

## TERMS AND CONDITIONS

The following terms and conditions shall apply to each agreement for the sale and/or hire of goods/services:-

### 1. Definitions

- 1.1. "Customer" means the person or persons named on the Quotation, hire agreement, invoice, purchase order, email, or any other documentation produced in relation to an agreement for the supply of goods and/or services, or any person acting on behalf of and with the authority of the person so named.
- 1.2. "Day" means a period of 24 hours.
- 1.3. "Day-Rate" means the rate per Day for the hire of the goods as set out in the Quotation.
- 1.4. "Event" means the event described in the Quotation.
- 1.5. "GST" means Goods and Services Tax as defined in A New Tax Act (Goods and Services) 1999 (Cth).
- 1.6. "Hire Period" means the period for which the Equipment is hired by the Customer as specified in the Quotation.
- 1.7. "NCET" means Novatech Creative Event Technology Pty Ltd ABN 41 097 794 155.
- 1.8. "Price" means the amount set out in the Quotation and any further sums payable pursuant to this Agreement.
- 1.9. "Quotation" means the quotation attached to these Terms and Conditions.
- 1.10. "Site" means the designated place, venue or location at which the goods are to be delivered or at which the Customer is to take possession of the goods.
- 1.11. "Special Conditions" means the special conditions attached hereto (if any).
- 1.12. "Terms and Conditions" means these written terms and conditions.
- 1.13. "Warehouse" means Novatech Creative Event Technology Pty Ltd warehouse at 153 Holbrooks Road Underdale, SA 5032.

### 2. Offer and Acceptance

- 2.1. This Agreement consists of-
  - 2.1.1. The Quotation attached to these standard Terms and Conditions;
  - 2.1.2. These standard Terms and Conditions;
  - 2.1.3. Any Special Conditions attached hereto and recorded in writing;
  - 2.1.4. Any variation order pursuant to clause 3.
- 2.2. Any request from the Customer to NCET for the supply of goods and/or services however made shall constitute acceptance of this Agreement notwithstanding that a request from a Customer may be accompanied by its own terms and conditions and the Customer agrees that this Agreement shall apply to the exclusion of the Customer's terms and conditions.
- 2.3. Where more than one legal person constitutes the Customer each legal person shall be jointly and severally liable for each of the Customer's obligations pursuant to this Agreement.
- 2.4. The Customer agrees to notify NCET in writing ten (10) days prior to the supply of goods or services of any changes which affect the legal entity, structure or management control of the Customer's business.
- 2.5. The Customer will not represent to any third parties that it in any way acts for NCET and NCET will not be bound by any contracts that the Customer makes with third parties for the sale or hire of goods and services.

### 3. Variations

- 3.1. Either party may request a variation to the scope of the goods or services provided pursuant to this Agreement.
- 3.2. A request for a variation may be made orally, but must be confirmed in writing as soon as reasonably possible.
- 3.3. NCET will provide a quote for the variation, but NCET will not be obliged to perform the variation unless signed by the Customer.
- 3.4. The Price will vary according to the variation quote.
- 3.5. NCET may charge for a variation if it is accepted verbally or by the Customer's conduct, and the Price will change accordingly.
- 3.6. Where in preparing the Quotation NCET has relied on advice, descriptions or instructions from the Customer as to-
  - 3.6.1. the Site, including protection from the elements
  - 3.6.2. the availability of power
  - 3.6.3. access to the Site
  - 3.6.4. materials etc to be provided by the Customer and the advice, description or instructions are wrong, misleading or inaccurate, NCET may charge as a variation any additional labour, materials or goods necessary to enable NCET to comply with its obligations pursuant to this Agreement and the Price will increase accordingly.

