

Terms and Conditions - Australia

1. Definitions

1.1. In these Terms and Conditions unless the context otherwise requires:

- (a) **Business Day** is a normal working day excluding Saturdays, Sundays and gazetted Public Holidays in the State of Australia in which the Equipment is delivered or collected from Microhire.
- (b) **Quotation** means the quotation for the hire of equipment/software by Microhire to the Customer which has been accepted by the Customer.
- (c) **Commencement Date** means the date upon which the Equipment and any software is delivered by Microhire to the Customer.
- (d) **Equipment** means the Equipment and any Software supplied to the Customer by Microhire from time to time in accordance with the Quotation.
- (e) **Event Recording** means the process of recording moving visual images and/or audio signal digitally.
- (f) **Force Majeure** means an act, omission or circumstance over which Microhire could not have reasonably exercised control.
- (g) **Penalty Interest Rate** means the rate prescribed by the Penalty Interest Rates Act 1983 (Vic).
- (h) **Rental Period** means the period commencing on the Commencement Date.
- (i) **Software** means programs or applications on a device.
- (j) **Terms and Conditions** means these Terms and Conditions.
- (k) **Microhire** is defined as Microhire Venue Services Pty Ltd and its associated companies and subsidiaries.

2. Interpretation

2.1. In the Interpretation of these Terms and Conditions unless the context otherwise requires:

- (a) Words denoting a person shall include corporations, statutory corporations, partnerships, joint ventures, associations, boards, governments or semi-government agencies or authorities.
- (b) Words denoting the singular number shall include the plural number and vice versa.
- (c) Words denoting any gender shall include all other genders.
- (d) A reference to a statute or a regulation also refers to any statute or regulation amending or consolidating or re-enacting same.
- (e) Money references are references to Australian currency.
- (f) Headings used in these Terms and Conditions are for convenience and ease of reference only and are not part of these Terms and Conditions and shall not be relevant or affect the meaning or Interpretation of these Terms and Conditions.
- (g) Every obligation, covenant, agreement, condition express or implied in these Terms and Conditions and entered into by more than one Party shall bind them jointly and each of them severally.
- (h) If any provision or part provision of these Terms and Conditions is held invalid, unenforceable or illegal for any reason, these Terms and Conditions shall remain



otherwise in full force apart from such provision or part provision, which shall be deemed deleted.

3. Scope

- 3.1. Microhire shall provide Equipment and Software for the duration of the Rental Period.
- 3.2. Provided that the Customer has not breached any provision of these Terms and Conditions, the Rental Period may be extended at the request of the Customer at the sole discretion of Microhire.
- 3.3. In the event that the Equipment is not returned by the expiration of the Rental Period then at the sole option of Microhire a further fee shall become due and payable at daily rate and such shall continue to accrue on the expiration of the renewed Rental Period until the Equipment is returned. In the event that Equipment is returned prior to the expiration of the Rental Period or any extended Rental Period then Microhire may give a rebate on the Hire Fees but is not obliged to do so. No claim shall be made or maintainable if Microhire determines not to give a rebate. Nothing in this sub-clause shall oblige Microhire to so extend a Rental Period.
- 3.4. The Customer acknowledges that all delivery and collection times are approximate and late delivery or collection shall not entitle the Customer to terminate this agreement or claim any compensation from Microhire.

