

# MODERN PARTY - TERMS & CONDITIONS OF HIRE

## 1. DEFINITIONS

In these Conditions:

- (a) “**Commencement Date**” means the Commencement Date specified in the Invoice;
- (b) “**Conditions**” means these Terms and Conditions of Hire;
- (c) “**Contract**” means the contract between the Owner and the Hirer for the hiring of the Equipment (once an order has been accepted by the Owner) in accordance with these Conditions and the Invoice;
- (d) “**Damage Waiver Fee**” means the amount that is equal to 8% of the Hire Fee and as otherwise specified in the Invoice;
- (e) “**Equipment**” means all the equipment and accessories supplied by the Owner to the Hirer;
- (f) “**Force Majeure Event**” means an event or circumstance beyond the reasonable control of the Owner, including, but not limited to, acts of God, war, rain, hail, wind, fire, explosion, civil disobedience, legislation not in force at the date of the Contract or labour disputes;
- (g) “**GST**” means a tax, duty, levy, charge or deduction, imposed by the *A New Tax System (Goods and Services) Tax Act 1999* (or any other act imposing a goods and services tax in Australia) and any related interest, penalties, fines or other charges;
- (h) “**Hire Fee**” means the amount payable by the Hirer to hire the Equipment as specified in the Invoice;
- (i) “**Hirer**” means the person, firm or corporation hiring the Equipment from the Owner and includes the Hirer’s agent;
- (j) “**Invoice**” means the tax invoice issued to the Hirer by the Owner in relation to the hiring of the Equipment;
- (k) “**Replacement Fee**” means the amount to replace damaged or lost Equipment as notified by the Owner to the Hirer from time to time;
- (l) “**Term**” means the duration of the Contract between the Owner and the Hirer as specified on the Invoice;
- (m) “**Total Fee**” means the Hire Fee and the Damage Waiver Fee;
- (n) “**Owner**” means DC Investments (SA) Pty Ltd ABN 64 157 873 562 trading as Modern Party Hire of 19/22 Ware Street, Thebarton SA 5031.

## 2. CONDITIONS OF HIRE

- (a) These Conditions apply to the Equipment hired by the Hirer.
- (b) If the Hirer agrees to be bound by these Conditions by signing this document, providing its electronic signature consent or otherwise (**Consent**), the Hirer also agrees that these Conditions apply to the hire of all Equipment by the Hirer during the calendar year in which such Consent was given (without the need for the Hirer’s signature, electronic signature consent or other form of consent to be given on more than one occasion during this period).
- (c) The Hirer will hire the Equipment from the Owner from the Commencement Date.
- (d) Subject to compliance with these Conditions, the Hirer is entitled to use the Equipment for the duration of the Term.
- (e) Any extension of the Term must be agreed to by the parties in writing.
- (f) The Hirer must not remove Equipment which has been securely installed without the prior written consent from the Owner.
- (g) The Hirer agrees and acknowledges that it has received adequate instructions from the Owner regarding the correct and safe use of the Equipment, which may include physical demonstration or verbal or written instructions.
- (h) The Hirer must not use the Equipment at locations or for purposes different to the Equipment’s general designated purpose and specified suitability (such as indoor versus outdoor use).
- (i) While the Hirer has possession of the Equipment, the Hirer acknowledges responsibility for the Equipment and is liable in accordance with these Conditions for any damage, loss or destruction thereto.

## 3. PAYMENT

- (a) The Hirer agrees to pay the Owner the Total Fee and Replacement Fee including any applicable GST, stamp duties, penalties, levies or freight and other charges relevant to these Conditions.
- (b) The Hirer must pay the Total Fees upfront for orders placed (and accepted by the Owner) within 7 days from the required delivery/collection date of the Equipment.
- (c) Subject to clause 3(b), the Hirer must pay the Owner 30% of the Total Fees upon acceptance of the order by the Owner.
- (d) Subject to clause 3(b), the Hirer must pay the balance of the Total Fees to the Owner at least 48 hours prior to the scheduled delivery or collection of the Equipment.
- (e) The Owner has no obligation whatsoever to hire, deliver or allow collection of the Equipment until the Total Fees are paid in full.
- (f) A daily Hire Fee will apply to any Equipment not returned on time until the time the Equipment is returned to the Owner (part days will be treated as a whole day).
- (g) All payments must be made to the Owner by credit card, bank transfer or cash in Australian currency.
- (h) The Owner may require certain security details (such as proof of identification or personal or third party guarantees) prior to accepting an order to hire the Equipment. The Owner has the right to not accept an order until sufficient security is provided (as determined in the Owner’s absolute discretion).
- (i) All prices on the Owner’s website are in Australian Dollars (AUD).

