

TERMS AND CONDITIONS OF HIRE

The following Terms and Conditions must be accepted by the "Hirer" prior to "Harts" 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 Harts to the Hirer and "hire of goods" includes any services provided by Harts in 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;

"Harts" means Harts Corporation (Aust) Pty Ltd, Harts Party Hire and or Harts Premier Hire Service;

"Hire Period" means the time from when the goods leave the store used by Harts until they return to it;

"Hirer" means the person, firm or company, jointly and severally if more than one, hiring goods from Harts;

"Site" means the site to which the goods are delivered;

"Terms" means these Terms and Conditions of Hire.

2. Basis of Contract

2.1 The Terms apply exclusively to every contract for the hire of goods by the Hirer from Harts and cannot be varied or supplanted by any other terms without the prior written consent of Harts.

2.2 A written quote provided by Harts to the Hirer regarding the proposed hire of goods is valid for 30 days and is an invitation only to the Customer to place an order based upon that quote. Any terms in Harts' quote form part of the Terms and if inconsistent will prevail.

2.3 If an order placed by the Customer is accepted by Harts, Harts 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 All amount quoted is for use of the goods on one day only. Each additional day's use incurs an additional charge of 25% of daily rate.

3.3 Unless otherwise specified, any quotation assumes:

- (a) delivery, installation, removal and return of goods being provided during ordinary working hours;
- (b) delivery being made to street level;
- (c) grounds or floors being level and clear;
- (d) the Customer unpacking, setting out, repacking and cleaning of goods.

3.4 Any variation to the assumptions in clause 3.2 and 3.3 will incur further charges payable by the Hirer for additional equipment used, time spent or overtime rates by Harts.

3.5 Prices for the hire of goods exclude GST. In addition to the amount payable, the Hirer must pay to Harts the GST payable or remittable by Harts for any goods and services provided.

4. Invoicing, payment and bonds

4.1 Payment for hire of goods and services must be made by:

- (a) 50% of the total quoted fee on ordering; and balance on delivery, or
- (b) if order placed less than 7 days from delivery, then payment in full is required to confirm the booking.

4.2 Payment must be made by cash, EFT, credit card or EFTPOS.

4.3 Harts may require a security bond to be paid in addition to any Hire fees. Harts may apply the security bond against any amounts payable by the Hirer under the Terms.

4.4 Any portion of the security bond not applied will be refunded by cheque posted within ten days of return of goods.

5. Variation and Cancellation

5.1 If through circumstances beyond the control of Harts, Harts is unable to provide goods, then Harts 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 may cancel an order but will forfeit all booking deposits and if cancellation is less than seven days prior to the event, the hire fee in full.

6. Delivery and collection

6.1 Goods will be delivered in a reasonably clean, but not necessarily sterile, state. The Hirer is responsible to ensure any goods from which food or drinks are to be served are fit for use.

6.2 The Hirer must allow Harts' 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 Harts, its employees or agents while at the Site.

6.3 The Hirer must make the goods available for collection by Harts packed in their respective containers and crates at the end of the Hire Period in a complete, clean and dry state.

6.4 Harts' count and decision as to condition of goods prior to despatch and on return shall be final

7. Responsibility of Hirer

7.1 The Hirer bears all risk in the goods for the Hire Period.

7.2 During the Hire Period, the Hirer is responsible for:

- (a) safekeeping of the goods during the Hire Period;
- (b) using of the goods in strict conformity with the goods' instructions or specifications;
- (c) not using pigmented streamers or decorations within or near any marquee hired;
- (d) ensuring that the goods are not moved from the Site, unless in an emergency and Harts is advised immediately afterwards;
- (e) complying with all relevant laws, by-laws and regulations applicable to the installation, use and operation of the goods;
- (f) protecting the goods against soilage, damage, fire, theft, distress or seizure;
- (g) using only fuel, power and consumables specified by Harts; and
- (h) ensuring that the goods are not operated for any purpose beyond their rated capacity or in a manner likely to result in undue wear.