### 4. Customer Obligations

- 4.1. The Customer must-
  - 4.1.1. Obtain all necessary approvals, permits, consents, and permissions in relation to the Event in order for NCET to fulfil its obligations under this Agreement.
  - 4.1.2. Move any furniture or fittings to allow installation.
  - 4.1.3. Clean the Site.
  - 4.1.4. Ensure that where any goods are being installed on any structure or held in place by any structure that the structure is capable of holding the weight of those goods and that the structure is properly erected so as to be safe and so as to take the anticipated loads involved in holding the goods.
  - 4.1.5. Make all enquiries necessary to comply with clauses 4.1.1 and 4.1.4.
  - 4.1.6. Ensure that the Site is safe for all of NCET's employees and contractors to carry out the services required of NCET under this Agreement.
  - 4.1.7. Arrange delivery of the goods in accordance with clause 10.
  - 4.1.8. Provide power in accordance with clause 5.
  - 4.1.9. Pay any amounts due and payable to NCET under this Agreement within the time specified in this Agreement, or if no such time is specified, within twenty eight (28) days of NCET issuing an invoice.
  - 4.1.10. Arrange insurance in accordance with clause 12.

### 5. Power

- 5.1. The Customer must-
  - 5.1.1. Unless otherwise agreed, provide power.
  - 5.1.2. Ensure that the power is safe, and complies with relevant Australian Standards.
  - 5.1.3. Pay the cost of any goods damaged by any fault with the power supply in accordance with clause 7.
  - 5.1.4. Make enquiries and perform all necessary tests to ensure compliance with this clause.
- 5.2. The Customer agrees that NCET is not liable for any failure to perform any of its obligations pursuant to this Agreement arising out of or in connection with any failure or fault of the power supply however caused and the Customer indemnifies NCET against any liability to any person howsoever arising, in respect of or in connection with any failure or fault in the power supply.
- 5.3. Electrical equipment will be provided, tested and tagged in accordance with AS/NZS 3760:2003. The Customer agrees that NCET is not liable for equipment supplied by others but energised from NCET's equipment. NCET reserves the right to refuse to energise dangerous or untested equipment. On long term hire, it is the Customer's responsibility to ensure testing is current.

### 6. Hire of Goods

- 6.1. All goods made available for hire shall be charged at a Day Rate.
- 6.2. The commencement of the Day for the purposes of this Agreement shall be when the goods are dispatched from the Warehouse.
- 6.3. All goods hired to the Customer by NCET remain the property of NCET, and must be returned to NCET at or before the expiration of the Hire Period.
- 6.4. Where any goods are not returned to NCET before the end of the Hire Period the Customer must pay additional hire charges for each Day or part thereof that the goods remain outstanding at the Day Rate for those goods.
- 6.5. Unless NCET has been expressly retained in writing to advise on the suitability fitness and merchantability of the equipment for the Customer's purpose, any warranty as to the suitability, fitness or merchantability is excluded.

### 7. Lost or Damaged Goods

- 7.1. The Customer is responsible for the full replacement cost of any goods that are deemed to be lost, stolen, damaged or otherwise not returned to NCET within the Hire Period in the condition in which they were supplied ("lost goods").
- 7.2. The Customer is liable to pay to NCET for cross-hiring of replacement goods to replace any lost goods.
- 7.3. The Customer must pay to NCET its costs of replacing any lost goods. NCET will replace lost goods with identical or equivalent goods and the provision by NCET to the Customer of an invoice setting out the cost of the replacement goods shall be conclusive proof of the cost of replacing the lost goods and the Customer must pay that amount to NCET on demand.

## 8. Payment

- 8.1. The Customer must pay NCET the Price within the time for payment provided in this Agreement, including the payment of any deposit.
- 8.2. If a deposit is payable it is not refundable in the event that the Customer cancels the Event or otherwise does not proceed with this Agreement.
- 8.3. NCET is not obliged to undertake any work or provide any goods or services to the Customer until the deposit has been paid to and received by NCET.
- 8.4. NCET's quoted price will be binding upon NCET for a period of thirty (30) days after the date of the Quotation.
- 8.5. Unless otherwise stated the Price does not include delivery charges. Any charges incurred by NCET for delivery will be added to the Price.
- 8.6. Payment may be made by credit card, but any payment by credit card will incur a surcharge of 1.5%.
- 8.7. The Price will be inclusive of GST unless otherwise specified.

## 9. Interest

If any monies payable by the Customer to NCET under this Agreement remain outstanding for a period greater than thirty (30) days the Customer shall pay interest (compounding monthly) at a rate 2% above the ninety (90) day bank bill rate notified by the Commonwealth Bank as at the last day of the calendar month in which the payment first became due and payable.

