

## Top End Sounds Pty Limited T/A Total Event Services – Terms & Conditions of Trade

- 1. Definitions**
- 1.1 "TES" shall mean Top End Sounds Pty Limited T/A Total Event Services, its successors and assigns or any person acting on behalf of and with the authority of Top End Sounds Pty Limited T/A Total Event Services.
- 1.2 "Client" shall mean the Client (or any person acting on behalf of and with the authority of the Client) as described on any quotation, work authorisation or other form as provided by TES to the Client.
- 1.3 "Guarantor" means that person (or persons) who agrees to be liable for the debts of the Client on a principal debtor basis.
- 1.4 "Goods" shall mean all Goods supplied by TES to the Client (and where the context so permits shall include any supply of Services as hereinafter defined) and are as described on the invoices, quotation, work authorisation or any other forms as provided by TES to the Client.
- 1.5 "Services" shall mean all Services supplied by TES to the Client and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
- 1.6 "Equipment" shall mean all Equipment supplied on hire by TES to the Client (and where the context so permits shall include any supply of Services as defined above) and is as described on the invoices, quotation, authority to hire, or any other work authorisation forms as provided by TES to the Client.
- 1.7 "Event" shall mean any concert, show, performance, exhibition, fair, party, conference, or contest, or any event of a similar nature to those specified in this clause.
- 1.8 "Minimum Hire Period" shall mean the Minimum Equipment hire period as described on the invoices, quotation, authority to hire, or any other forms as provided by TES to the Client.
- 1.9 "Price" shall mean the Price payable for the Goods and/or Equipment as agreed between TES and the Client in accordance with clause 4 of this contract.
- 2. The Competition and Consumer Act 2010 ("CCA") and Fair Trading Acts ("FTA")**
- 2.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the CCA or the FTA in each of the States and Territories of Australia (including any substitute to those Acts or re-enactment thereof), except to the extent permitted by those Acts where applicable.
- 2.2 Where the Client buys Goods and/or Equipment as a consumer these terms and conditions shall be subject to any laws or legislation governing the rights of consumers and shall not affect the consumer's statutory rights.
- 3. Acceptance**
- 3.1 Any instructions received by TES from the Client for the supply of Goods and/or Equipment and/or the Client's acceptance of Goods and/or Equipment supplied by TES shall constitute acceptance of the terms and conditions contained herein.
- 3.2 Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments of the Price.
- 3.3 Upon acceptance of these terms and conditions by the Client the terms and conditions are binding and can only be amended with the written consent of TES.
- 3.4 The Client shall give TES not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client or any change in the Client's name and/or any other change in the Client's details (including but not limited to, changes in the Client's address, facsimile number, or business practice). The Client shall be liable for any loss incurred by TES as a result of the Client's failure to comply with this clause.
- 3.5 Goods and/or Equipment are supplied by TES only on the terms and conditions of trade herein to the exclusion of anything to the contrary in the terms of the Client's order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of trade.
- 4. Price and Payment**
- 4.1 At TES's sole discretion the Price shall be either:
- (a) as indicated on invoices provided by TES to the Client in respect of Goods and/or Equipment supplied; or
- (b) TES's current price at the date of delivery of the Goods and/or Equipment according to TES's current Price list; or
- (c) TES's quoted Price (subject to clause 4.2) which shall be binding upon TES provided that the Client shall accept TES's quotation in writing within thirty (30) days. All quotations are subject to availability of Goods, Equipment and crew at the time of confirmation.
- 4.2 TES reserves the right to change the Price in the event of a variation to TES's quotation.
- 4.3 Full payment of the Price shall be due before the Event or delivery of the Goods and/or Equipment unless the Client has an approved and established Credit Account.
- 4.4 Upon confirmation of a booking a deposit of twenty five percent (25%) of the Price is required unless confirmation is less than fourteen (14) days prior to the commencement of the Event, in which case a deposit of fifty percent (50%) of the Price shall be required to secure the booking.
- 4.5 Fifty percent (50%) of the Price shall be due a minimum of fourteen (14) days prior to the Event or the delivery of Goods and/or Equipment and the balance due before the Event or delivery of the Goods and/or Equipment.
