, nor shall the Owner be liable for consequential damages of any kind arising out of late delivery or non-delivery.

### **8. Title and Risk**

(a) The Hirer acknowledges that Owner owns the Equipment and in all circumstances retains the title to the Equipment.

(b) Nothing in these Terms confers on the Hirer any right, title, ownership or interest whatsoever in or over the Equipment except as expressly provided in these Terms.

(c) Risk in the Equipment passes to the Hirer on the earlier of:

(i) collection of the Equipment by the Hirer; or

(ii) delivery of the Equipment to the Hirer.

### **9. Personal Properties Securities Act**

(a) These Terms are a security interest for the purposes of the PPSA.

(b) If sections 95, 96, 117, 118, 121(4), 123, 125, 130, 132(3)(d), 132(4), 135, 142 and 143 of the PPSA would, apart from this clause, apply to this Agreement or the security interest it creates, those sections will not apply to the maximum extent it is possible to exclude them under section 115 of the PPSA.

(c) If section 116(2) of the PPSA applies, section 132 of the PPSA will not apply to the maximum extent it is possible to exclude it under section 115(7) of the PPSA.

(d) The Hirer and any guarantor irrevocably authorise the Owner to obtain from the register under the PPSA, if the Hirer or any guarantor is an individual, disclosure of any registration in which the individual is registered as a grantor or a secured party and any other searches which may be permitted by section 172 of the PPSA.

(e) The Hirer consents to the Owner effecting registration on the register under the PPSA in any manner the Owner considers appropriate in relation to any security interest in the Equipment arising under or in connection with or contemplated by this Agreement.

(f) The Hirer waives its right to receive notice of a verification statement in relation to any

## **TERMS & CONDITIONS**

registration by the Owner on the register of the PPSA and any other notice required under the PPSA

- (g) The Hirer agrees to properly execute any documents, provide all relevant information, fully cooperate with the Owner and do any other act or thing the Owner requires to ensure any interest created under this Agreement is perfected and remains continuously perfected, has priority over any other security interest in the Equipment or otherwise and any defect a the security interest, including its registration is overcome.
- (h) The Hirer must not, without providing prior written notice to the Owner change its name, address, contact details or any other details that would cause any details in the financing statement to be different if the security interest was re-registered.
- (i) The Hirer will not register a financing change statement for the security interest without the Owner's prior written consent.
- (j) The Hirer agrees to reimburse, on demand, the Owner for all costs and/or expenses incurred or payable by the Owner in relation to registering or maintaining any financing statement, releasing in whole or in part the Owner's security interest or any other document for any security interest and for the enforcement of any rights arising out of the Owner's security interest.
- (k) In this Agreement the following words have the respective meanings given to them in the PPSA: financing statement, financing change statement, perfected, register, registration, security interest and verification statement.

### **10. Hirer's Responsibilities**

#### **(a) Site Conditions**

The Hirer must advise the Owner of any Site conditions which may affect the proper use of the Equipment including, but not limited to, all underground services or pipes. Any damage to utilities or services shall be repaired at the Hirer's sole expense.

#### **(b) Insurance**

- (i) The Hirer will maintain at its own sole expense all appropriate insurance policies for:
  - A. public liability;
  - B. theft or damage to the equipment hired; and
  - C. other insurances as the Owner may reasonably require from time to time.
- (ii) If the insurances outlined in clause 10(b)(i) are not effected and maintained in accordance with these Terms, the Owner may effect that insurance itself and the Hirer must immediately upon demand reimburse the Owner for the premiums and any cost incurred or paid by the Owner.
- (iii) The Hirer must, in relation to each insurance policy upon demand by the Owner supply the Owner with the details of the insurance policy and/or produce the policy or certificate/s of insurance and all receipts for premiums or certificates of currency.

#### **(c) Security of Equipment**

The Hirer is responsible for the security of the Equipment until such time as it is returned to or collected by the Owner. If the Equipment is stolen or damaged the Hirer agrees to indemnify the Owner for such loss or damage at the current replacement cost of the Equipment. The Hirer agrees that the Owner may charge the cost of replacement or repair of the Equipment to the credit card provided by the Hirer. In the event of the Equipment being stolen or damaged the Hirer is to notify the Owner immediately stating the full circumstances of the loss or damage. Until the Owner receives such notification, the hiring charges will continue.

