

# TERMS AND CONDITIONS FOR THE HIRE OF GOODS AND EQUIPMENT



These Terms and Conditions for the Hire of Goods and Equipment (***Terms and Conditions***) together with the Sales Document and Addendum (if applicable) form the ***Agreement*** between the trustee for the Adelaide Event Group Unit Trust trading as White Marquee Event Hire (ABN 88 798 652 056) (***White Marquee***) and you (the ***Hirer***).

It is important you read the Terms and Conditions before accepting the Sales Document.

## THE PARTIES AGREE AS FOLLOWS:

### 1 Interpretation

#### 1.1 Definitions

The following definitions will apply in this Agreement (unless the context indicates otherwise):

**Addendum** means the supplementary document that outlines in further detail the Equipment that is being hired and the Special Conditions that apply.

**Agreement** means these Terms and Conditions, the Sales Document and the Addendum (to the extent applicable).

**Booking Fee** means 10% of the total Hire Fee payable in accordance with the terms of the Agreement.

**Cancellation Fee** means the fee payable by the Hirer to cancel the hire, as calculated in accordance with the terms of this Agreement.

**Client Pickup Date** is the date that the Equipment must be picked up by the Hirer from White Marquee Premises, as specified in the Sales Document.

**Client Return Date** is the date that the Equipment must be returned to White Marquee Premises by the Hirer, as specified in the Sales Document.

**Collection Date** is the date that the Equipment will be collected from the Site by White Marquee, as specified in the Sales Document.

**Commencement Date** is the Delivery Date or the Client Pickup Date, as specified in the Sales Document.

**Confidential Information** of a party is all technical, financial, commercial and other information (in whatever medium) of or relating to it or its business affairs, which is disclosed or available to, or observed or accessible by, the other party in connection with this Agreement which: (a) is marked as 'confidential', 'sensitive', 'private' or any other similar description; or (b) a reasonable person would (given its nature) consider confidential, but excluding information that: (c) is readily available in the public domain without breach of confidentiality; or (d) the receiving party can establish by written records is or has been legally known to, developed by, or acquired by, that receiving party, independently of this Agreement.

**Custom Equipment** means Equipment that has been customised by White Marquee based on the Hirer's custom specifications.

**Damage Waiver Fee** is an optional fee of 8% of the Hire Fee, applied to the insurance and waiver of the Equipment that is hired by the Hirer.

**Delivery Date** is the date that the Equipment will be delivered to the Site by White Marquee, as specified in the Sales Document.

**Deposit** means the part payment made to secure the hire prior to the Delivery Date or Client Pickup Date.

**Equipment** means the plants, products, goods, Equipment, etc, that White Marquee will hire to the Hirer under this Agreement.

**GST** means goods and services tax as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (***GST Law***).

**Hire Fee** is the total fees payable for the hire of the Equipment, as outlined in the Sales Document.

**Hire Period** means:

- (a) the period from the Delivery Date to the Collection Date; or

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(b) the period from the Client Pickup Date to the Client Return Date, as specified in Sales Document.

**Hirer** means the legal entity or person hiring the Equipment from White Marquee Event Hire.

**Missing Equipment** means Equipment that is not returned by the Hirer to White Marquee at the completion of the Hire Period.

**Premises** is White Marquee's Premises located at 264 Richmond Road, Marlestone, SA, or as otherwise notified to the Hirer.

**Quote** is the quote for the hire of Equipment provided by White Marquee.

**Sales Document** means the Quote and or Tax Invoice.

**Services** means the services to be provided by White Marquee under this Agreement, as outlined in the Sales Document.

**Site** means the designated place, venue, or location at which the Equipment is to be delivered to and the designated place the Hirer is to take possession of the Equipment.

**Special Conditions** means the special conditions that apply to the hire of the Equipment, as set out in the Addendum.

**Sub-hire Equipment** means Equipment that White Marquee has sub-hired from another Equipment provider.

**Tax Invoice** is the tax invoice for the Equipment and or Services provided by White Marquee.

**Venue** means the place where the Equipment is to be used by the Hirer.

## 1.2 Interpretation

In this Agreement unless the context otherwise requires:

- (a) words importing any gender include every gender;
- (b) words importing the singular number include the plural number and vice versa;
- (c) words importing persons include firms, companies and corporations and vice versa;
- (d) any obligation on any Party not to do or omit to do anything is to include an obligation not to allow that thing to be done or omitted to be done;
- (e) the headings to the clauses and schedules of this Agreement are not to affect the interpretation;
- (f) any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment;
- (g) a reference to any party includes their lawful successors and or assignee;
- (h) the word "including" (and related forms including "includes") means "including without limitation"; and
- (i) a reference to \$ or dollars is to Australian dollars.