- 4.6 Regardless of the Client having an approved and established Credit Account TES reserves the right to require a twenty five percent (25%) booking deposit and detailed progress payment claims in accordance with TES's specified payment schedule. Such payment claims may include the reasonable value of authorised variations and the value of any Goods and/or Equipment delivered to the Event site.
- 4.7 Time for payment for the Goods and/or Equipment shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due seven (7) days following the date of the invoice but before the delivery of the Goods and/or Equipment.
- 4.8 Payment will be made by cheque, or by bank cheque, or by Visa or Mastercard (plus a surcharge of up to two percent (2%) of the Price), or by Amex (plus a surcharge of up to five percent (5%) of the Price), or by direct credit, or by any other method as agreed to between the Client and TES.
- 4.9 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.
- 4.10 Unless expressly stated otherwise in TES's quotation, the following fees and charges are not included in the Price, but if incurred, will be at the Client's expense:
- (a) any additional costs incurred by TES in direct relation to the Event including, but not limited to technical integration fees, resource hire fees, electricity consumption, parking fees etc; and
- (b) transportation for empty equipment cases for the duration of the Event if storage at the venue is not available.
- 5. Delivery**
- 5.1 At TES's sole discretion delivery of the Goods and/or Equipment shall take place when:
- (a) the Client takes possession of the Goods and/or Equipment at TES's address; or
- (b) the Client takes possession of the Goods and/or Equipment at the Client's nominated address (in the event that the Goods and/or Equipment are delivered by TES or TES's nominated carrier).
- 5.2 At TES's sole discretion the costs of delivery may be in addition to the Price and for the Client's account.
- 5.3 The Client shall make all arrangements necessary to take delivery of the Goods and/or Equipment whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Goods and/or Equipment as arranged then TES shall be entitled to charge a reasonable fee for redelivery.
- 5.4 Delivery of the Goods and/or Equipment to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this agreement.
- 5.5 TES may deliver the Goods and/or Equipment by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 5.6 The failure of TES to deliver shall not entitle either party to treat this contract as repudiated.
- 5.7 TES shall not be liable for any loss or damage whatsoever due to failure by TES to deliver the Goods and/or Equipment (or any of them) promptly or at all, where due to circumstances beyond the control of TES.
- 6. Risk**
- 6.1 If TES retains ownership of the Goods and/or Equipment nonetheless, all risk for the Goods passes to the Client on delivery.
- 6.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, TES is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by TES is sufficient evidence of TES's rights to receive the insurance proceeds without the need for any person dealing with TES to make further enquiries.
- 6.3 Where the Client expressly requests TES to leave Goods and/or Equipment outside TES's premises for collection or to deliver the Goods and/or Equipment to an unattended location then such Goods and/or Equipment shall be left at the Client's sole risk and it shall be the Client's responsibility to ensure the Goods and/or Equipment are insured adequately or at all.
- 6.4 TES may require fire alarm isolation for the duration of the Event. Any damages or occurrences resulting from such isolation will be the sole responsibility of the Client.
- 6.5 The Client agrees to indemnify and hold TES harmless from and against any and all property damage and personal injury resulting from contact with underground cables, pipes, services or other obstructions, and all surface damage.
- 7. Events**
- 7.1 Once TES has commenced providing its Services, Goods and/or Equipment for any Event which the Client has arranged or is undertaking then TES shall not be liable to the Client in any way whatsoever (including any loss or damage suffered by the Client) for non-performance its obligations (whether wholly or partly) by reason of any cause beyond TES's reasonable control (including without limitation, acts of God, inclement weather, flood, cyclone, lightning strike, power failure, fire, riot(s), civil commotion or unrest, interference by civil or military authorities or act of war (i.e. a force majeure event)).
- 7.2 For the sake of clarity as such force majeure events are beyond TES's control, such events shall not negate nor reduce the Client's liability to pay the full Price that was agreed between TES and the Client for the provision of the Goods/Services and Equipment by TES to the Client, and the Client's payment obligations to TES shall be deemed to remain the same as if the force majeure event had never occurred.