4. Customer's Obligations

- 4.1. The Customer shall:
 - (a) pay Microhire all fees and charges payable including without limitation, Hire Fees, Service Fees, Delivery Costs, Collection Costs and Consumables.
 - (b) collect and return Equipment from and to the Delivery Address in a method approved by Microhire. In particular, but without limitation, the Customer shall not post Equipment.
 - (c) make all appropriate enquiries about Equipment's fitness for the purposes for which it is hired or used by the Customer and shall determine whether Equipment is fit for that purpose and is in a condition suitable for use.
 - (d) use Equipment only for the purpose for which it is manufactured or designed and in accordance with the manufacturer's instructions.
 - (e) clean Equipment and return it to Microhire in a clean condition, properly maintained in accordance with the manufacturer's recommendations.
 - (f) not sell, charge, pledge or part with possession of Equipment;
 - (g) keep Equipment at the address specified unless written permission has been obtained from Microhire to relocate Equipment elsewhere;
 - (h) keep Equipment in a careful and proper manner and not interfere or tamper with or let anyone else do so;
 - (i) return Equipment in the same packaging as delivery was made in. Microhire reserves the right to charge for packaging materials that are not returned.
 - (j) permit Microhire and its agents or servants to enter the premises where Equipment is located at all reasonable times in order to inspect Equipment or carry out repairs to Equipment.
 - (k) to ensure the removal of all software or web service licenses from computers, any additional costs that Microhire incurs to remove will be charged to the customer.

5. Risk



- 5.1. Risk for Equipment passes to the Customer when the Equipment leaves the Premises of Microhire or, if Microhire has agreed to deliver the Equipment to the Customer, when the Equipment is delivered to the Customer at the Customer's premises and ceases when the Equipment is delivered into the safe possession of Microhire at the Premises or, if Microhire has agreed to collect the Equipment from the Customer, when the Equipment is collected by Microhire (or its employee or agent) from the Customer's premises.
- 5.2. The Customer is responsible for the safekeeping of the Equipment and shall bear the risk of any loss, theft, damage or destruction of Equipment.
- 5.3. In the event that the Equipment requires repair as a result of the Customer's negligence, misuse or abuse, the Customer shall bear the cost of any such repair including any freight charges.
- 5.4. The Customer shall pay Microhire the new replacement cost as assessed by Microhire of the Equipment which is lost, stolen, destroyed or damaged beyond repair.
- 5.5. The Customer shall pay Microhire a reasonable refurbishing fee in the event that ownership labels, or other notices affixed to Equipment are removed or defaced.
- 5.6. Any item of irreplaceable material (including operations manuals) not returned to Microhire upon cessation of the Rental Period shall be charged to the account of the Customer at full replacement cost or \$50 whichever shall be the greater amount.
- 5.7. The Customer indemnifies Microhire and keeps Microhire indemnified against all losses, costs, expenses, damage and all liability which Microhire suffers in connection with the Customer's Event to the extent that it is caused by the negligence, willful or wrongful act of the Customer, Third Party or Contractor to the extent of such loss.

6. Maintenance

- 6.1. Microhire shall at its expense provide routine maintenance and recalibration for Equipment and shall use its best endeavours to expeditiously repair or replace Equipment which becomes defective during the Rental Period through no fault of the Customer.
- 6.2. In the event that the Equipment does not operate properly the Customer shall immediately notify Microhire and request instructions before taking remedial action.
- 6.3. Microhire may at its option and for such length of time as it deems expedient replace Equipment with another of such type or model as shall for the time being be available and Equipment so substituted shall be subject to these Terms and Conditions.
- 6.4. Microhire shall not be liable if the defect to the equipment occurs as a result of:
 - (a) improper use;
 - (b) operation of Equipment other than in accordance with the operating manual;
 - (c) modification of Equipment;
 - (d) use of Equipment in an environment other than that for which it was designed;
 - (e) use of Equipment by a person other than the Customer its employees and agents;
 - (f) the Customer's failure to allow maintenance of Equipment;
 - (g) the serial number or labels being removed or replaced.

7. Limited Warranty and Exclusion of Liability

- 7.1. Microhire warrants that each item of Equipment hired is of merchantable quality and reasonably fit for the purpose for which it was designed. All other warranties whether express, implied, statutory or otherwise, relating in any way to the subject matter of these Terms and Conditions are excluded.



7.2. Where legislation implies in these Terms and Conditions any condition or warranty and that legislation avoids or prohibits provisions in a contract excluding or modifying the application of or the exercise of or liability under such term, such term shall be deemed to be included in these Terms and Conditions. However, excluding claims in relation to personal injury and death, the liability of Microhire for any breach of such term shall be limited, at the option of Microhire, to any one or more of the following:

- (a) if the breach related to goods: the replacement of the goods or the supply of equivalent goods; the repair of such goods; the payment of the cost of replacing the goods or of acquiring equivalent goods; or the payment of the cost of having the goods repaired; and
- (b) if the breach relates to services: the supplying of the services again; or the payment of the cost of having the services supplied again.