## 2 Formation of Agreement

- 2.1 White Marquee may provide the Hirer a Quote. A Quote provided by White Marquee Event Hire is only valid for 30 days and does not guarantee the availability of Equipment. If the Quote is accepted by the Hirer, White Marquee will issue the Hirer with a Sales Document as soon as practicable.
- 2.2 The parties acknowledge and agree that an Agreement is entered into the earlier of the Hirer accepting a Quote or a Tax Invoice. The Hirer is deemed to accept a Quote or Tax Invoice upon:
  - (i) The Hirer accepting the Quote or Tax Invoice (as the case may be) in writing;
  - (ii) The Hirer signing the Addendum (if applicable); or
  - (iii) The Hirer pays the Booking Fee, the Deposit or the Hire Fee.

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- 2.3 White Marquee may allow a Hirer to make orders for the hire of Equipment online via the White Marquee website. The parties acknowledge and agree that an order made online is merely an invitation to treat, and may be rejected by White Marquee. If the Equipment is not available on a particular date the online order will be rejected.

### 3 Hire Period

- 3.1 The hire will commence from the Commencement Date and continue for the Hire Period.
- 3.2 The Hirer is entitled to use the Equipment for the hire period subject to the terms of this Agreement.
- 3.3 Any extension of the Hire Period must be expressly agreed to in writing by White Marquee before the expiration of the Hire Period.

### 4 Hire of Equipment

- 4.1 The Hirer may undertake the Equipment in the manner agreed with White Marquee (and specified in the Sales Document), including:
- (i) receipt of delivery of the Equipment by White Marquee to the Site; and collection of the Equipment by White Marquee from the Site; or
  - (ii) pick-up of the Equipment by the Hirer from White Marquee's Premises; and return of the Equipment by the Hirer to White Marquee's Premises.
- 4.2 Unless otherwise specified, the parties acknowledge and agree:
- (i) delivery, collection, installation, removal and return of Equipment being hired will be conducted during business hours;
  - (ii) any delivery of Equipment will be made to street level or ground floor and clear of obstruction;
  - (iii) the Hirer is responsible for unpacking, setting out, repacking and cleaning of Equipment.
- Any variation to the assumptions in this clause 4.2, may incur further charges payable by the Hirer.
- 4.3 Where White Marquee agrees to make Equipment delivery and collection arrangements to and from the Hirer's Site, the Hirer will pay to White Marquee any charges and expenses incurred in such delivery, installation and/or collection. White Marquee will use its endeavors to deliver the Equipment at the requested time but will not be liable to the Hirer for a late delivery or non-delivery.
- 4.4 Where White Marquee agrees to collect the Equipment, White Marquee will arrange to pick-up the Equipment within a reasonable period after a request to do so. For the avoidance of doubt, the Hirer agrees to maintain the responsibility for the Equipment whilst it is awaiting pick-up.
- 4.5 Where the parties have agreed that the Hirer will pick up and return the Equipment to White Marquee's Premises, the Hirer is required to:
- (i) provide photo identification - e.g. Driver's Licence, Student or Senior Card, on collection of Equipment;
  - (ii) check the Equipment is the correct quantity, clean and in good working order before leaving White Marquee's Premises;
  - (iii) if required by White Marquee, sign a separate Rental Agreement;
  - (iv) return the Equipment prior to or on the expiration of the Hire Period;
  - (v) upon return of the Equipment, sign a Return Document stating the Equipment has been returned to White Marquee in good condition and the correct quantities – and any variations/damaged items are to be reported.
- 4.6 Upon commencement of the Hire Period, the Hirer must inspect the Equipment. Unless otherwise agreed in the Special Conditions, and without limiting any other provision of this Agreement, on completion of the inspection, the Hirer will be deemed to have satisfied itself

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that the Equipment is suitable, fit for purpose, of merchantable quality and capable of meeting all the requirements of the Hirer.

- 4.7 Any damage or malfunctioning of Equipment must be notified by the Hirer to White Marquee as soon as possible (and in any case, no later than 24 hours following receipt of the Equipment).
- 4.8 Upon completion of the Hire Period, the Equipment must be inspected by the Hirer to determine whether the Equipment to be returned to, or collected by, White Marquee is complete and is in good order in accordance with the Agreement.
- 4.9 Where White Marquee is to collect the Equipment at the expiration of the Hire Period, the Hirer must make it available for collection in good order, including (but not limited to) in the following manner:
  - (i) Furniture stacked neatly;
  - (ii) Glassware (rinsed) packed upright in boxes;
  - (iii) Crockery and Cutlery must be washed, dried, and packed in crates;
  - (iv) Tableware must be rinsed of food and dried. Should dirty tableware be returned, the Hirer will be charged an additional cleaning fee of \$0.45 per piece;
  - (v) Linen can be returned soiled but must be dry. Any linen items returned with burn marks, wax marks, tears, holes, or any other abnormalities will be charged to the Hirer at the full replacement cost;
  - (vi) If any goods are returned dirty or waterlogged resulting in goods becoming damaged, the Hirer will be charged the replacement cost of the goods; and
  - (vii) Catering Equipment such as bain maries and fryers incur a \$50 refundable cleaning fee to be paid on booking. Refunds will only be processed once Equipment is checked as clean on return.