- 7.3 For further clarity if there is power and/or telephone disruption/fluctuation to supply that causes disruption to an Event and the disruption/fluctuation is not the fault of TES staff and/or Equipment supplied by TES and therefore is beyond TES's control then TES will not consider or accept any reduction in the Price.
- 7.4 It shall be the Client's responsibility to ensure that they are adequately insured against any possible force majeure event(s) and/or all other usual risks that are associated with running an Event of any type (including, but not limited to, Public Liability Insurance).
- 8. Client's Responsibilities**
- 8.1 During the Event TES's technical operators should be catered for, within reason, with appropriate food and beverages supplied by the Client.
- 9. Access**
- 9.1 TES will require access to the Event venue with ample time to carry set up the Goods and/or Equipment before the Event is scheduled to start. In the event that the appropriate amount of time is not available, or if the Event requires more than one (1) day setting up or packing down, then any additional charges (such as extending the venue hire period or penalty rates for TES's employees shall be invoiced to the Client.
- 10. Title**
- 10.1 TES and the Client agree that ownership of the Goods shall not pass until:
- (a) the Client has paid TES all amounts owing for the particular Goods; and
- (b) the Client has met all other obligations due by the Client to TES in respect of all contracts between TES and the Client.
- 10.2 Receipt by TES of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then TES's ownership or rights in respect of the Goods shall continue.
- 10.3 It is further agreed that:
- (a) where practicable the Goods shall be kept separate and identifiable until TES shall have received payment and all other obligations of the Client are met; and
- (b) until such time as ownership of the Goods shall pass from TES to the Client TES may give notice in writing to the Client to return the Goods or any of them to TES. Upon such notice the rights of the Client to obtain ownership or any other interest in the Goods shall cease; and
- (c) TES shall have the right of stopping the Goods in transit whether or not delivery has been made; and
- (d) if the Client fails to return the Goods to TES then TES or TES's agent may (as the invitee of the Client) enter upon and into land and premises owned, occupied or used by the Client, or any premises where the Goods are situated and take possession of the Goods; and
- (e) the Client is only a bailee of the Goods and until such time as TES has received payment in full for the Goods then the Client shall hold any proceeds from the sale or disposal of the Goods, up to and including the amount the Client owes to TES for the Goods, on trust for TES; and
- (f) the Client shall not deal with the money of TES in any way which may be adverse to TES; and
- (g) the Client shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of TES; and
- (h) TES can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Client; and
- (i) until such time that ownership in the Goods passes to the Client, if the Goods are converted into other products, the parties agree that TES will be the owner of the end products.
- 11. Personal Property Securities Act 2009 ("PPSA")**
- 11.1 In this clause:
- (a) financing statement has the meaning given to it by the PPSA;
- (b) financing change statement has the meaning given to it by the PPSA;
- (c) security agreement means the security agreement under the PPSA created between the Client and TES by these terms and conditions; and
- (d) security interest has the meaning given to it by the PPSA.
- 11.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions:
- (a) constitute a security agreement for the purposes of the PPSA; and
- (b) create a security interest in:
- (i) all Goods previously supplied by TES to the Client (if any);
- (ii) all Goods that will be supplied in the future by TES to the Client.
- 11.3 The Client undertakes to:
- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which TES may reasonably require to:
- (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
- (ii) register any other document required to be registered by the PPSA; or
- (iii) correct a defect in a statement referred to in clause 11.3(a)(i) or 11.3(a)(ii);
- (b) indemnify, and upon demand reimburse, TES for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
- (c) not register a financing change statement in respect of a security interest without the prior written consent of TES;
- (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of TES; and
- (e) immediately advise TES of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 11.4 TES and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 11.5 The Client hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 11.6 The Client waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 11.7 Unless otherwise agreed to in writing by TES, the Client waives its right to receive a verification statement in accordance with section 157 of the PPSA.
- 11.8 The Client shall unconditionally ratify any actions taken by TES under clauses 11.3 to 11.5.
- 12. Security and Charge**
- 12.1 Despite anything to the contrary contained herein or any other rights which TES may have howsoever:
- (a) where the Client and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Client and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to TES or TES's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Client and/or the Guarantor acknowledge and agree that TES (or TES's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.
