

**The following Terms and Conditions must be accepted by the "Hirer" prior to "Mr Party Hire" making the goods or services available to the "Hirer".**

#### Definitions

Owner is Mr Party Hire.

Hirer includes an agent of the hirer and agrees to hire the equipment specified in the Schedule from the owner upon the terms and conditions in this agreement.

Equipment means any item of party and event equipment listed in the Schedule to this agreement including accessories.

#### 1. Hire of equipment

1.1 The hiring of the equipment will commence from the commencement date specified in the Schedule and continue for the term specified in the Schedule.

1.2 The hirer is entitled to use the equipment for the hire period. Any extension of the period must be agreed to by Mr Party Hire.

1.3 The hirer agrees to return the equipment to the address of Mr Party Hire on or before the end of the hire period as outlined in the Schedule.

#### 2. Payment for rental

2.1 The hirer agrees to pay Mr Party Hire the hire fee and the damage waiver fee specified in the Schedule for the equipment for the hire period including any applicable GST, stamp duties, tolls, fines, penalties, levies or freight and other charges relevant to this agreement and the hire.

2.2 The required fees must be paid to Mr Party Hire prior to or on the commencement date of the hire period. Equipment not returned on time and in accordance with this agreement will be subject to a continuance of the agreed rental until return is complete.

2.3 Payment for hire of goods must be made by:

- (a) 30% of the agreed hire price on ordering; and
- (b) The balance of the agreed hire price on delivery of the goods.

2.4. Payment must be made by Credit Card, EFTPOS, Cheque or Cash. If EFT is used, the "Hirer" must advise Mr Party Hire of confirmation of the transfer receipt, prior to the "goods" being delivered.

2.5. Mr Party Hire may require a security deposit to be paid in addition to any Hire fees and may apply the deposit against any amounts payable by the Hirer under the terms.

2.6 Any portion of the security deposit not applied will be refunded within ten days of the return of the goods

2.7 Mr Party Hire may charge the hirer a fee for accepting payment by credit card.

#### 3. Cancellation

3.1 If through circumstances beyond the control of Mr Party Hire, Mr Party Hire is unable to provide the goods, then Mr Party Hire may:

- (a) Make changes to the goods provided that the end performance is not materially prejudiced; or
- (b) Cancel any order (even if it has already been accepted) by notice in writing

3.2 The Hirer may cancel an order but may forfeit any hire fees paid as follows:

- (a) If booking is cancelled 4 weeks before the function date, Mr Party Hire will make a full refund of any hire fees paid minus a \$100 administration fee;
- (b) Bookings cancelled less than 1 week before the function date will forfeit 15% of the total hire fee, plus a \$100 administration fee;
- (c) Cancelled bookings received by Mr Party Hire during normal business hours and within 2 days of the function date will forfeit 30% of the total hire fee, plus a \$100 administration fee.
- (d) Any booking cancelled on the function date will be liable for between 50% and 100% of the total hire fee,

dependant on the status of the order being fulfilled by Mr Party Hire.

#### 4. Delivery and Collection

4.1. The goods will be delivered in a reasonably clean, but not necessarily sterile, state. The Hirer must confirm the sterility of any goods, from which food or drinks are to be served, prior to use.

4.2 The Hirer must allow any Mr Party Hire representative access to the goods at all reasonable times. The Hirer must provide safe and proper access to and at the Site. The Hirer is liable for all injury, loss or damage suffered by Mr Party Hire, its employees or agents while at the Site.

4.3 The Hirer must pack goods in their respective containers and crates at the end of the Hire Period in a complete, clean and dry state.

4.4 Mr Party Hire's count and decision as to condition of goods prior to dispatch and on return shall be final.

#### 5. Damage waiver fee

5.1 A Damage Waiver is charged to cover accidental damage and general wear and tear.

5.2. The Hirer agrees to be liable for any additional costs where the amount of accidental damage and/or general wear and tear is estimated by Mr Party Hire to be in excess of the Damage Waiver charged.

5.3 This clause in no way entitles the hirer to, or implies the availability of, compensation from Mr Party Hire for any liability incurred by the hirer in relation to the use of the hired equipment.

5.3 This clause will not continue to operate after the expiration of the hire agreement unless an extension by Mr Party Hire is granted in writing and an additional agreed fee is paid.

5.4 This clause will not apply to loss or damage which relates to or arises from:

- (i) Breach of any statutory laws or regulations in connection with the use of the equipment by the hirer;
- (ii) Misuse, abuse, wilful and/or malicious acts, negligent and/or reckless use and/or overloading of the equipment;
- (iii) Theft, loss or damage by whatever cause to tools and/or accessories supplied with the equipment including but not limited to: hoses, drills, bits, grease guns, electric leads, tyres and tubes;
- (iv) Lack of lubrication or non-adherence to other normal maintenance requirements that could reasonably be expected of the hirer under the agreement;
- (v) Disregard for instructions given to the hirer by the owner in respect of the proper use of the equipment or in contradiction of the Manufacturer's Instructions if supplied with the equipment at the commencement of hire;
- (vi) Unexplained disappearances of the equipment;
- (vii) Theft of the equipment in circumstances where site security is available including, but not limited to, locked yards, buildings and sheds, where proper security is not used by the hirer to secure the equipment whilst they are left unattended;
- (viii) Loading or off loading equipment from maritime vessels, transportation of equipment on maritime vessels or the use of equipment on any wharf or bridge or over any body of water.

