

TERMS AND CONDITIONS OF HIRE

Terms and Conditions of Hire also Terms and Conditions for Purchase of Goods. .

The following Terms and Conditions must be accepted by the "Hirer" prior to "Having a Party" making the goods or services available to the "Hirer"

1. Definitions

"goods" means all goods, equipment, consumables, accessories and packing containers of whatever nature supplied by Having a Party to the Hirer;
"hire of goods" includes any services provided by Having a Party in connection with the delivery, unpacking, installing and collection of goods;
"GST" means GST within the meaning of the A New Tax System (Goods and Services Tax) Act 1999 or any amending legislation;
"Hire Period" means the time from when the goods leave the store used by Having a Party until they return to or are collected by Having a Party;
"Hirer" means the person, firm or company, jointly and severally if more than one, hiring goods from Having a Party;
"Site" means the site to which the goods are delivered;
"the Terms" means these Terms and Conditions of Hire;
"return" or "returned" means, in connection with goods, their return by you to Having a Party or collection by it of the goods at the Site, as agreed with you.

2. Basis of Contract

2.1 The Terms apply exclusively to every contract for the hire of goods by the Hirer from Having a Party and cannot be varied or substituted for by any other terms without the prior written consent of Having a Party save as provided in 2.2.
2.2 A written quote provided by Having a Party to the Hirer regarding the proposed hire of goods is valid for [7] days and is an invitation only to the Customer to place an order based upon that quote. Any terms in Having a Party's quote form part of the Terms and in the case of any inconsistency such terms will prevail and take priority over the Terms.
2.3 If an order placed by the Customer is accepted by Having a Party, Having a Party agrees to hire the goods to the Hirer for the Hire Period for use at the Site on the Terms.

3. Hire Charges and variation

3.1 A minimum charge of \$20.00 applies for any order.
3.2 Amounts quoted are for use of the goods on one day only. For each additional day or part of a day you may incur at our discretion an additional charge or excess use fee being not less than 25% of the daily rate.
3.3 Unless otherwise specified, any quotation assumes and is to be implied as incorporating the following conditions:
(a) delivery, installation, removal and return of goods being provided during ordinary working hours;
(b) delivery being made to street level only;
(c) grounds or floors being level and clear;
(d) the Hirer unpacking, setting out, repacking and cleaning the goods and their being returned in a good, clean and hireable condition .
3.4 Any departure from or non-compliance with the conditions in clause 3.3 will give rise to further charges payable by the Hirer for additional equipment used, time spent or overtime labour rates incurred by Having a Party.
3.5 All hire prices quoted include GST

4. Invoice, payment and bonds

4.1 Payment for hire of goods or services is required as follows:
(a) a non refundable deposit, at time of ordering, equal to 25% of the total fees, or \$250.00, (whichever is the greater); and
(b) 100% of the total fees must be paid at least 7 days prior to delivery of the goods or services (of which 25% is strictly non refundable);
and where full payment has not been made as required above, Having a Party may treat the contract as at an end and such moneys held by it shall be forfeited without prejudice to its rights at law and arising out of breach of contract.
4.2 Payment must be made by bank deposit, credit card, EFTPOS or cash.
4.3 Having a Party may require a security bond to be paid in addition to any hire or service fees as deemed necessary. A security bond may be required prior to the delivery date, or applied upon sighting of delivery site during delivery on the agreed delivery day. No goods will be delivered until the bond payment has been received by Having a Party if deemed necessary.
4.4 Any portion of the security bond not applied will be refunded by cheque posted within fourteen days of return of goods.
4.5 Any instruction received from the Hirer for the supply of goods or services and/or the hirer's acceptance of goods or services by Having a Party shall constitute acceptance of the terms and conditions contained herein.
4.6 Upon acceptance of these terms and conditions by the Hirer the terms and conditions are irrevocable and can only be amended with the written consent of Having a Party.

5. Variation and Cancellation

5.1 If through circumstances beyond the control of Having a Party, Having a Party is unable to provide goods, then Having a Party 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.
5.2 The Hirer or purchaser may cancel any order, but will forfeit 25% of the total hire price or sale price agreed at placement of order. If cancellation is less than seven days prior to delivery date, the hire or sale price held by Having a Party will be forfeited in full.
5.3 If the Hirer seeks to vary or modify an order, to which Having a Party agrees as evidenced by a new contract being entered into, and the Hirer subsequently cancels the new contract, the first contract shall not be nor be deemed to be novated or cancelled and the deposit paid there under shall be duly forfeited.