- (b) should TES elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client and/or Guarantor shall indemnify TES from and against all TES's costs and disbursements including legal costs on a solicitor and own client basis.
- (c) the Client and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint TES or TES's nominee as the Client's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 12.1.
- 13. Defects**
- 13.1 The Client shall inspect the Goods and/or Equipment on delivery and shall within forty eight (48) hours of delivery (time being of the essence) notify TES of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford TES an opportunity to inspect the Goods and/or Equipment within a reasonable time following delivery if the Client believes the Goods and/or Equipment are defective in any way. If the Client shall fail to comply with these provisions the Goods and/or Equipment shall be presumed to be free from any defect or damage. For defective Goods and/or Equipment, which TES has agreed in writing that the Client is entitled to reject, TES's liability is limited to either (at TES's discretion) replacing the Goods and/or Equipment or repairing the Goods and/or Equipment except where the Client has acquired Goods and/or Equipment as a consumer within the meaning of the Competition and Consumer Act 2010 (Cwlth) or the Fair Trading Acts of the relevant state or territories of Australia, and is therefore also entitled to, at the consumer's discretion either a refund of the purchase price of the Goods and/or Equipment, or repair or replacement of the Goods and/or Equipment.
- 14. Returns**
- 14.1 Returns will only be accepted provided that:
- (a) the Client has complied with the provisions of clause 13.1; and
- (b) TES has agreed in writing to accept the return of the Goods; and
- (c) the Goods are returned at the Client's cost within forty eight (48) hours of the delivery date; and
- (d) TES will not be liable for Goods which have not been stored or used in a proper manner; and
- (e) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.
- 14.2 TES may (at their sole discretion) accept the return of Goods for credit but this may incur a handling fee of up to fifteen percent (15%) of the value of the returned Goods plus any freight costs.
- 14.3 Non-stocklist items or Goods made to the Client's specifications are under no circumstances acceptable for credit or return.
- 15. Warranty**
- 15.1 To the extent permitted by statute, no warranty is given by TES as to the quality or suitability of the Goods and/or Equipment for any purpose and any implied warranty, is expressly excluded. TES shall not be responsible for any loss or damage to the Goods and/or Equipment, or caused by the Goods and/or Equipment, or any part thereof however arising.

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	Additional Terms Applicable to Equipment Hire
<b>16. Intellectual Property</b>	
16.1 Where TES has designed, developed, drawn or written Goods and/or Equipment for the Client, then the copyright in those designs and drawings and documents shall remain vested in TES, and shall only be used by the Client at TES's discretion.	
16.2 The Client warrants that all designs or instructions to TES will not cause TES to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify TES against any action taken by a third party against TES in respect of any such infringement.	
16.3 The Client agrees that TES may use any documents, designs, drawings or Goods and/or Equipment created by TES for the purposes of advertising, marketing, or promotion.	
<b>17. Default and Consequences of Default</b>	
17.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at TES's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.	
17.2 In the event that the Client's payment is dishonoured for any reason the Client shall be liable for any dishonour fees incurred by TES.	
17.3 If the Client defaults in payment of any invoice when due, the Client shall indemnify TES from and against all costs and disbursements incurred by TES in pursuing the debt including legal costs on a solicitor and own client basis and TES's collection agency costs.	
17.4 Without prejudice to any other remedies TES may have, if at any time the Client is in breach of any obligation (including those relating to payment) TES may suspend or terminate the supply of Goods and/or Equipment to the Client and any of its other obligations under the terms and conditions. TES will not be liable to the Client for any loss or damage the Client suffers because TES has exercised its rights under this clause.	
17.5 If any account remains overdue after thirty (30) days then an amount of the greater of twenty dollars (\$20.00) or ten percent (10%) of the amount overdue (up to a maximum of fifty dollars (\$50.00)) shall be levied for administration fees which sum shall become immediately due and payable.	
17.6 Without prejudice to TES's other remedies at law TES shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to TES shall, whether or not due for payment, become immediately payable in the event that:	
(a) any money payable to TES becomes overdue, or in TES's opinion the Client will be unable to meet its payments as they fall due; or	
(b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or	
(c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.	