### 5 Addendum – Special Conditions

- 5.1 Where the hire of the Equipment requires additional terms and/or Special Conditions to be agreed between the parties, White Marquee may (in its discretion) issue the Hirer with an Addendum. For the avoidance of doubt, the provision of a supplementary Addendum is not required for every Agreement and its issue is at the discretion of White Marquee.
- 5.2 The terms and conditions in an Addendum (including the Special Conditions) are incorporated into and made part of the Agreement.
- 5.3 In the event of any inconsistency between these Terms and Conditions and the Special Conditions, the provisions of these Special Conditions shall prevail.

### 6 Hire Fees

- 6.1 The Hire Fees will comprise of the following:
  - (i) a Booking Fee equal to 10% of the Hire Fee; and
  - (ii) a Deposit equal to 30% of the Hire Fee.
- 6.2 The Booking Fee will apply to all hires and is non-refundable.
- 6.3 Unless otherwise agreed by White Marquee in writing, a Hire Agreement is not accepted and effective unless and until the Deposit is received by White Marquee. For the avoidance of doubt, any such Deposit shall, when paid, be applied against the Hire Fee.
- 6.4 Unless otherwise stated, the Hire Fees payable by the Hirer in relation to the Equipment will be as stated in the applicable Sales Document. White Marquee reserves the right at any time to revise the Hire Fees by providing the Hirer with notice. Where the increase in Hire Fees applies to Equipment already on hire by the Hirer, the Hirer may terminate the hire and return the Equipment to White Marquee.
- 6.5 Additional fees may be payable by the Hirer in unforeseen circumstances, including (but not limited to):

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- (i) additional labour and Equipment charges incurred by White Marquee due to hot or inclement weather;
  - (ii) additional labour and Equipment charges caused by any third-party contractor, or any other person, excluding employees or agents of White Marquee.
  - (iii) any Site-specific or Venue-specific restrictions on movement and use of Equipment, not previously communicated by the Hirer to White Marquee, resulting in additional cost to White Marquee.
  - (iv) the requirement of ground protection devices not provided for in the Agreement resulting in additional cost to White Marquee.
- 6.6 From time to time, White Marquee may, in its absolute discretion, provide discount offers and other promotions. Such discount offers and promotions are subject to their terms and conditions. Unless otherwise specified in their applicable terms and conditions, discount offers and other promotions: (i) do not apply to Sub-hired Equipment of Custom Equipment; (ii) do not include delivery and collection fees; (iii) do not include the Damage Waiver Fee; and (iv) may not be used in conjunction with any other offer.
- 6.7 The Hire Fees may include estimated sums for certain items because their actual price is not yet known and:
- (i) these items will be set out in the Sales Documents with the words 'estimate' or 'allowance' next to the estimated \$ or dollar amount;
  - (ii) once the actual price is known, White Marquee will advise the Hirer; and
  - (iii) if the actual price is greater than the estimated sum, the the difference is added to the Hire Fee. If the actual price is lower than the estimated sum, the the difference is subtracted from the Hire Fees.

### 7 Payment Terms

- 7.1 The Hirer agrees to pay White Marquee the Hire Fee and the Damage Waiver Fee (if applicable) specified in the Sales Document for the use of 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.
- 7.2 Unless otherwise agreed in the Sales Document or in writing by White Marquee, the required Hire Fees must be paid to White Marquee at least one week prior to or on the Commencement Date of the Hire Period. Hirers who do not pay on the terms agreed will be deemed to be in default.
- 7.3 If payment is not received in full prior to the Commencement Date, White Marquee is not obliged to deliver/supply the Equipment.
- 7.4 White Marquee may, in its absolute discretion, require the Hire Fee to be paid on confirmation of a hire booking, or other advance payment of the Hire Fee as agreed with the Hirer of the Hire Fee, where the Equipment to be hired has to be manufactured, adapted, or any process has to be applied to existing items of the Equipment to align with the Hirer's specific requirements.
- 7.5 Equipment not returned on time and in accordance with this Agreement will incur a daily late fee (10% of Hire Fee accruing daily) and will be subject to a continuance of the agreed Hire Fee and other charges until collection, return or pick-up (as applicable) is complete, but this will not constitute an extension of the Hire Period.
- 7.6 White Marquee reserves the right to charge interest on any outstanding payments at an amount of 3% compound interest of the total balance owing, calculated monthly, until such time as the Hire Fee and any interest accrued as a result of the payment default are paid by the Hirer to White Marquee.
- 7.7 Should debt recovery action be required, the Hirer will be liable to pay any costs incurred by White Marquee associated with the recovery of the Hirer's debt.
- 7.8 Unless otherwise stated in the Sales Document, White Marquee Event Hire accepts payment in the following methods: Bank Transfer, Cash, Cheque, VISA, MasterCard (1.5% surcharge per transaction applies for credit card), AMEX (3% surcharge per transaction applies to AMEX).