6. Delivery and collection

6.1 Goods will be delivered in a reasonably clean but not necessarily sterile state or condition and any implied warranty is hereby negated. The Hirer must wash any goods from which food or drinks are to be served prior to use. The Hirer must return all goods in clean and tidy condition or a minimum 1 Hour charge, at \$50.00 per Hr. for cleaning will apply.
6.2 The Hirer must allow Having a Party servants, agents and insurers access to the goods at all reasonable times to deliver, install, remove, inspect, test, adjust, maintain, repair or replace them. The Hirer is responsible for providing safe and proper access to and at the Site. The Hirer is liable for all injury, loss or damage suffered by Having a Party, its employees or agents while at the Site.
6.3 The Hirer must make the goods available for collection by Having a Party at the pre arranged designated time (organised at time of delivery). If the goods are not made available as designated and Having a Party must return a second or subsequent time to pickup, a minimum extra charge of 50% of the standard delivery/transport cost, an excess use fee (under Clause 3.2) and all additional labour costs involved with collection will apply.
6.4 Having a Party's count and decision as to the condition of goods prior to dispatch and on return shall be final.

7. Responsibility of Hirer

7.1 The Hirer bears all risks in relation to the goods for the Hire Period.
7.2 During the Hire Period the Hirer is responsible for:
(a) Safe keeping of the goods
(b) Using the goods in strict conformity with the goods instruction or specifications and generally in accordance with the purpose for which they are designed
(c) Not using pigmented streamers or decoration within or near any marquee hired
(d) Ensuring that goods are not moved or relocated from the Site, unless in an emergency, and Having a Party is advised immediately afterwards
(e) Complying with all relevant laws, by-laws and regulations applicable to the installation, use and operations of the goods
(f) Protecting the Goods against being soiled or contaminated, damage, fire, theft, distress or seizure
(g) Using only fuel, power and consumables specified or approved by Having a Party; and
(h) Ensuring the goods are not operated for any purpose beyond their rated capacity or in a manner likely to result in undue wear

8. The Hirer remains liable where:

(a) The Hirer fails, refuses or is unable or unwilling to return or produce all of the goods to Having a Party at the end of the Hire Period in good and proper order and in substantially identical condition to that in which they were at the time of delivery
(b) The Hirer has not taken reasonable precautions to safeguard the goods
(c) The Hirer has not complied with the Terms
(d) Accessories or packaging are lost or damaged
(e) Goods have been carried or used over or upon water

(f) Loss or damage to marquees, walling or other hire goods has been caused by heaters, catering equipment, catering odours or coloured streamers
(g) Damage to goods has been caused by graffiti or vandalism

9. Break down or defect

9.1 The Hirer must inspect all goods and notify Having a Party of any deficiency within 24 hours of delivery. Any shortages not notified within this time will nevertheless be charged in full.
9.2 Break downs or defects in the goods resulting from:
(a) Proper or ordinary use; or
(b) The development of an inherent fault or a fault not ascertainable prior to the start of the Hire Period: may, at Having a Party's option, either be repaired or the goods replaced at Having a Party's expense.
9.3 If a repair is impracticable and if replacement goods are not available, the proportional charge for broken or defective goods will be credited to the Hirer and Having a Party will not have any other liability whatever to the Hirer in connection with such deficiency.
9.4 No relief from hire charges nor any claims will be allowed or admitted by Having a Party:
(a) For stoppages due to causes beyond Having a Party's control, knowledge or obligations under these Terms including, without limitations, bad weather or Site conditions; or
(b) The Hirer not informing Having a Party of any defect or breakdown immediately it occurs.
9.5 The Hirer must not attempt or carry out try to effect any repairs to or modification of on the goods or otherwise interfere therewith
9.6 Having a Party is not responsible under these Terms or otherwise for and does not warrant that it holds expertise for assessing Site conditions or related issues such as drainage or stability of the Site which is and shall remain the Hirer's responsibility solely.