<b>18. Cancellation</b>	
18.1 TES may cancel any contract to which these terms and conditions apply or cancel delivery of Goods and/or Equipment at any time before the Goods and/or Equipment are delivered by giving written notice to the Client. On giving such notice TES shall repay to the Client any sums paid in respect of the Price. TES shall not be liable for any loss or damage whatsoever arising from such cancellation.	
18.2 In the event that the Client wishes to cancel the delivery of Goods/Services and/or Equipment:	
(a) more than twenty-eight (28) days prior to the scheduled date that TES is to commence delivery of Goods/Services and/or Equipment to the Client then the Client shall be liable for any and all loss (whether direct or indirect) incurred by TES up to the time of cancellation, or which TES may suffer as a direct result of the cancellation.	
(b) within fifteen (15) to twenty-eight (28) days of the scheduled date that TES is to commence delivery of the Goods/Services and/or Equipment to the Client then a cancellation fee equivalent to ten percent (10%) of the Price shall be payable.	
(c) within fifteen (15) days of the scheduled date that TES is to commence delivery of the Goods/Services and/or Equipment to the Client then a cancellation fee equivalent to fifty percent (50%) of the Price shall be payable.	
(d) notwithstanding the specified cancellation notification periods and cancellation fees detailed in clauses 18.2 (a)-(c) where TES has either partly or wholly, physically commenced the supply, delivery, installation, set-up, supply or the manufacture of Goods, or the supply of any Services or Equipment, to the Client, then the cancellation fee shall be one hundred percent (100%) of the Price.	
18.3 Cancellation of orders for Goods made to the Client's specifications or non-stocklist items will definitely not be accepted, once production has commenced.	
<b>19. Privacy Act 1988</b>	
19.1 The Client and/or the Guarantor/s (herein referred to as the Client) agree for TES to obtain from a credit reporting agency a credit report containing personal credit information about the Client in relation to credit provided by TES.	
19.2 The Client agrees that TES may exchange information about the Client with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency for the following purposes:	
(a) to assess an application by the Client; and/or	
(b) to notify other credit providers of a default by the Client; and/or	
(c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or	
(d) to assess the creditworthiness of the Client.	
The Client understands that the information exchanged can include anything about the Client's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.	
19.3 The Client consents to TES being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).	
19.4 The Client agrees that personal credit information provided may be used and retained by TES for the following purposes (and for other purposes as shall be agreed between the Client and TES or required by law from time to time):	
(a) the provision of Goods and/or Equipment; and/or	
(b) the marketing of Goods and/or Equipment by TES, its agents or distributors; and/or	
(c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Goods and/or Equipment; and/or	
(d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or	
(e) enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Goods and/or Equipment.	
19.5 TES may give information about the Client to a credit reporting agency for the following purposes:	
(a) to obtain a consumer credit report about the Client;	
(b) allow the credit reporting agency to create or maintain a credit information file containing information about the Client.	
19.6 The information given to the credit reporting agency may include:	
(a) personal particulars (the Client's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number;	
(b) details concerning the Client's application for credit or commercial credit and the amount requested;	
(c) advice that TES is a current credit provider to the Client;	
(d) advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;	
(e) that the Client's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;	
(f) information that, in the opinion of TES, the Client has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Client's credit obligations);	
(g) advice that cheques drawn by the Client for one hundred dollars (\$100) or more, have been dishonoured more than once;	
(h) that credit provided to the Client by TES has been paid or otherwise discharged.	
<b>20. General</b>	
20.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.	
20.2 If any provisions of these terms and conditions are inconsistent with the PPSA, the PPSA shall prevail to the extent of that inconsistency.	
20.3 These terms and conditions and any contract to which they apply shall be governed by the laws of Northern Territory and are subject to the jurisdiction of the courts of Darwin.	
20.4 TES shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by TES of these terms and conditions.	
20.5 In the event of any breach of this contract by TES the remedies of the Client shall be limited to damages which under no circumstances shall exceed the Price of the Goods and/or Equipment.	
20.6 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by TES nor to withhold payment of any invoice because part of that invoice is in dispute.	