#### **(d) Safety of Equipment**

The Owner must comply with all legal requirements in relation to its possession and use of the Equipment, including, but not limited to, obtaining and maintaining all necessary permits, licenses and registrations and, complying with the relevant Occupational Health and Safety Acts of the state in which the Hirer is using the equipment. The Hirer is to ensure adequate safety measures are adopted at the Site. The Hirer will authorise any inspections to ensure that there are no alterations or modifications to any Equipment made by any person other than an employee of the Owner.

#### **(e) Use of Equipment**

The Hirer is to use the Equipment in a proper manner and in accordance with any instructions available for the Equipment. Furniture and Electrical items are not to be left in areas where they may get wet. The Hirer must not offer, sell, assign, sub-let, charge, mortgage, pledge or create any form of security interest over, or otherwise deal with, the Equipment in any way.

#### **(f) Condition of Equipment**

The Hirer will service, clean and maintain the Equipment in good and substantial repair and condition, reasonable wear and tear excepted. The Hirer must ensure their guests and users of the Equipment are aware of these conditions. An adult must supervise all children using, or in the vicinity of the Equipment at all times.

### **11. Indemnity**

The Hirer indemnifies and shall keep indemnified the Owner against any Claim, of whatever nature and however arising, suffered paid or incurred by the Owner in connection with:

- (a) any failure by the Hirer to comply with its obligations under these Terms;
- (b) the Hirer's possession, use, demonstration, holding or operation of the Equipment;
- (c) the possession, use or operation of the Equipment by any other person during the Period of Hire (whether or not authorised by the Hirer); and
- (d) death or bodily injury suffered by any person arising whether directly eHireres possession, use, demonstration, holding or operation of the Equipment, ey liability arising as a direct result of any servicing carried out by the Owner.

### **12. Limitation of Liabilities**

- (a) The Owner acknowledges that the *Competition and Consumer Act 2010* (Cth) (as amended) and other statutes from time to time in force imply or impose statutory guarantees, conditions or warranties into contracts for the hire of equipment and/or provision of services which cannot be excluded, restricted or modified or can only be restricted or modified to a limited extent ('**Non Excludable Terms**'). Nothing in these Terms is intended to exclude or restrict the application of the Non Excludable Terms.
- (b) Other than the Non Excludable Terms, the Owner hereby excludes to the full extent permitted by law all conditions, warranties, guarantees, terms and obligations expressed or implied by law in connection with this Agreement. If the Owner's liability can be limited in relation to the hire of goods, the Owner's liability is hereby limited (at the Owner's sole option) to:
  - (i) the replacement of the hired goods or the hire of equivalent goods;
  - (ii) the repair of the hired goods;
  - (iii) the payment of the cost of replacing the hired goods or of hiring equivalent goods; or
  - (iv) the payment of the cost of having the hired goods repaired.
- (c) The Owner will be under no liability to the Hirer or any third party in any circumstances for any indirect, special or consequential loss or damage, including but not limited to loss of revenue, loss of production, loss of product, loss of contract or loss of profit howsoever arising and whether in an action in contract, tort, in equity, under statute, or on any other basis.

### **13. Force Majeure**

If the Owner is unable at any time to perform any of its obligation whether wholly or partly by reason of any cause beyond its control ( including without limitation, act 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 a force majeure in which case the obligations of the Owner under these Terms shall, to the extent that they are affected by such 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 such delays caused by such force majeure events.

### **14. Termination by the Owner**

- (a) The Owner may immediately terminate the Contract and repossess the Equipment upon any of the following events occurring:
  - (i) If the Hirer does or permits any act or thing whereby the Owner's rights in the equipment may be prejudiced; or

TERMS & CONDITIONS

- (ii) If the Hirer shall become or be made insolvent or bankrupt; or
(iii) If the Hirer commits any breach of the Contract.
(b) Upon termination of the Contract the Hirer must return the Equipment, at its sole cost and expense, to the Owner in the same repair and condition it was delivered, fair wear and tear excepted.
(c) The Hirer must pay all costs and expenses associated with the return of the Equipment to the Owner including transport.
(d) For the purposes of repossessing the equipment, the Owner may enter into or upon any premises where the equipment may be held without prejudice to the rights of the Owner to recover from the Hirer any moneys due hereunder or any damages for breach hereof and the Hirer indemnifies the Owner in respect of any Claims arising out of any action taken under this clause.