## 4. CANCELLATION

- (a) Subject to the provisions of this clause 4, the Hirer may terminate the Contract or cancel its order for some of the Equipment upon providing to the Owner written notice of such termination or cancellation prior to the Commencement Date.
- (b) If the Hirer wishes to cancel the hiring of some Equipment, it must clearly identify (in the notice provided to the Owner pursuant to clause 4(a)) each and every item of the Equipment which the Hirer no longer requires.
- (c) The Hirer agrees and acknowledges that if it terminates a Contract or cancels its order for some of the Equipment, it will be liable to pay the Owner (by way of liquidated damages and not by way of penalty):
  - 1. 30% of the Total Fees (applicable to the Equipment no longer required) if written notice of termination or cancellation is received by the Owner more than 21 days before the Commencement Date;
  - 2. 50% of the Total Fees (applicable to the Equipment no longer required) if written notice of termination or cancellation is received by the Owner more than 24 hours before the Commencement Date; or
  - 3. 100% of the Total Fees (applicable to the Equipment no longer required) if written notice of termination or cancellation is received by the Owner within 24 hours of the Commencement Date.
- (d) The Owner may retain any pre-payments received by the Hirer as part of or full payment for the amounts payable by the Hirer pursuant to clause 4(c).
- (e) The Owner has no obligation whatsoever to hire any Equipment to the Hirer that is subject to a cancelled order or terminated Contract.

## 5. DELIVERY AND RETURN

- (a) Delivery, collection and/or return of the Equipment is at the Hirer’s expense.
- (b) The Hirer must sign all delivery documentation requested to be signed by the Owner and/or the forwarding carrier.
- (c) The Equipment shall be returned in a reasonably clean, but not necessarily sterile state or a cleaning fee may apply.

- (d) All Equipment comprising of crockery, cutlery and glassware must be rinsed, cleaned (with all food matter removed) and dried before being returned to the Owner. If crockery, cutlery or glassware is not returned in a clean condition (as determined by the Owner in its absolute discretion), the Hirer will be charged and agrees to pay the Owner a cleaning fee of \$0.25 per item.
- (e) If the Owner is required to deliver Equipment, the Hirer must provide safe and proper access to the delivery site, including making sure that the site will be clear of all obstructions to allow the Owner to erect, install or place the Equipment safely.
- (f) The Hirer is liable for and indemnifies the Owner on a full indemnity basis, its employees or agents against all injury, death, loss or damage suffered by any of them while at the delivery site, unless such injury, loss or damage is caused by the negligence of the Owner, its employees or agents.
- (g) The Hirer agrees and acknowledges that it will pay the Owner additional delivery charges (as reasonably determined by the Owner) for delivery of any Equipment above or below street level at the delivery site.

## 6. PICK UP/COLLECTION

- (a) If the Hirer collects the Equipment from the Owner's premises, the Hirer will be required to show their drivers license or passport identification in which a copy will be taken for security measures by the Owner.
- (b) The Owner, its employees or agents must witness the return of any Equipment to the Owner's premises.
- (c) If any Equipment is returned not in accordance with clause 6(b), the Hirer agrees and acknowledges that it will be responsible for any loss or damage to such Equipment.

## 7. DAMAGE AND DAMAGE WAIVER FEE

- (a) The Hirer is responsible for the Equipment from the time of delivery/collection until collection/return by or to the Owner.
- (b) Subject to clause 7(c), the Hirer agrees and acknowledges that it must pay for all damage to or loss of the Equipment however caused during that period.
- (c) Payment of the Damage Waiver Fee by the Hirer is optional. Subject to clause 7(d), if paid by the Hirer, the Damage Waiver Fee covers all costs associated with normal wear and tear and damage to the Equipment hired, however the Damage Waiver Fee does not relieve the Hirer of its liabilities under clause 7(b) to pay for lost Equipment or damaged Equipment if such damage is a result of:
  1. overloading, exceeding rated capacity, misuse, abuse or improper servicing of the Equipment;
  2. the use or operation of the Equipment is in contravention of these Conditions;
  3. any unknown cause;
  4. cigarette burns, marks or stains on any furniture or décor items;
  5. red wine or any other significant (as determined by the Owner in its absolute discretion) stains on any furniture or décor items;
  6. candle wax on linen or other material products;
  7. the weather (including without limitation sun, heat, cold, rain, hail, wind or storm); or
  8. Equipment which is sub-hired or sub-leased with the consent of the Owner.
- (d) Payment of the Damage Waiver Fee by the Hirer will only cover damaged glassware and/or crockery up to the amount of the Damage Waiver Fee. The Hirer will be responsible for and liable to pay the Owner the Replacement Fee for all damaged glassware and/or crockery that exceeds the amount of the Damage Waiver Fee.
- (e) The Hirer must return to the Owner (at the Hirer's expense) all damaged Equipment, otherwise such Equipment will be classified as lost.
- (f) Unless the Owner offers damaged Equipment for sale to the Hirer or damage to Equipment is covered by the Damage Waiver Fee, the Hirer agrees and acknowledges that it must pay the Owner:
  1. the Replacement Fee for all Equipment that is lost or damaged to the extent that it cannot be re-hired by the Owner; or
  2. if such damaged Equipment can be repaired for less than the Replacement Fee, the amount it will reasonably cost the Owner to repair such Equipment (as determined by the Owner in its absolute discretion).