20.7 TES may license or sub-contract all or any part of its rights and obligations without the Client's consent.	
20.8 The Client agrees that TES may review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which TES notifies the Client of such change. The Client shall be under no obligation to accept such changes except where TES supplies further Goods and/or Equipment to the Client and the Client accepts such Goods and/or Equipment.	
20.9 The failure by TES to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect TES's right to subsequently enforce that provision.	
	<b>21. Hire Period</b>
	21.1 The Minimum hire period is one (1) day, daily rate is based on twenty-four (24) hours, weekly rate is based on seven (7) days, all other periods are by agreement.
	21.2 Hire Charges shall commence from the time the Equipment is collected by the Client from TES's premises and will continue until the return of the Equipment in full serviceable condition to TES's premises, and/or until the expiry of the Minimum Hire Period, whichever last occurs.
	21.3 If TES agrees with the Client to deliver and/or collect the Equipment, hire charges shall commence from the time the Equipment leaves TES's premises and continue until the Client notifies TES that the Equipment is available for collection, and/or until the expiry of the Minimum Hire Period, whichever last occurs.
	21.4 The Client shall be responsible for free access by TES to the site on which the Equipment is located. If there are any delays due to free access not being available then the Client shall be responsible and shall reimburse TES for, all lost hire fees associated with the Equipment being unavailable. The Client shall also be responsible for all other expenses and costs incurred by TES due to delays in access to the Equipment.
	21.5 No allowance whatsoever can be made for time during which the Equipment is not in use for any reason, unless TES confirms special prior arrangements in writing. In the event of Equipment breakdown provided the Client notifies TES immediately, hiring charges will not be payable during the time the Equipment is not working, unless the condition is due to negligence or misuse on the part of or attributable to the Client.
	<b>22. Damage Waiver</b>
	22.1 The Client agrees to pay a damage waiver to TES to cover any costs associated with any accidental damage to a particular item of Equipment provided that the replacement cost and/or the cost of repairs to any Equipment which was damaged does not exceed ten percent (10%) of the hiring fee for that particular item of Equipment. If the damage exceeds ten percent of the hiring fee for that particular item of Equipment then clause 23.5 shall apply. The damage waiver does not apply to or cover any other damage to or loss of Equipment including, without limitation:
	(a) damage resulting from misuse, abuse or improper servicing of Equipment; or
	(b) damage resulting from failure on the Client's behalf to meet their responsibilities under clause 26; or
	(c) damage caused by the use or operation of Equipment in contravention of any of the other terms of hire; or
	(d) damage to, or loss of, the Equipment from any unknown cause.
	<b>23. Risk For Equipment</b>
	23.1 TES retains ownership in the Equipment at all times nonetheless all risk for the Equipment passes to the Client on delivery.
	23.2 The Client accepts full responsibility for the safekeeping of the Equipment and indemnifies TES for all loss, theft, or damage to the Equipment howsoever caused and without limiting the generality of the foregoing whether or not such loss, theft, or damage is attributable to any negligence, failure, or omission of the Client.
	23.3 The Client will insure, or self insure, TES's interest in the Equipment against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will effect adequate Public Liability Insurance covering any loss, damage or injury to property arising out of the Equipment. Further the Client will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.
	23.4 The Client accepts full responsibility for and shall keep TES indemnified against all liability in respect of all actions, proceedings, claims, damages, costs and expenses in respect of any injury to persons or damage to property arising out of the use of the Equipment during the hire period however arising and whether or not arising from any negligence, failure or omission of the Client or any other persons.
	23.5 In the event that the Equipment is lost, damaged or for whatever reason not returned to TES in the same condition that the Equipment was supplied to the Client by the arranged date of return, then the Client shall be liable for full hire charges of the Equipment until the Equipment is repaired, replaced and returned to service and any other costs whatsoever incurred or loss suffered by TES as a result of the damage to or loss of the Equipment.
	<b>24. Power Supply</b>
	24.1 TES will require appropriate power including three (3) phase power to operate the Equipment. If the appropriate power supply is not available then any additional costs including generator and electrician wire up to provide the required power will be invoiced to the Client.
