

TERMS & CONDITIONS OF EQUIPMENT HIRE**1. Definitions**

1.1 In these Terms:

"*equipment*" means all goods, equipment, consumables, accessories and of whatever nature supplied by Feel Good Events to the Hirer and "hire of equipment" includes any services provided by Feel Good Events in delivery, unpacking, installing and collection of equipment;

"*GST*" means the Goods and Services tax as defined in *A New Tax System (Goods and Services Tax) Act 1999* as amended;

"*Hire Period*" means the time from when the equipment leaves Feel Good Events' premises until it is received back at Feel Good Events' premises;

"*Hire Contract*" means any contract for the hire of equipment by Feel Good Events to the Hirer on the Terms;

"*Hirer*" means a person, firm or corporation, jointly and severally if there is more than one, hiring equipment from Feel Good Events;

"*Feel Good Events*" means Marcus Prentice trading as Feel Good Events (ABN 79 146 971 030);

"*Site*" means the site where the equipment is delivered, used or intended to be used by the Hirer; and

"*Terms*" means these Terms and Conditions of Hire.

2. Basis of Agreement

2.1 Unless otherwise agreed by Feel Good Events in writing, the Terms apply exclusively to every Hire Contract with the Hirer and cannot be varied or supplanted by any other terms, including the Hirer's terms and conditions (if any).

2.2 A written quote provided by Feel Good Events to the Hirer regarding the proposed hire of equipment is valid for 30 days and is an invitation only to the Hirer to enter into a Hire Contract based upon that quote. Any terms in Feel Good Events' quote form part of the Terms and, if inconsistent, the terms in the quote will prevail.

3. Pricing

3.1 Prices for the hire of the equipment will be advised by Feel Good Events at the date of hire and are subject to change at any time, on written notice from Feel Good Events.

3.2 If Feel Good Events requires the Hirer to pay a deposit, then this must be paid prior to Feel Good Events providing or delivering any equipment.

3.3 Unless otherwise stated, prices quoted for the hire of equipment exclude GST and any other taxes or duties imposed on or in relation to the hire of equipment. In addition to payment of the hire fees for the hire of equipment the Hirer must pay any

GST and any other taxes or duties imposed on the hire of equipment.

3.4 If the Hirer requests any variation to a Hire Contract, Feel Good Events may vary the hire fees to account for the variation.

3.5 Where there is any change in the costs incurred by Feel Good Events in relation to the hire of equipment Feel Good Events may vary its hire fees in order to take account of any such change, by notifying the Hirer.

4. Payment

4.1 Payment for hire of equipment must be made in the manner and at the times referred to in the Hire Contract promptly and without deduction.

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

4.3 Feel Good Events may require a security bond to be paid in addition to any hire fees. Feel Good Events may apply the security bond against any amounts payable by the Hirer under the Terms.

4.4 Any portion of the security bond not applied at the end of Hire Period will be refunded once the equipment has been inspected on return and Feel Good Events determines that no cleaning or repairs are required or any damage has occurred.

5. Variation and Cancellation

5.1 If through circumstances beyond the control of Feel Good Events, Feel Good Events is unable to provide equipment, then Feel Good Events may:

(a) make changes to the equipment provided so that the end performance is not materially prejudiced; or

(b) cancel any Hire Contract (even if it has already been accepted) by notice in writing without any liability to the Hirer.

5.2 The Hirer may cancel a Hire Contract prior to delivery of equipment but will forfeit any deposit paid.

6. Delivery, collection and return

6.1 The Hirer must allow Feel Good Events' servants, agents and insurers access to the equipment at all reasonable times to deliver, install, remove, inspect, test, adjust, maintain, repair or replace them. The Hirer is responsible for providing safe and proper access to and at the Site. The Hirer is liable for all injury, loss or damage suffered by Feel Good Events, its employees or agents while at the Site.

6.2 If the Hirer requires any change to the time of delivery or removal of the equipment it must promptly notify Feel Good Events in writing. Feel Good Events in its absolute discretion may accept or reject such request. If Feel Good Events accepts such request it may charge the Hirer for any additional hire fees or costs incurred by Feel Good Events.