## **8 Cancellation**

- 8.1 The Hirer has the right to cancel an Agreement upon providing notice to White Marquee (Cancellation Notice). The Cancellation Notice must:
- (i) be provided to White Marquee as soon as practicably possible; and
  - (ii) must clearly identify all Equipment no longer required by the Hirer.
- 8.2 Upon receipt of a Cancellation Notification, White Marquee has no further obligation to supply and or deliver the Equipment to the Hirer.
- 8.3 Cancellation Fees may be charged by White Marquee where Equipment has been reserved and the Hirer cancels the booking without reasonable notice or fails to take delivery of the Equipment, as following:
- (i) Booking Fee of 10% of Hire Fees will apply to all bookings as it is non-refundable (including in the case of cancellations);
  - (ii) Deposit of 30% of Hire Fees will be forfeited for all cancellations received within fourteen (14) days prior to the Commencement Date;
  - (iii) where the Equipment includes a pavilion, the Deposit of 30% of Hire Fees will be forfeited for the cancellation received within 1 month prior to the Commencement Date;
  - (iv) a Cancellation Fee of 50% of the Hire Fee will apply to all cancellations received within three (3) days prior to the Commencement Date; and
  - (v) 100% of the Hire Fees will apply to all cancellations received on the Commencement Date.
- 8.4 If the Hirer cancels or postpones a hire booking due to government restrictions related to an epidemic or pandemic (including but not limited to Covid-19), the following Cancellation Fees shall apply:
- (i) Booking Fee of 10% of Hire Fees will apply to all bookings as is non-refundable (including in the case of cancellations) - this Booking Fee can be used as a credit if postponing the event;
  - (ii) Deposit of 30% of Hire Fees will be forfeited for all cancellations or postponements received within three (3) days prior to the Commencement Date; and
  - (iii) 75% of the Hire Fees will apply to all cancellations or postponements received on the Commencement Date,
- provided that the Hirer must provide to White Marquee (upon request) written evidence of the applicability of the government restriction.
- 8.5 The Hire Fees must be paid in full (without the right to refunds) for:
- (i) Custom Equipment;
  - (ii) Sub-hire Equipment; or
  - (iii) any printing and other ad hoc items.
- 8.6 If required, the Hirer agrees and acknowledges that it must promptly pay the Cancellation Fee in full as invoiced by White Marquee.
- 8.7 White Marquee may, in its absolute discretion, allow any Cancellation Fees to be used as credits for redemption on future hires (including, for example, postponements due to government restrictions).

## **9 Force Majeure**

- 9.1 For the purpose of this clause, "Force Majeure Event" means an event or circumstance beyond the reasonable control of White Marquee, including, but not limited to, acts of God, natural disasters (but not including inclement weather), war, riots, civil commotion or unrest, interference by civil or military authorities, fire, explosion, civil disobedience, epidemic or pandemic, legislation not in force at the date of the Agreement, or labour disputes.



- 9.2 If White Marquee is unable at any time to perform any of its obligations whether wholly or partly by reason of a Force Majeure Event, White Marquee may give written notice to that effect to the Hirer, giving full particulars of such force majeure, in which case the obligations of White Marquee under the Agreement shall, to the extent that they are affected by the force majeure, be suspended during the term of the force majeure. White Marquee shall not be liable for any loss or damage suffered by the Hirer because of any delays caused by such force majeure events.