8. Damage Waiver

8.1 Subject to clause 7, if the Hirer pays the Damage Waiver fee, Harts agrees to waive its rights for loss or damage to the goods caused by fire, storm, collision, accident, theft or burglary.

8.2 Damage waiver will not apply and the Hirer remains liable where:

- (a) the Hirer has not promptly submitted a written report (and in the case of theft, a copy of the police report) relating to the damaged or missing goods;

(b) the Hirer has not taken reasonable precautions to safeguard the goods;

(c) the Hirer has not complied with clause 7 of the Terms;

(d) accessories or packaging are lost or damaged;

(e) goods have been carried or used the over water;

(f) Loss or damage to marquees, tarpaulins, walling or other hired goods has been caused by pigmented colours, heaters, catering equipment, or catering odours.

(g) damage to goods has been caused by graffiti or vandalism.

9. Breakdown or defect

9.1 The Hirer must inspect all goods on receipt and notify Harts within 24 hours of delivery. Any shortages not notified within this time will be charged for in full.

9.2 Breakdowns or defects in the goods resulting from:

- (a) proper and ordinary use; or
- (b) the development of an inherent fault or a fault not ascertainable prior to start of the Hire Period; may, at Harts' option, either be repaired or the goods replaced at Harts' expense.

9.3 If 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 Harts will not have any other liability whatever to the Hirer.

9.4 No relief from hire charges nor any claims will be allowed by Harts:

- (a) for stoppages due to causes out of Harts' control including, without limitation, bad weather or Site conditions; or
- (b) the Hirer not informing Harts of the defect or breakdown immediately it occurs.

9.5 The Hirer must not try to effect any repairs on the goods.

10. Default and Termination

10.1 If the Hirer:

- (a) breaches any term of the Terms;
- (b) is an individual and becomes bankrupt or enters into any scheme of arrangement or composition for the benefit of his or her creditors;
- (c) is a corporation and becomes insolvent or enters into any scheme of arrangement, any assignment or composition with or for the benefit of its creditors, has as a liquidator, administrator, receiver or manager appointed, or any action is taken for winding up or dissolution; then Harts may, without prejudice to any other remedy available to it:
- (d) require immediate payment of all money which would become payable by the Hirer to Harts at a later date on any account, without further notice;
- (e) charge the Customer interest on any sum due at the prevailing rate pursuant to the *Penalty Interest Rates Act 1983 (Vic)* plus 4 per cent for the period from the due date until the date of payment in full;
- (f) charge the Hirer for, and the Customer must indemnify Harts from, all costs and expenses (including without limitation all legal costs and expenses) incurred by it resulting from the default or in taking action to enforce compliance with the Terms or to recover 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 for such period as Harts thinks fit, supply of any further goods to the Hirer.

10.2 On termination, the Hirer must immediately make the goods available for collection. If the Hirer does not, Harts is entitled to enter any premises of the Hirer where the goods are suspected to be to repossess the goods. Harts will not be liable for any damage caused and the Hirer must indemnify Harts from any liability to it or any third party in respect of any damage, demands, proceedings, costs and expenses howsoever arising.

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 Harts' liability howsoever 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 Force Majeure - If Harts is unable at any time to perform any of its obligations whether wholly or partly by reason of any cause beyond its control (including without limitation, acts of God, inclement weather, strikes, lockouts, fires, riots, civil commotion or unrest, interference by civil or military authorities or act of war) Harts may give written notice to that effect to the Hirer, giving full particulars of such force majeure in which case the obligations of the Tenderer under this tender shall, to the extent that they are affected by the force majeure, be suspended during the term of the Force Majeure. Harts shall not be 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 to any other party for any loss or damage suffered by the Hirer as a result of any delays caused by such force majeure events.

11.4 Harts will not be liable for any loss or damage suffered by the Hirer where Harts has failed to meet any delivery date or varies, cancels or suspends the supply of the 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 the 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 law of Victoria from time to time governs 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 Harts to enforce any of these Terms shall not be construed as a waiver of any of Harts' 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.