## 10. Delivery

- 10.1. The Customer shall be responsible for making all necessary arrangements to take delivery of the goods, including preparation of the Site.
- 10.2. Delivery of the goods to any third party nominated by the Customer (including carriers) is deemed to be delivery to the Customer.
- 10.3. The Customer shall inspect the goods upon delivery and notify NCET within twenty four (24) hours of any defects, or failure to fulfil the Quotation. NCET will be given access to any goods within a reasonable time after delivery in order to inspect any defects in the goods.
- 10.4. Should the Customer fail to give such notification, the goods and services will be deemed to be free from any defects whatsoever.
- 10.5. The failure of NCET to deliver any goods shall not entitle either party to terminate this Agreement.
- 10.6. Should NCET fail to deliver all or part of the goods, NCET shall not be liable for any loss or damage incurred by the Customer, or any of the Customer's agents, customers, related companies, or contractors.

## 11. Installation

- 11.1. NCET is not responsible for the installation or set up of any goods unless specified in this Agreement.
- 11.2. The Customer acknowledges that NCET may be dependent upon other contractors preparing the Site for the goods or their installation.
- 11.3. NCET shall not be liable for any delay in installing the goods or providing the services where such delay is a consequence of any act or omission on the part of any person other than NCET.

## 12. Insurance

- 12.1. The Customer must obtain:-
  - 12.1.1. Public liability insurance with an authorised Australian Insurer to a minimum value of \$20,000,000.00 (AUD) or such other amount as notified by NCET, naming NCET as an insured under such policy in relation to the supply of goods or services by NCET pursuant to this Agreement and in relation to the Event.
  - 12.1.2. Insurance with an authorised Australian Insurer for the full replacement value of all goods provided to the Customer under this Agreement, including a minimum, cover against fire, accident, theft, storm and water damage. The Customer will name NCET as an insured under such a policy.
- 12.2. The Customer must on demand by NCET provide satisfactory evidence of the insurances required in clause 12.1 within twenty four (24) hours of a request being made. Time is of the essence in relation to this clause 12.2.

## 13. No Obligation to Supply in Certain Circumstances

- 13.1. NCET may refuse to provide services and/or goods in the following circumstances:-
  - 13.1.1. The Customer does not obtain all necessary approvals, permits, consents and permissions as required by clause 4.
  - 13.1.2. The Customer does not in the opinion of NCET provide safe and adequate access to the Site.
  - 13.1.3. The power supply is in the opinion of NCET faulty, dangerous or inadequate.
  - 13.1.4. The Customer does not provide satisfactory evidence of insurance required under this Agreement.
  - 13.1.5. Where in the opinion of NCET the provision of the services or the hire or supply of any goods may cause a hazard to NCET staff or contractors or members of the general public.
  - 13.1.6. Where the Customer has not paid the deposit.
  - 13.1.7. Where the Customer has neglected or refused to sign these Terms and Conditions.
  - 13.1.8. Where the Customer is in default of any payments owed to NCET whether under this Agreement or otherwise.
- 13.2. In the event that NCET is entitled to refuse to provide goods or services pursuant to this clause:-
  - 13.2.1. NCET will give notice to the Customer of the reason or reasons why NCET will refuse to provide goods and/or services under this Agreement ("breach"); and
  - 13.2.2. The Customer must remedy the breach within seven (7) days or such lesser time as notified by NCET if the Event is due to be held within fourteen (14) days of the date of the notice given under clause 13.2.1.
- 13.3. If the Customer does not remedy the breach within the time stipulated in clause 13.2.2 NCET may terminate this Agreement and the Customer will, without prejudice to any other rights which NCET may have, be liable to pay the Cancellation Fee pursuant to clause 14 and for the purposes of clause 14 the date of cancellation will be the date upon which NCET terminates this Agreement under this clause 13.3.
- 13.4. NCET will not be liable to the Customer for any loss or damage the Customer suffers (including third party claims) because NCET exercised its rights under this clause.