#### **10 Damage Waiver**

- 10.1 A Damage Waiver Fee of 8% of Hire Fees is optional. The Hirer acknowledges and agrees that the Sales Document will include the Damage Waiver Fee by default, and the Hirer must notify White Marquee if it wishes the Damage Waiver Fee to be removed.
- 10.2 Upon payment by the Hirer of the Damage Waiver Fee, White Marquee waives any claim it may have against the Hirer for the cost of repairs or replacement of the Equipment due to damage occurring during its use under this Agreement. The limitation is subject to payment of any excess payable by the Hirer and the other terms of this Agreement. This clause in no way entitles the Hirer to, or implies the availability of, compensation from White Marquee for any liability incurred by the Hirer to any third party in relation to the use of the hired Equipment.
- 10.3 This clause 10 ceases to operate at the end of the Hire Period unless an extension by White Marquee is granted in writing and an additional agreed fee is paid.
- 10.4 This clause 10 will not apply to loss or damage which arises from:
- (i) use of, or damage to, any Custom Equipment or Sub-hired Equipment;
  - (ii) use of, damage to, or missing glassware or Robert Gordon crockery – the Hirer shall be responsible for full replacement cost of any damaged or missing Equipment in this range;
  - (iii) any intentional damage and/or loss caused by vandalism or theft of the Equipment;
  - (iv) breach of this agreement where the breach increased the risk of or causes the loss or damage;
  - (v) breach of any statute or other law or regulations in connection with the use of the Equipment by the Hirer where the breach increased the risk of or causes the loss or damage;
  - (vi) misuse, abuse, wilful and/or malicious acts, negligent and/or reckless use and/or overloading of the Equipment;
  - (vii) an unintentional or intentionally lit fire (of any type) in, under, on top, beside, around or near the Equipment;
  - (viii) 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;
  - (ix) lack of lubrication or non-adherence to other normal maintenance requirements that are required by or could reasonably be expected of the Hirer under this agreement;
  - (x) disregard for instructions given to the Hirer by White Marquee 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;
  - (xi) unexplained disappearance of the Equipment; or
  - (xii) theft of the Equipment in circumstances where site security is available including, but not limited to, locked yards, buildings and sheds, where that security is not properly used by the Hirer to secure the Equipment whilst it is left unattended.
- 10.5 Irrespective of the application of the Damage Waiver Fee, all damaged Equipment must be returned to White Marquee, otherwise the Equipment is classified as Missing Equipment. The Hirer agrees to pay for Missing Equipment on a full replacement value basis.



**11 Use, operation and maintenance**

- 11.1 The Hirer agrees that the use of the Equipment carries with it inherent dangers and risks of injury and the Hirer agrees to accept all those dangers and risks.
- 11.2 The Hirer will ensure that all persons operating or erecting the Equipment are instructed in its safe and proper use and where required hold valid proof of training or are fully licenced to use it.
- 11.3 The Hirer agrees to operate, maintain, store and transport the Equipment in a proper manner and where required strictly in accordance with any instruction provided by White Marquee and with due care and diligence.
- 11.4 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 White Marquee or posted on the Equipment in regard to its operation, maintenance and storage.
- 11.5 The Hirer agrees to comply with all occupational health and safety laws and regulations relating to the use of the Equipment and associated operations.
- 11.6 The Hirer agrees and acknowledges that it has all the necessary permits and licences for the use of the Equipment and associated operations including at the Site.
- 11.7 The Hirer must ensure the Equipment is returned to White Marquee clean of all foreign matter or agrees to a reasonable cleaning fee being charged by White Marquee.

**12 Hirer's obligations**

- 12.1 The Hirer acknowledges and agrees that:
  - (i) the Equipment will be used in accordance with any additional conditions outlined in any Special Conditions;
  - (ii) the particulars in the Sales Document provided by the Hirer 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;
  - (iv) the Hirer's vehicle is transporting the Equipment (if required);
  - (v) the Hirer will not, without prior written consent of White Marquee, tamper with, repair or modify the Equipment in any way, or permit another to do so; and
  - (vi) the Hirer will not remove the Equipment from the State or Territory in which it is hired without the prior approval of White Marquee.

**13 Services**

- 13.1 Where White Marquee provides onsite Services for a Hirer, the Hire must:
  - (i) ensure that White Marquee can access the Site at all times specified by White Marquee and at all other reasonable times so as to enable White Marquee to provide the Equipment and Services;
  - (ii) ensure that the Equipment, when installed, remains in place at the Site for the Hire Period and that the Site is not required for any other purpose which would require the Equipment to be dismantled and re-installed, or which may put the whole or any part of the Equipment at risk of being lost, damaged or destroyed;
  - (iii) ensure that all access to the Site is given to White Marquee and that such time as is required by White Marquee is available at the conclusion of the Hire Period to enable White Marquee to dismantle and remove the Equipment from the Site;
  - (iv) do all such things as are necessary to discharge the Hirer's obligations under all applicable occupation health and safety legislation, regulations and codes of practice to ensure that the Site and the Equipment as installed are safe and free from defects and dangerous conditions;
  - (v) ensure that where the Equipment is being Installed on any structure or held in place by





any structure that the structure can hold the weight of the Equipment and that the structure is properly erected so as to be safe and so as to take the anticipated loads involved in holding the Equipment;

- (vi) do all such things as are necessary to discharge the Hirer's obligations under all application legislation, regulations, by-laws and codes of practice and has the requisite and necessary insurances to allow White Marquee to provide the Services to the Hirer;
- (vii) ensure that the Site is safe for all White Marquee's employees and contractors to carry out the Services required of White Marquee under this Agreement.