15. Payment

- (a) For all non-account Hirers payment is required as follows:
(i) 50% non-refundable deposit on acceptance of the Order by the Owner;
a. 50% payment due no later than 7 days prior delivery/collection for the Period of Hire.
(b) The Owner is not obliged to deliver possession of the Equipment to the Hirer until payment has been confirmed. Payments being made by cheque are to be received by the Hirer no later than 7 days prior to the delivery date. In the event that a cheque is dishonoured the Hirer will be charged a dishonoured cheque fee of \$50 by the Owner. Further the Hirer agrees that the Owner has the right to charge the entire amount including the dishonoured cheque fee to the credit card supplied by the Hirer.
(c) Unless alternative arrangements have been agreed between the Owner and the Hirer payments by account Hirers must be received within the Owner's trading terms. Failure to meet the Owner's trading terms will result in the supply of further goods to be withheld until such time as the payment is made in full.
(d) In the event that payment cannot be made via credit card, legal action may be taken to recover the debt owing without further notice and all credit facilities will be closed. Any expenses, costs or disbursements incurred by the Owner in recovering any outstanding monies including dishonoured cheques, debt collection agency fees and solicitor's costs shall be paid by the Hirer.
(e) In addition to any other rights of repossession that the Owner has under the Contract if the Hirer does not make each payment as required under these Terms as and when due, the Hirer grants to the Owner an absolute right to:
(i) enter the premises where the Equipment is situated and repossess the Equipment; and
(ii) if necessary, sever the Equipment from any structure to which it is affixed.
(f) The Hirer indemnifies the Owner against any Claim which the Owner suffers, incurs or is liable for in respect of the Owner's exercise of its rights to repossess the Equipment under these Terms.

16. Display of Owners Name

The Owner's signage may appear on the Equipment. The Hirer must not conceal or obliterate any such signage, nor can the Hirer claim any charges from the Owner for advertising in respect of such signage.

17. Documentation

Any documentation published by the Owner including but not limited to these Terms, price lists and brochures may be changed without notice. All current documents are published on the Wow Marquees Hire website: www.wowmarqueeshire.com.au

18. General

(a) Assignment

The Hirer must not assign its rights under the Contract without the Owner's prior written consent. The Owner may give or withhold its consent in its sole discretion.

(b) Public liability

Notwithstanding any other provision of the Contract, the Hirer represents and warrants to the Owner that it holds public liability insurance for not less than \$10,000,000 for any one occurrence in respect of the use of the Equipment during the Period of Hire and shall provide the Owner with a copy of the policy and evidence of payment of the premium upon request to do so.

(c) Entire Agreement

The Contract constitutes the entire agreement between the parties and contains all of the representations, warranties, covenants and agreements of the parties in relation to the subject matter of the Contract.

(d) Severance

If any part of these Terms are, or become, void or unenforceable, that part shall be severed from the Terms so that all parts that are not, or do not become, void or unenforceable remain in full force and effect and are unaffected by that severance.

(e) No Waiver

No delay or omission by a party to exercise any right, power or remedy available to that party as a result of a continuing breach or default under these Terms will impair any such right, power or remedy, nor will it be construed to be a waiver of that party's rights to take action or make a claim in respect of a continuing breach or default.

(f) Variation

A variation of the Contract must be in writing and signed by both parties or by persons authorised to sign for them.

(g) Governing Law

The Contract is governed by and to be interpreted in accordance with the laws of Victoria and, where applicable, the laws of the Commonwealth of Australia.

These Terms & Conditions are AGREED BY HIRER:

NAME of HIRER:.....

SIGNATURE.....

PRINT NAME.....

DATE.....QUOTATION #.....

COMPANY Purchase Order (If applicable) #.....