## 14. Cancellation Fees

- 14.1. The Customer is liable for payment of a Cancellation Fee if the Customer cancels the Event or the hire of any goods or the provision of any services as follows:-
  - 14.1.1. The greater of the deposit or;
    - 14.1.1.1. Where fourteen (14) days or greater notice of the cancellation is provided to NCET 25% of the Price; or
    - 14.1.1.2. Where greater than seven (7) days but less than fourteen (14) days notice of the cancellation is provided to NCET 50% of the Price; or
    - 14.1.1.3. Where less than seven (7) days notice of the cancellation is provided to NCET 100% of the Price.
- 14.2. Any deposit paid by the Customer will be applied to the Cancellation Fee.

## 15. Credit Reporting

The Customer agrees that NCET has the right to make any inquiries from a credit reporting agency or business to ascertain the credit and financial responsibility of the Customer.

## 16. Customer's Disclaimer

- 16.1. The Customer hereby disclaims any right to cancel this Agreement, or to seek compensation for loss or damages arising from any misrepresentation made to the Customer by NCET, or any related corporation of NCET, and their respective officers, employees, agents and contractors.
- 16.2. The Customer acknowledges that they buy/hire the goods/services relying solely upon their own skill and judgement.

## 17. Catering

NCET Staff required on Site for in excess of eight (8) hours must be provided with meals and drinks by the Customer. Should this not be available, the cost of NCET's staff meals and drinks will be added to the Price.

## 18. Intellectual Property

- 18.1. Where any designs or specifications have been supplied by the Customer for manufacture by NCET, the Customer warrants that the use of those designs or specifications for the manufacture, assembly or supply shall not infringe the rights of any third party.
- 18.2. Where NCET produces any design, pattern, or specification during the supply or manufacture of any goods, intellectual property in them remains with NCET, and may only be reproduced or copied with the written consent of NCET.

## 19. Identifying Ownership

The Customer shall not remove, deface or cover up, or cause or allow the removal, defacement or cover-up, of any marks, signs, notices or symbols identifying the ownership of the goods supplied by NCET.

## 20. Registered Security

- 20.1. The Customer hereby charges in favour of NCET all of the Customer's estate and interest in any land and in any other assets, whether tangible or intangible, in which the Customer now has any legal or beneficial interest or in which the Customer later acquires any such interest, with payment of all monies owed by the Customer, and consents to:-
  - 20.1.1. The lodging by NCET of a caveat or caveats which note its interest in that real property; and
  - 20.1.2. Granting to NCET a fixed and floating charge over all its assets and the Customer will take all steps as may be required by NCET to enable NCET to execute, register and stamp a registered security on such terms as NCET may require.
- 20.2. In the event that the Customer refuses to execute any documents required by clause 20.1.2 the Customer irrevocably appoints NCET as its attorney to execute any such documents as may be necessary to perfect a registered security as required by NCET pursuant to clause 20.1.2, and the Customer will consent to a mandatory injunction to enforce its obligations pursuant to this clause 20.