13.2 The Hirer acknowledges that White Marquee may, in providing the Services, be dependent upon other contractors preparing the Site for the Equipment or its installation. White Marquee will not be liable for any delay in installing the Equipment or for providing the Services where such delay is a consequence of any act or omission on the part of such external contractors.

#### **14 Liability**

- 14.1 To the full extent permitted by law and except to the extent arising from actions or omissions of White Marquee or from things beyond the reasonable control of the Hirer, the Hirer indemnifies White Marquee from all claims and demands on White Marquee arising from a breach of this Agreement and/or from the use or misuse of the Equipment under the hire, including in respect of injuries to or deaths of persons and any damage to property.
- 14.2 To the full extent permitted by law, White Marquee excludes any implied or imposed guarantee, term, condition, warranty, undertaking, inducement or representation in relation to this Agreement (**Provision**).
- 14.3 Unless otherwise expressly agreed in writing, any implied or imposed guarantee, term, condition, warranty, undertaking, inducement or representation in relation to the suitability, fitness and merchantability of the Equipment for the Hirer's purpose is hereby expressly excluded.
- 14.4 To the extent to which White Marquee is not able to exclude a Provision (**Non-Excludable Provision**), and White Marquee is able to limit the Hirer's remedy for a breach of the Non-Excludable Provision, then White Marquee's liability for breach of the Non-Excludable Provision is limited to (at White Marquee's election):
  - (i) in the case of goods, the repair or replacement of the goods or the supply of equivalent goods (or the payment of the cost of doing so); and
  - (ii) in the case of services, the supplying of the services again (or the payment of the cost of doing so).
- 14.5 Subject to White Marquee's obligations under the Non-Excludable Provisions, White Marquee is not liable to the Hirer or any third party for any indirect loss or consequential loss arising in connection with this document or its subject matter, whether arising in or for breach of contract, negligence or other tort, breach of statutory duty, breach of warranty or guarantee or otherwise and whether or not that loss was foreseeable, even if White Marquee has been advised of the possibility of such loss.
- 14.6 To the extent permitted by law, White Marquee expressly excludes and disclaims all liability arising from:
  - (i) the Hirer ordering the wrong Equipment or insufficient quantities of the Equipment;
  - (ii) the Hirer ordering Equipment for a purpose which is outside of the Equipment's specifications;
  - (iii) the Site and facilities not being safe and secure;
  - (iv) the Site is not so prepared or the facilities or Site are not available or unsuitable for the delivery and installation of the Equipment (unless White Marquee has been engaged to prepare the site for delivery and installation of the Equipment);
  - (v) the Hirer not having obtained all of the necessary and requisite permits, licenses and insurances for the Equipment and or the Site where the Equipment will be situated; and

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- (vi) the negligent act or omission of the Hirer or any of its servants, employees, agents or contractors.

14.7 Subject to clauses 14.1, 14.2, 14.5 and 14.6, White Marquee's total liability to the Hirer is limited to an amount equal to the Hire Fees.

### 15 Loss, damage or breakdown of goods and Equipment

15.1 Subject only to the provisions for damage waiver in this Agreement:

- (i) the Hirer must return the Equipment in the same state and condition as it was when the Hirer takes possession except for fair wear and tear; and
- (ii) the Hirer is liable for any damage caused or allowed to the Equipment by the Hirer and for the payment of the full replacement value of any Equipment not returned to White Marquee.

15.2 If there is a breakdown or failure of the Equipment the Hirer shall notify White Marquee immediately for the appropriate action to be taken.

15.3 In the event that the Hirer fails or refuses for any reason whatsoever to return or make available for collection all the Equipment to White Marquee at the expiration of the Hire Period, then without prejudice to any other rights which White Marquee may have, either pursuant to this Agreement or at law, the Hirer will be liable to pay White Marquee on a day-rate basis for the hiring for Equipment for such further period of time. Such further period of time will commence at the expiration of the Hire Period and conclude at the earliest to occur of, the date when the Equipment is returned to White Marquee in good working order and condition – or – the date when White Marquee receives from the Hirer full monetary compensation for the loss or damage to the Equipment. The loss or damage to the Equipment will be the replacement cost of the Equipment at that time or, where the Equipment cannot be replaced, the cost of new substitute Equipment that can substantially be used for the same purpose as the lost, damaged or destroyed Equipment. In addition, the Hirer fully indemnifies the Owner for any other liability, loss, or cost that the Owner might sustain because of the Owner being unable to meet any other contractual obligation to supply that Equipment (or any other item thereof) to any other person.