## 8. EQUIPMENT FAULT

In the event that the Equipment breaks down or becomes unsafe to use during the Term, the Hirer must:

- (a) immediately stop using the Equipment and notify the Owner in writing;
- (b) take all steps necessary to prevent injury or death occurring to persons or property as a result of the condition of the Equipment;
- (c) take all steps necessary to prevent any further damage to the Equipment itself; and
- (d) not repair or attempt to repair the Equipment without the prior written consent of the Owner.

## 9. SUBSTITUTION

The Owner reserves the right at any time to substitute any portion of the Equipment ordered by the Hirer with Equipment of similar or like description or performance.

## 10. INSURANCE

- (a) It is the Hirer's responsibility to obtain any and all proper and appropriate insurances (such as public and property liability insurance and insurance coverage for the full replacement value of the Equipment) in respect of and in connection with the hire of the Equipment.
- (b) The Hirer acknowledges that the Owner may refuse the hiring, delivery or collection of Equipment unless the Hirer has taken out appropriate insurance policies (as determined by the Owner in its absolute discretion) and provides the Owner with certificates of currency of such insurance policies.

## 11. DEFAULT EVENTS

- (a) A "Default Event" will occur if the Hirer:
  1. breaches any of these Conditions and fails to rectify such breach within seven (7) days of being requested by the Owner to do so;
  2. breaches any of these Conditions and such breach cannot be remedied; or
  3. becomes insolvent as defined in the Corporations Act 2001 (Cth), goes into liquidation or commits an act of bankruptcy under the Bankruptcy Act 1966 (Cth).
- (b) If a Default Event occurs, the Owner may terminate the Contract and without previous notice to the Hirer, enter any site or premises where the Owner deems the Equipment to be situated and re-possess such Equipment.

## 12. ACKNOWLEDGMENT OF OWNERSHIP

The Hirer agrees and acknowledges that the Owner remains the legal owner of the Equipment at all times and these Conditions do not give any rise to any hire purchase agreement, leasing agreement, or an option to buy the Equipment.

## 13. ASSIGNMENT

The Contract for the hire of Equipment is personal to the Hirer and must not be assigned without the prior written consent of the Owner (which consent may be withheld in the Owner's absolute discretion).

## 14. SUB-HIRE OR SUB-LEASE

The Hirer must not sub-hire or sub-lease the Equipment without the prior written consent of the Owner (which consent may be withheld in the Owner's absolute discretion or given subject to such conditions as the Owner sees fit).

**15. FORCE MAJEURE**

The Owner will not breach these Conditions and will not be liable to the Hirer for any delay or failure to perform its obligation under this agreement due to a Force Majeure Event.

**16. INDEMNITY**

The Hirer hereby indemnifies and must keep indemnified (on a full indemnity basis) and releases and forever holds harmless the Owner, its employees and agents for any losses, expenses, costs, damages, injuries, death, proceedings, claims and demands of every description (**Losses**) arising directly or indirectly in relation to the Hirer's use of the Equipment, the Hirer's breach of these Conditions or the Owner's enforcement of any of its rights under these Conditions or generally under law, unless such Losses result from the negligence of the Owner, its employees or agents.

**17. AUTHORITY**

- (a) Any person signing these Conditions on behalf of the Hirer hereby covenants that he or she has the authority to sign on behalf of and bind the Hirer to these Conditions.
- (b) Where the Hirer is more than one person liability shall be joint and several.

**18. SEVERENCE**

- (c) If a contract constituted by these Conditions is a 'consumer contract' or 'small business contract' (each as defined in the Australian Consumer Law in Schedule 2 to the Competition and Consumer Act 2010 (Cth) (**ACL**)) and a term of that contract would, but for this clause be 'unfair' (as defined in section 24(1) of the ACL), the Owner may only apply or rely upon that term to the extent that doing so is reasonably necessary to protect the Owner's legitimate interests.
- (d) If any provision of these Conditions are not enforceable in accordance with its terms, other provisions which are self-sustaining are, and continue to be, enforceable in accordance with their terms.
- (e) If any part of these Conditions is invalid or unenforceable, that part is deleted and the remainder of the Conditions remains effective.

**19. ENTIRE AGREEMENT**

The Contract constitutes the entire agreement between the parties relating in any way to its subject matter, unless agreed to otherwise by the Owner and Hirer in writing.

**20. GOVERNING LAW**

These Conditions are governed by the laws of South Australia and the Hirer and the Owner submit to the jurisdiction of the courts of South Australia.

**SIGNATURE CONSENT**

By signing here, you acknowledge you have reviewed and accept the terms & conditions of hire.

FULL NAME: \_\_\_\_\_

INVOICE NUMBER (If applicable): \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

DATE: \_\_\_\_\_