	24.2 It is the responsibility of the Client and the venue to ensure all power outlets, and supply, are capable of the required loading to operate the Equipment. Mains power and other power supplies shall conform to relevant statutes, regulations and bylaws of government, local and other public authorities that may be applicable electricity supply.
	24.3 The use of a generator or power supply, other than mains supply from an authorised energy supply authority, shall only be used with the express written consent of TES.
	24.4 TES's consent to use a generator or other power supply does not excuse the Client of their liability should any damage to the Equipment arise as a result of the power supply.
	24.5 TES cannot be held responsible for Client and or venue power failures. The Client and the venue need to ensure that adequate clean uninterrupted power is provided free of any potential voltage spikes or brown out events.
	24.6 Where the Client has contracted the venue for the purpose of use the Client is to hold the venue responsible to provide and guarantee the adequate and continuous service of power required.
	<b>25. Title To Equipment</b>
	25.1 The Equipment is and will at all times remain the absolute property of TES.
	25.2 If the Client fails to return the Equipment to TES when required then TES or TES's agent may enter upon and into land and premises owned, occupied or used by the Client, or any premises where the Equipment is situated as the invitee of the Client and take possession of the Equipment, without being responsible for any damage thereby caused.
	25.3 The Client is not authorised to pledge TES's credit for repairs to the Equipment or to create a lien over the Equipment in respect of any repairs.
	<b>26. Client's Responsibilities</b>
	26.1 The Client shall:
	(a) notify TES immediately by telephone of the full circumstances of any mechanical breakdown or accident. The Client is not absolved from the requirements to safeguard the Equipment by giving such notification.
	(b) satisfy itself at commencement that the Equipment is suitable for its purposes;
	(c) operate the Equipment safely, strictly in accordance with the law, only for its intended use, and in accordance with any manufacturer's instruction whether supplied by TES or posted on the Equipment;
	(d) ensure that all persons operating or erecting the Equipment are suitably instructed in its safe and proper use and where necessary hold a current Certificate of Competency and/or are fully licensed to operate the Equipment and shall provide evidence of the same to TES upon request;
	(e) comply with all occupational health and safety laws relating to the Equipment and its operation;
	(f) on termination of the hire, the Client shall deliver the Equipment complete with all parts and accessories clean and in good order as delivered, fair wear and tear accepted, to TES;
	(g) keep the Equipment in their own possession and control and shall not assign the benefit of the hire contract nor be entitled to lien over the Equipment;
	(h) safely secure all items loaded on or in the Equipment or in or on the Client's vehicle;
	(i) operate the Equipment with an adequate motor vehicle and/or power source;
	(j) not alter or make any additions to the Equipment including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment;
	(k) employ the Equipment solely in its own work and shall not permit the Equipment of any part thereof to be used by any other party for any other work;
	(l) not exceed the recommended or legal load and capacity limits of the Equipment;
	(m) not use or carry any illegal, prohibited or dangerous substance in or on the Equipment;
	(n) not fix any of the Equipment in such a manner as to make it legally a fixture forming part of any freehold;
	(o) not take Equipment outside of the State where the Equipment is hired without the express written approval of TES.
	26.2 Immediately on request by TES the Client will pay:
	(a) the new list price of any Equipment that is for whatever reason destroyed, written off or not returned to TES;
	(b) all costs incurred in cleaning the Equipment;
	(c) all costs of repairing any damage caused by the ordinary use of the Equipment up to an amount equal to ten percent (10%) of the new list price of the Equipment unless the damage waiver under clause 22 has been paid by the Client;
	(d) the cost of repairing any damage to the Equipment caused by the negligence of the Client or the Client's agent;
	(e) the cost of repairing any damage to the Equipment caused by vandalism, or (in TES's reasonable opinion) in any way whatsoever other than by the ordinary use of the Equipment by the Client;
	(f) the cost of fuels and consumables provided by TES and used by the Client.
	<b>27. Wet Hire</b>
	27.1 In the event of "wet" hire of the Equipment the operator of the Equipment remains an employee of TES and operates the Equipment in accordance with the Client's instructions. As such TES shall not be liable for any actions of the operator in following the Client's instructions.