15.4 The Hirer acknowledges that failure or refusal to return or make available for collection all the Equipment to White Marquee at the expiration of the Hire Period can be deemed as criminal theft and White Marquee may, without prejudice to any other rights which White Marquee may have, either pursuant to this Agreement or at law, immediately report the criminal theft to the police.

### 16 Termination

16.1 Without prejudice to any other remedies White Marquee may have against the Hirer and notwithstanding the period of hire specified in the contract, this Agreement and any hire may be terminated by White Marquee as follows:

- (i) immediately and without giving prior notice if White Marquee reasonably considers there is an imminent risk of loss, material damage or disappearance of the Equipment;
- (ii) unless White Marquee agrees otherwise at the Hirer's request, upon giving the Hirer 7 days notice of termination at any time during the period of hire; or
- (iii) immediately and without prior notice if the Hirer has a winding-up petition presented against it, or is wound up, or has a receiver of any of its assets appointed, or it makes an assignment/compromise to the benefit of its creditors or if it is placed under administration or process of restructuring, or if it ceases to carry on business.

16.2 White Marquee may terminate this agreement at any time if the Hirer breaches the agreement and the breach cannot be, or is not, rectified within 2 days after White Marquee sends written notice to the Hirer specifying the breach and requesting rectification. White Marquee may also terminate this agreement if the Hirer commits a material breach of it.

16.3 White Marquee may seek compensation from the Hirer for a breach of this agreement including for loss of revenue whilst the Equipment is not able to be hired to others (for example due to its damage or loss) and/or loss of rental that would have been earned had



termination not occurred. This does not limit White Marquee's other rights at law.

- 16.4 If the hire agreement is terminated under this clause 16, the Hirer must immediately pay all outstanding Hire Fees to White Marquee and must return the Equipment to White Marquee.

**17 Title to Equipment**

- 17.1 The Hirer acknowledges that White Marquee 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 White Marquee's credit in connection with the Equipment.
- 17.2 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.
- 17.3 During the time that the Hirer has possession of the Equipment, risk of the Equipment shall be borne by the Hirer, and the Hirer is responsible for the safety and control of the Equipment.
- 17.4 For the avoidance of doubt:
- (i) where White Marquee will deliver the Equipment to the Site, then White Marquee is responsible for the Equipment until it is delivered to the Hirer at the Site; and
  - (ii) where the Hirer will collect the Equipment from the White Marquee Premises (and the Hirer will deliver it to the Site), then the Hirer is responsible for the Equipment as and from the time the Hirer collects the Equipment from the White Marquee's Premises.

**18 Repossession and remedies on default**

- 18.1 White Marquee may retake possession of the Equipment if:
- (i) the hire is terminated or becomes liable to be terminated by White Marquee;
  - (ii) the Hirer does not pay amounts owing to White Marquee when due.
- 18.2 In the case of repossession due to a breach of this agreement the Hirer grants White Marquee permission to enter any premises where the Equipment listed in the Sales Document is situated to disconnect, decommission, repossess, or remove that Equipment. The Hirer hereby agrees:
- (i) not to make any claim or bring any action against White Marquee as a result of the exercise of White Marquee's rights under this clause; and
  - (ii) indemnify White Marquee against any expense, cost, loss or liability which might be incurred by White Marquee in entering upon the Site and taking possession of the Equipment.
- 18.3 In addition to White Marquee's right to retake possession White Marquee may, following any termination of this agreement, sue for recovery of any damages or charges or loss suffered by White Marquee and/or to cancel any insurances effective in respect of the Equipment hired.

**19 General**

- 19.1 The Agreement constitutes the entire agreement between the parties relating in any way to its subject matter, unless agreed to otherwise by White Marquee and Hirer in writing.
- 19.2 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.
- 19.3 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.
- 19.4 This agreement is governed by the laws of the State of South Australia, and each party



submits to the exclusive jurisdiction of the Court of the State of South Australia.