7.3. Subject only to Clause 7.2, excluding claims in relation to personal injury and death, Microhire shall not be under any liability to the Customer in respect of any loss or damage (including, without limitation, consequential loss or damage) however caused, which may be suffered or incurred or which may arise directly or indirectly in respect to the supply of goods or services pursuant to these Terms and Conditions or the failure or omission on the part of Microhire to comply with its obligations under these Terms and Conditions including, without limitation, negligence.

8. Title

- 8.1. Microhire retains all rights and title in the Equipment, including without limitation any intellectual property rights, and title in the Equipment.
- 8.2. The Customer acknowledges that its use of the Microsoft Software accompanying the Equipment rented is governed by the Microsoft End User Licence Agreement a copy of which can be referred to on the Microsoft website www.microsoft.com
- 8.3. The use of any Software supplied by Microhire is subject to the Terms and Conditions of the relevant End User Licence Agreement which is incorporated into these Terms and Conditions.

9. Purchase of Equipment

- 9.1. In the event that the Customer seeks to purchase the Equipment and Microhire agrees to sell the Equipment the property therein shall not pass until and unless all Hire Fees and the purchase price have been received by Microhire and the payments shall be applied first in reduction of Hire Fees and second on account of the purchase price. Hire Fees shall continue to accrue until the full purchase price has been paid.

10. Force Majeure

- 10.1. Microhire shall not be liable for any delay or failure to perform its obligations if such a failure or delay is due to Force Majeure.

11. Waiver

- 11.1. No right of Microhire shall be deemed to be waived except by notice in writing from Microhire.
- 11.2. Any failure by Microhire to enforce any clause of these Terms and Conditions, or any forbearance, delay or indulgence granted by a Party will not be construed as a waiver of Microhire's rights.

12. Notices

- 12.1. Notices under these Terms and Conditions may be delivered by hand, by mail, facsimile or e-mail to the address set out in the Delivery Docket.



12.2. Notices shall be deemed given, in the case of:

- (a) hand delivery, upon written acknowledgment of receipt by an officer or other duly authorised employee, agent or representative of the receiving Party;
- (b) posting, three days after dispatch;
- (c) facsimile, upon completion of transmission; and
- (d) e-mail, immediately after dispatch.

13. Fees

- 13.1. The Customer shall pay Microhire the Hire Fees on delivery, in advance or as per agreement noted on the formal quotation or 14 days from the date of invoice without withholding, deduction or offset of any amounts for any purpose.
- 13.2. Microhire may increase its Hire Fees at any time upon thirty (30) days' notice to the Customer.
- 13.3. Except to the extent stated to the contrary in a Delivery Docket, Hire Fees are exclusive of taxes, duties, fees or other government levies or charges which may be imposed on or in respect of the Equipment. Such taxes, duties, fees or other government charges shall to the extent permissible by law be paid by the Customer to Microhire.
- 13.4. The Customer shall pay Microhire interest from the due date until payment is made to Microhire at the rate specified from time to time under the Penalty Interest Rates Act (Vic).
- 13.5. If any payment owing to Microhire is not made within 14 days of the due date, or as per agreed period noted on formal quotations, Microhire may, without further notice to the Customer, suspend further services or its remaining obligations to the Customer under these Terms and Conditions.
- 13.6. The Customer may be required to pay to Microhire a charge as specified in the Schedule hereto prior to the commencement of any services in respect of the cost of manufacturing and/or pre production or sub contract of services for the supply of such production and/or entertainment.
- 13.7. If the Customer cancels an order within 72 hours of the Event delivery date, the Customer will be liable to pay to Microhire within 7 days of invoice, full payment of the estimated services, in addition to any pre production costs, as detailed herein.
- 13.8. The Customer will be liable to reimburse Microhire the full amount of the contract sum should the Customer cancel an order, production or manufacturing costs incurred by Microhire.