#### 6. Use, operation and maintenance

6.1 The hirer agrees that the use of the equipment carries with it dangers and risks of injury and the hirer agrees to accept all dangers and risks.

6.2 The equipment shall not be used by anyone other than the hirer without the express permission of Mr Party Hire.

6.3 The hirer will ensure that all persons operating or erecting the equipment are instructed in its safe and

proper use and where required hold a valid Certificate of Competency or are fully licensed to use it.

6.4 The hirer agrees to operate, maintain, store and transport the equipment strictly in accordance with any instruction provided by Mr Party Hire and with due care and diligence.

6.5 The hirer agrees that the equipment will only be used for its intended purpose and in accordance with any manufacturer's instructions and recommendations whether supplied by Mr Party Hire or posted on the equipment in regard to its operation, maintenance and storage

6.6 The hirer agrees to comply with all occupational health and safety laws and regulations relating to the use of the equipment and associated operations.

6.7 The hirer shall ensure the equipment is returned to Mr Party Hire clean of all foreign matter or agrees to a reasonable cleaning fee being charged by Mr Party Hire.

6.8 The reasonable costs of fuel or other consumables provided by Mr Party Hire and used by the hirer are to be paid to the owner at the completion date.

#### 7. Hirer's warranties

7.1 The hirer warrants that:

(i) The equipment will be used in accordance with the conditions outlined in the Hire Agreement;

(ii) The particulars in the Hire Agreement are correct in every respect and are not misleading in any way including, without limitation, by omission;

(iii) The equipment will not be used for any illegal purpose;

(v) The hirer will not, without prior written consent of Mr Party Hire, tamper with, repair or modify the equipment in any way, or permit another to do so;

(vii) The hirer agrees that the equipment complies with its description, is in merchantable condition and is fit for the hirer's purpose.

(viii) The hirer agrees that the equipment has been received by the hirer clean and in good working order.

#### 8. Indemnity

8.1 To the full extent permitted by law the hirer releases, discharges and indemnifies Mr Party Hire from all claims and demands on the owner arising out of or consequent on the use or misuse of the equipment during the hire period.

8.2 Without limiting clause 8.1 of this agreement, the hirer agrees that to the full extent permitted by law, no warranties are given by Mr Party Hire in respect of the equipment. Any liability of Mr Party Hire pursuant to any warranty which cannot be excluded by law will not exceed either the cost of repairing the equipment or the cost of resupplying the equipment, at the discretion of Mr Party Hire.

#### 9. Loss, damage or breakdown of equipment

9.1 Subject only to the obligations of Mr Party Hire following payment of the damage waiver fee by the hirer in accordance with Clause 5 the hirer will be responsible for any loss or damage to the equipment irrespective of how the loss or damage occurred, except for fair wear and tear, during the hire period.

9.2 The hirer is liable for the payment of the new list price of any equipment not returned to Mr Party Hire.

9.3 If there is a breakdown or failure of the equipment the hirer shall notify Mr Party Hire immediately for the appropriate action to be taken.

#### 10. Insurance

10.1 Mr Party Hire will maintain current insurance policies in respect of the equipment to its full insurable value.

#### 11. Liability

11.1 The hirer will assume all risks and liabilities for, and in respect of, the equipment and for all injuries to or deaths of persons and any damage to property

howsoever arising from the hirer's possession, use, maintenance, repair, storage or transport of the equipment.

#### 12. Disclaimer

12.1 To the extent permitted by law Mr Party Hire disclaims all liability for and does not give any warranties to the hirer as to the condition of the equipment.

#### 13. Title to equipment

13.1 The hirer acknowledges that Mr Party Hire retains title to the equipment and that the hirer has rights to use the equipment as a mere bailee only. The hirer agrees that the hirer has no rights to pledge the owner's credit in connection with the equipment.

13.2 The hirer agrees not to agree, offer or purport to sell, assign, sub-let, lend, pledge, mortgage let or hire or otherwise part with or attempt to part with personal possession or otherwise not to deal with the equipment and not to conceal or alter the goods or make any addition or alteration to, the equipment.

#### 14. Repossession and remedies on default

14.1 The owner may retake possession of the equipment if the hirer breaches any provision of this agreement, notwithstanding anything else herein contained.

14.2 If repossession takes place, Mr Party Hire shall only charge the hire fee up to and including the time of repossession.