- 19.5 White Marquee will comply with the applicable privacy legislation in all dealings with Hirers. Information on our privacy policy is available on request.
- 19.6 The waiver of a breach of any term of the Agreement must be in writing, and will not be a waiver of any other breach of that term or the breach of any other term.
- 19.7 Neither the Agreement nor any rights or obligations hereunder may be assigned or otherwise transferred by the Hirer.
- 19.8 All notices and consents required or permitted to be given under this Agreement must be in writing and may be given by one or more of the following modes: personal service, pre-paid postage, or email, at the addresses of the parties as notified to one another or to such other address as the party to be served may designate to the other party or parties by written notice.
- 19.9 Unless otherwise stated, an amount payable by under this Agreement in respect of a taxable supply represents the value of that supply (exclusive of GST), and the recipient must, in addition to that amount and at the same time, pay to the supplier the GST payable in respect of the supply.
- 19.10 Both White Marquee 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 in good faith with a reasonable view to settlement prior to either party initiating any legal proceedings.
- 19.11 Any amendment, variation, consent to modification, supplement or replacement, of any provision of this Agreement must be in writing and must also be executed by an authorised representative of White Marquee and the Hirer.

## **20 PPS Law**

- 20.1 Despite anything else in this document, without the express written consent of White Marquee, the hire period (including any option or extension of it) cannot be longer than two years (or any other period that is the time threshold for a PPS lease under the PPS Law (as defined below)).
- 20.2 This clause applies to the extent that this agreement provides for a 'security interest' for the purposes of the Personal Property Securities Act 2009 (Cth) (**PPS Law**). References to PPS Law in this Agreement include references to amended, replacement and successor provisions. White Marquee may register its security interest. The Hirer must do anything (such as obtaining consents and signing documents) which White Marquee requires for the purposes of ensuring that White Marquee's security interest is enforceable, perfected, first priority and otherwise effective under the PPS Law.
- 20.3 White Marquee may recover from the Hirer the cost of doing anything under this clause, including but not limited to registration fees.
- 20.4 The rights of White Marquee under this document are in addition to and not in substitution for White Marquee's rights under other law (including PPS Law) and White Marquee may choose whether to exercise rights under this document, and/or under other law, as it sees fit.
- 20.5 To the extent that Chapter 4 of the PPS Law applies to the security interest under this agreement, and the PPS Law requires White Marquee to give a notice or allow time or provide any account to the Hirer the Hirer and White Marquee agree that to the extent allowable under the PPS Law that requirement does not apply and, for the purposes of section 115 of the PPS Law it is "contracted out" of this agreement in respect of all goods to which that section can be applied. Provisions of the PPS Law confer rights on White Marquee. The Hirer agrees that in addition to those rights, White Marquee will, if there is default by the Hirer, have the right to seize, purchase, take possession or apparent possession, retain, deal with or dispose of any goods, not only under those sections but also, as additional and independent rights, under this document and the Hirer agrees that White Marquee may do so in any manner it sees fit, including (in respect of dealing and disposal) by private or public sale, lease or licence.
- 20.6 The Hirer waives its rights to receive a verification statement in relation to registration events



in respect of commercial property under section 157 of the PPS Law. White Marquee and the Hirer agree not to disclose information of the kind that can be requested under section 275(1) of the PPS Law. The Hirer must do everything necessary on its part to ensure that section 275(6)(a) of the PPS Law continues to apply. The agreement in this sub-clause is made solely for the purposes of allowing White Marquee the benefit of section 275(6)(a) and White Marquee will not be liable to pay damages or any other compensation or be subject to injunction if White Marquee breaches this sub-clause.

**21 Security interests and sub-hire**

- 21.1 The Hirer must not create, purport to create or permit to be created any 'security interest' (as defined in PPS Law) in the Equipment other than with the express written consent of White Marquee.
- 21.2 The Hirer must not lease, hire, bail or give possession ('sub-hire') of the Equipment to anyone else unless White Marquee (in its absolute discretion) first consents in writing. Any such sub-hire must be in writing in a form acceptable to White Marquee and must be expressed to be subject to the rights of White Marquee under this Agreement. The Hirer may not vary a sub-hire without the prior written consent of White Marquee (in its absolute discretion).
- 21.3 The Hirer must ensure that White Marquee is provided at all times with up-to-date information about the sub-hire including the identity of the sub-Hirer, the terms of and state of accounts and payment under the sub-hire and the location and condition of the Equipment.
- 21.4 The Hirer must take all steps including registration under PPS Law as may be required to:
  - (a) ensure that any security interest arising under or in respect of the sub-hire is enforceable, perfected and otherwise effective under the PPS Law;
  - (b) enabling the Hirer to gain (subject always to the rights of White Marquee) first priority (or any other priority agreed to by White Marquee in writing) for the security interest; and
  - (c) enabling White Marquee and Hirer to exercise their respective rights in connection with the security interest.
- 21.5 White Marquee may recover from the Hirer the cost of doing anything under this clause, including registration fees.