14. Event Data and Digital Services

- 14.1. Should the Customer hire a computer from Microhire, the Customer accepts that Microhire is required to delete the data from the computer equipment and destroy all copies of data following the conclusion of the Event.
- 14.2. Should the Customer require a copy of the data, prior to the Event, the Customer must request a copy of the data in written form at least 48 hours prior to commencement of the Event.
- 14.3. Should the Customer order digital services from Microhire, Microhire will employ due diligence in maintaining the secure storage of all client data, and the Customer accepts that Microhire is required to delete all client data from their systems and destroy all copies of data upon completion of the service.
- 14.4. Any associated Third Party fee, such as telephone or internet services, within the timeframe and format as specified by Microhire in a usable and uncorrupted format at the Customers expense.
- 14.5. The Customer is at all times responsible and liable for compliance with relevant human rights legislation, workplace safety and copyright.



- 14.6. Should the Customer request an Event Recording, Microhire will provide a copy of the Event Recording with no guarantees or liabilities provided such request is made in writing by the Customer to Microhire prior to the event with adequate time for Microhire to organise the service. It is acknowledged by the Customer that Microhire shall delete any Event Recording after compliance with a written request by the Customer.
- 14.7. The Customer acknowledges to Microhire that the technology, telecommunications and systems utilised by Microhire to provide Event data and digital services, involve inherent interruptions, delays and/or failure of transmission or access.
- 14.8. To the fullest extent permitted by law and without limitation, Microhire is excluded from all liability for any failure, interruption, loss of data or delay in any Event data, Event Recording or digital services arising from any failure to the extent that the failure is beyond Microhire's reasonable control.
- 15. Termination**
- 15.1. Without limiting the generality of any other clause in these Terms and Conditions, Microhire may terminate these Terms and Conditions immediately by notice in writing if:
- (a) any payment due from the Customer to Microhire pursuant to these Terms and Conditions remains unpaid for a period of 7 days;
 - (b) the Customer breaches any provision of these Terms and Conditions and such breach is not remedied within 14 days upon receipt of notice by Microhire served pursuant to clause 12 herein;
 - (c) the Customer is otherwise no longer capable of complying with its obligations under these Terms and Conditions; or
 - (d) the Customer becomes, threatens or resolves to become or is in jeopardy of becoming subject to any form of insolvency administration; the Customer being a partnership, dissolves, threatens or resolves to dissolve or is in jeopardy of dissolving; the Customer being a natural person, dies; or the Customer ceases or threatens to cease conducting its business in the normal manner.
- 15.2. If these Terms and Conditions or any Delivery Docket is terminated then Microhire may in its sole discretion:
- (a) retain all moneys paid, which is agreed to be a genuine estimate of part of Microhire's loss and damage suffered;
 - (b) charge a reasonable sum for Equipment supplied in respect of which no sum has been previously charged;
 - (c) be regarded as discharged from any further obligations under these Terms and Conditions; and
 - (d) enter upon the premises of the Customer, the consent to which is hereby granted by the Customer, and repossess the Equipment. All such reasonable costs of repossession are the responsibility of the Customer and shall be added to Hire Fees.
 - (e) pursue any additional or alternative remedies provided by law.
- 15.3. The covenants, conditions and provisions of these Terms and Conditions which are capable of having effect after the expiration of these Terms and Conditions shall remain in full force and effect following the expiration of the Terms and Conditions.



16. Entire Agreement

16.1. These Terms and Conditions constitute the entire agreement between the parties for the subject matter referred to in these Terms and Conditions. Any prior arrangements, including without limitation, verbal arrangements, agreements, representations or undertakings are superseded.

16.2. No modification, variation or alteration of any provision of these Terms and Conditions shall be valid except in writing signed by each Party.

17. Governing Law

17.1. These Terms and Conditions will be governed by and construed according to the law of the State of Victoria.

17.2. The parties irrevocably submit to the exclusive jurisdiction of the Courts of Victoria and Australia and any Courts hearing appeals from such Courts.