10. Default and termination

10.1 If the Hirer:
(a) breaches any of the Terms;
(b) is an individual and becomes bankrupt or enters into any scheme of arrangement or composition for the benefit of their creditors;
(c) is a corporation and becomes insolvent or enters into any scheme of arrangement, assignment or composition with or for the benefit of its creditors, has a liquidator, administrator, receiver or receiver/manager appointed, or any action is taken for its winding up or dissolution; then Having a Party may, without prejudice to any other remedy available to it;
(i) require immediate payment of all money which would become payable by the Hirer to Having a Party at a later date on any account, without further notice;
(ii) charge the Hirer interest on any sum due at the prevailing rate pursuant to the Penalty Interest Rates Act 1983 (VIC) plus 5% for the period from the due date until the date of payment in full;
(iii) charge the Hirer for and the Hirer must and is hereby deemed to agree to indemnify Having a Party from and against, all costs and expenses (including without limitation all legal costs and expenses) incurred by it resulting from the default or taking action to enforce compliance with the Terms or to recover the goods;
(iv) charge the Hirer for the cost of repairing or replacing any lost, damaged or destroyed goods;
(v) 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;
(vi) claim damages from the Hirer for breach of the Hire Contract; and/or
(vii) cease or suspend for such period as Having a Party thinks fit, supply of any further goods to the Hirer.
10.2 On termination, the Hirer must immediately return or make the goods available for collection failing which if the Hirer does not, Having a Party is entitled to enter any premises of the Hirer where the goods are believed to be to repossess the goods and Having a Party will not be liable for any damage so caused and the Hirer must and is hereby deemed to agree to indemnify Having a Party from any liability incurred by it to it or owed to any third party or being in respect of any damage, demands, proceedings, costs and expenses whatsoever arising therefrom. Further, the Hirer hereby irrevocably authorises Having a Party to enter such premises and this authority shall be deemed to be pleaded as a bar to or defence of any proceedings or prosecution claiming trespass or unlawful entry by or arising out of Having a Party's entry upon such premises.

11. Limitation and exclusion

11.1 Except as specifically set out in the Terms, any term, condition or warranty in respect of the quality, fitness for purpose, condition, description, assembly, manufacture, design or performance of the goods, whether implied by statute, common law, trade usage, custom or otherwise, is hereby expressly excluded;
11.2 Replacement or repair of the goods is the absolute limit of Having a Party's liability whatsoever arising under the Terms or from the use of or any other dealings with the goods by the Hirer or any third party.
11.3 Having a Party is not liable for any indirect or consequential losses or expenses suffered by the Hirer or any third party, howsoever caused, including but not limited to loss of turnover, profits, business or goodwill or any liability caused to or suffered by any other party.
11.4 Having a Party will not be liable for any loss or damage suffered by the Hirer where Having a Party has failed to meet any delivery date or varies, cancels or suspends the supply of goods.
11.5 Nothing in the Terms is to be interpreted as excluding, restricting or modifying or having the effect of excluding, restricting or modifying any application of any State or Federal legislation applicable to the sale of goods or supply of services which cannot be excluded, restricted or modified.

12. Miscellaneous

12.1 The laws of Victoria from time to time govern the Terms and the parties agree to the non-exclusive jurisdiction of the Courts of Victoria, the Federal Court of Australia, and of Courts entitled to hear appeals from those Courts.
12.2 Failure by Having a Party to enforce any of these Terms shall not be construed as a waiver of any of Having a Party's rights.
12.3 If any term is unenforceable it shall be read down so as to be enforceable, or if it cannot be so read down, the term shall be severed from these Terms without affecting the enforceability of the remaining terms.

13. Damage Waiver Fee

(a) Upon payment by the Hirer of the Damage Waiver Fee the Hirer is not responsible for the cost of repairs to or the cost of replacement of the Equipment if necessary because of damage to the Equipment sustained during the Hire Period.
(b) Clause (a) only applies where that cost is equal to or less than \$50,000. The Hirer remains responsible for those costs to the extent that they exceed \$50,000.
(c) If the Hirer:
i. has hired Equipment from the Owner for one event or exhibition;
ii. the Equipment has been hired under more than one Contract; and
iii. the Hirer has paid the Damage Waiver Fee under more than one of those Contracts,
Clause (a) only applies where that cost is equal to or less than \$50,000 in aggregate for those Contracts in respect of which the Damage Waiver Fee has been paid. The Hirer remains responsible for those costs to the extent that they exceed \$50,000 in aggregate for those Contracts.
(e) Clause (a) will not continue to operate after the expiration of the Hire Period unless an extension by the Owner is granted in writing and an additional fee is paid.
(f) Clause(a) does not limit the Hirer's liability for failure to return the Equipment.
(g) Clause (a) will not apply to, and the Hirer remains responsible for, loss or damage occurring to the Equipment:
i. because of breach of any statutory laws or regulations in connection with the use of the Equipment by the Hirer;
ii. because of misuse, abuse, wilful or malicious acts, negligent or reckless use or overloading of the Equipment;
iii. because of 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 time of hiring;
iv. because of the unexplained disappearance of the Equipment;
v. because of theft of the Equipment;
vi. while the Equipment is in transit, if being carried by the Hirer or an employee, contractor or agent of the Hirer.

14. Intellectual Property

Where Having a Party has designed, drawn or created goods for the Hirer, or designed or made any endorsement or modification thereto, then the copyright in any such design and drawing or creation shall reside in and remain vested in Having a Party, and shall only be used by the Hirer subject to at Having a Party's discretion.

Having a Party

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