14.3 All costs incurred by Mr Party Hire incurred in repossessing due to a breach are to be paid by the hirer.

14.4 In the case of repossession due to a breach of this agreement the hirer agrees to grant Mr Party Hire permission to enter any premises where the equipment listed in the Hire Agreement is situated to disconnect, decommission and/or remove that equipment.

14.5 In addition to the owner's right to retake possession the owner is entitled in its discretion, following any breach of any provision of this agreement by the hire, to terminate this agreement and/or sue for recovery of any damages or charges or loss suffered by the owner, and/or to cancel any insurances effective in respect of the equipment hired.

#### 15. Completion of the hire period

15.1 The hire period is completed when the equipment has been returned to Mr Party Hire in the same condition as when it was hired:

(i) On or by the date and time outlined in the Hire Agreement, or

(ii) Will be deemed completed on the date agreed for pick-up by Mr Party Hire.

15.2 Where pick-up is agreed Mr Party Hire will arrange to pick-up the equipment within a reasonable period after a request to do so and will issue the hirer with a pick-up number.

15.3 The hirer agrees to maintain the responsibility for the equipment whilst it is awaiting pick-up.

#### 16. Termination and Default

16.1. If the Hirer:

(a) Breaches any term;

(b) Becomes bankrupt (individual) or insolvent (corporation)

Then Mr Party Hire may, without prejudice to any other remedy available to it:

(d) Require immediate payment of all owed by the Hirer to Mr Party Hire;

(e) Charge the Customer interest on any sum due at the prevailing rate pursuant to the *Penalty Interest Rates Act 1983 (Vic)* until the date of payment in full;

(f) Charge the Hirer for all costs and expenses (including without limitation all legal costs and expenses) incurred by Mr Party Hire by enforcing compliance with the Terms or recovering the goods;

- (g) Charge the Hirer for the cost of repairing or replacing any lost, damaged or destroyed goods;
- (h) Charge the Hirer for subsequent lost hire charges as a result of the goods being lost, damaged or destroyed until the goods are repaired or replaced;
- (i) Claim damages from Hirer for breach of the Hire Contract; and/or
- (j) Cease or suspend supply of any further goods to the Hirer.

#### 17. Non-merger

17.1 The covenants, agreements and obligations contained in this agreement will not merge or terminate upon the termination of this agreement and to the extent that they have not been fulfilled or satisfied or are continuing obligations they will remain in force and effect.

#### 18. Severance

18.1 If any provision of this agreement is wholly or partly invalid, unenforceable, illegal, void or voidable, this agreement must be construed as if that provision or part of a provision had been severed from this agreement and the parties remain bound by all of the provisions and part provisions remaining after severance.

#### 19. Governing law

19.1 This agreement is governed by the laws of the State or Territory where the agreement is made and each party submits to the exclusive jurisdiction of the Court of that State or Territory.

#### 20. Privacy policy

20.1 Mr Party Hire will comply with the National Privacy Principles in all dealings with hirers. Information on our privacy policy is available on request.

#### 21. Disputes

21.1 Both Mr Party Hire and the hirer agree that any disputes arising from the hire and use of the equipment (except in regard to payment of fees or charges) shall be negotiated with a view to settlement with the assistance of the Hire and Rental Industry Association Limited (Tel 02 9997 5166) before litigation is pursued.

#### 22. Miscellaneous

22.1 The hire agrees to ensure that any site specified on the Hire Agreement, will be clear of all obstructions to allow Mr Party Hire to erect, install or place the hire equipment.

22.2 Any items or objects that are required, or requested by the hirer, to be moved, are done so without any liability to Mr Party Hire.

22.3 Mr Party Hire may seek additional payment for any unreasonable delay incurred by Mr Party Hire while waiting for the specified area to be cleared,

22.4 The hire agrees not to use streamers, decorations or taping within or near any marquee hired

#### Spring Carnival

- 1.0 The hire of equipment is only on the nominated race day until 6pm or any other time so advised by the VRC.
- 2.0 If the Hirer wishes to vacate the designated site prior to this time, the Hirer must reasonably arrange ALL hired items in the centre of the site for collection by Mr Party Hire staff. Failure to do so may result in the Hirer forfeiting their security deposit.
- 3.0 The hirer must contact Mr Party Hire on 0414 444 378 or 0418 394388 to advise that they are vacating the site at an earlier time.
- 4.0 Mr Party Hire reserves the right to withhold the security deposit, (or any such portion), to cover hired items that Mr Party Hire determines have been damaged, lost or stolen during the hire period.
- 5.0 Open market umbrellas are safe in winds of up to 20km/h. If the wind speed is beyond that, the market umbrella may need to be closed. The judgement of the safety of the umbrella use is the sole responsibility of the Hirer.
- 6.0 The Hirer is responsible for all guests who use the hired equipment.
- 7.0 All hired equipment must only be used for the purpose and capacity for which it was designed.