- 21. Default**
- 21.1. The Customer agrees that if the Customer should:-
- 21.1.1. As an individual, commit an act of bankruptcy; or
- 21.1.2. As a company, pass a resolution for winding up or have a summons to wind up issued against it; or
- 21.1.3. Become subject to any form of external administration; or
- 21.1.4. Enter into an arrangement regarding outstanding payment with any of its creditors; or
- 21.1.5. Allow any invoice to remain in arrears for a period of over thirty (30) days.
- 21.2. All monies currently owed to NCET shall become due and payable immediately, and NCET shall have the right to terminate the supply of goods and services to the Customer, and the provisions of clause 14 (Cancellation Fee) shall apply as if the Customer had cancelled the Agreement on the date of the relevant default in clause 21.1.
- 21.3. Should the Customer fail to pay any invoice when due, the Customer will be responsible for any additional costs associated with recovery of all outstanding amounts, including but not limited to NCET' legal costs on an indemnity basis, and any cost incurred by NCET to any collection agency.
- 21.4. NCET will not be liable to the Customer for any loss or damage the Customer suffers (including third party claims) because NCET exercised its rights under this clause.
- 22. Retention of Title**
- 22.1. Excluding goods made available for Hire by NCET, ownership, property, and title in all goods shall remain vested in NCET until the Customer has paid all monies owing to NCET for all goods and/or services provided.
- 22.2. NCET may request in writing that the Customer return the goods or any part of them at any time until property in the goods has passed to the Customer.
- 22.3. Should the Customer fail to return the goods to NCET upon such notice, NCET, without prejudice to any of its other rights and remedies under this Agreement, reserves the right of entry to the Customer's premises or any other premises where the goods may be stored, by its servants or agents for the purpose of recovering or re-selling the goods, and any cost incurred as a result of such action will be a debt of the Customer owed to NCET.
- 23. Risk**
- 23.1. Notwithstanding retention of title as specified in clause 22 hereof, all risk passes to the Customer upon delivery.
- 23.2. If any of the goods are damaged or destroyed prior to title in them passing to the Customer, or during the Hire Period, NCET is entitled, without prejudice to any of its other rights and remedies under any agreement, to any insurance proceeds payable for the goods.
- 24. Indemnity**
- The Customer shall be liable for and shall indemnify NCET and its servants, agents, successors and assigns and each of them against any demand, suit, action, liability, loss, claim or proceeding whatsoever arising under any statute or at common law or in equity arising out of or in connection with the provision or manufacture of goods or services by NCET pursuant to this Agreement, and for any costs and expenses that may be incurred in connection with such demand, suit, action, liability, loss, claim or proceeding.
- 25. Limitation of Liability**
- 25.1. To the extent permitted by law the liability of NCET under this Agreement is limited to:-
- 25.1.1. In the case of the sale of goods at the option of NCET one of the following:-
- 25.1.1.1 The replacement of the goods or the supply of equivalent goods; or
- 25.1.1.2 The repair of the goods; or
- 25.1.1.3 The payment of the cost of replacing the goods or of acquiring equivalent goods; or
- 25.1.1.4 The payment of the cost of having the goods repaired.
- 25.1.2. In the case of the supply of services including the hire of goods at the option of NCET one of the following:-
- 25.1.2.1 The supplying of the services again; or
- 25.1.2.2 The payment of the cost of having the services supplied again.
- 25.2. To the extent permitted by law, NCET is not liable whether at law, in equity or pursuant to statute, for any loss of profit, loss of income, loss of data, punitive or exemplary damages or any indirect or consequential loss howsoever arising, including for any negligence or breach of this Agreement.
- 25.3. NCET accepts no liability for goods supplied based on measurements and specifications supplied by the Customer, and the Customer shall be responsible for any additional costs associated with any alteration of the goods, or the supply of additional goods.
- 26. Privacy Act 1988**
- 26.1. The Customer agrees that personal information provided may be used and retained by NCET for the following purposes and for other purposes as agreed between the Customer and NCET or required by law from time to time:
- 26.1.1. Provision of goods/services.
- 26.1.2. Marketing of goods/services by NCET, its agents, distributors, or contractors.
- 26.1.3. Assessing the credit worthiness of the Customer in relation to extending credit.
- 26.1.4. Exchanging of information with a credit reporting agency or trade reference named by the Customer.
- 26.1.5. Processing of any payment instructions, direct debit facilities and/or credit facilities requested by Customer.
- 26.1.6. Collection of amounts owed to NCET whether under this Agreement or any other agreement and the enforcing of any rights accruing to NCET under this Agreement or at law.
- 27. Severence**
- 27.1. If any term of this Agreement is found to be unenforceable for reasons of invalidity or illegality, the term shall be read down to the extent necessary so that it is enforceable, valid and legal.
- 27.2. If any term of this Agreement cannot be read down it shall be severed and the remaining terms of this Agreement shall not be affected.
- 28. No Waiver**
- The Customer agrees that no waiver by NCET of any breach of this Agreement shall be a waiver of any continuing or recurring breach.
- 29. Entire Agreement**
- This Agreement constitutes the entire agreement between NCET and the Customer with respect to its subject matter and the Customer warrants that it has not relied on any representations as to any matter or thing to be done or not done by NCET other than as set out in the Agreement.
- 30. Jurisdiction**
- 30.1. This Agreement shall be governed by and construed in accordance with the laws of the State of South Australia.
- 30.2. The Customer submits to the jurisdiction of the Courts of the State of South Australia.

The Customer acknowledges having received, read and understood these Terms and Conditions, the Quotation, and any Special Conditions forming part of this Agreement and in requesting NCET to provide goods and/or services agrees to be bound exclusively by this Agreement.