6.3 If, for whatever reason Feel Good Events is unable to gain access to the Site for delivery or pick up of equipment it may charge the Hirer for delivery and pick up charges for each unsuccessful attempt.

6.4 If the Hire Contract states that the Hirer must arrange for pick up and return of the equipment to Feel Good Events and the Hirer fails return the equipment at the end of the Hire Period, the Hirer agrees to pay Feel Good Events the daily hire charge for each item for each day from the end of the Hire Period until the equipment is returned or until adequate compensation is made to Feel Good Events including payment for any loss or destruction of the equipment.

6.5 Feel Good Events' count and decision as to condition of equipment prior to dispatch and on return shall be final.

7. Responsibility of Hirer

7.1 During the Hire Period and at any time the equipment remains in the possession or under the control of the Hirer, the Hirer:

- (a) is responsible for and bears the risk for all of the equipment including damage to equipment caused by fire, storm, collision, accident, theft or burglary;
- (b) is responsible for using the equipment in strict conformity with the equipment's instructions or specifications;
- (c) must comply with all relevant laws, by-laws and regulations applicable to the installation, use and operation of the equipment;
- (d) must maintain and return the equipment in the same condition as at the start of the Hire Period;
- (e) must not sell, mortgage, sublet, assign or otherwise dispose of the equipment, as all equipment remains the property of Feel Good Events;
- (f) must immediately notify Feel Good Events of any failure of the equipment during the Hire Period (24 hour emergency service available for hires within Melbourne Metropolitan area - minimum response time 1 hour); and
- (g) must, within 14 days of demand, pay Feel Good Events for any damage or losses to any of the equipment, sustained while the equipment was in the possession of the Hirer.

7.2 The Hirer acknowledges that:

- (a) Feel Good Events is not responsible for the inexperience of the Hirer or operator of the equipment, which causes damage or non-operation of the equipment during the Hire Period and the Hirer will remain liable to pay all hire fees, unless the operator is provided by Feel Good Events;
- (b) use of non-genuine parts on the equipment (i.e. globes, fuses, smoke fluid, etc) may result in the Hirer being liable to pay services

charges and any charges for damage on demand to Feel Good Events.

7.3 The Hirer warrants that it has, or its employees have, the required skills, qualifications and expertise to operate and use the equipment.

7.4 The Hirer is solely responsible for all risks relating to or arising from the selection, use and location of the equipment.

7.5 The Hirer must indemnify Feel Good Events and keep it harmless from all costs, actions, claims, demands, loss or damage (including all legal costs) arising from or in connection with the equipment or as a result of its use by the Hirer.

8. Breakdown or defect

8.1 The Hirer must carefully inspect the equipment upon delivery and notify Feel Good Events within 4 hours if there is any damage, loss or shortage. Any shortages not notified within this time will be charged for in full.

8.2 Breakdown or defect in the equipment resulting from:

- (a) proper or ordinary use; or
- (b) the development of an inherent fault or faults not ascertainable prior to start of the Hire Period;

may, at Feel Good Events' option, either be repaired at the Site or the equipment replaced and delivered to the Site at Feel Good Events' expense.

8.3 If repair is impracticable and if replacement equipment is not available, the proportional charge for the broken or defective equipment will be credited to the Hirer and Feel Good Events will not have any other liability whatsoever to the Hirer.

8.4 No relief from hire fees or any claims will be allowed by Feel Good Events where:

- (a) an event has been delayed, cancelled or postponed for reasons out of Feel Good Events' control including, without limitation inclement weather or Site conditions;
- (b) the Hirer fails to notify Feel Good Events of any defect or breakdown of equipment immediately when it occurs.

8.5 The Hirer must not try to effect any repairs on any equipment.

9. Property, Risk and Insurance

9.1 The ownership of the equipment at all times remains with Feel Good Events and nothing in these Terms or any Hire Contract imparts any ownership rights to the Hirer.

9.2 The risk in the equipment is with the Hirer for the Hire Period or while the equipment is in the custody, possession or under control of the Hirer.

9.3 The Hirer must have its own insurance for loss, damage or theft of the equipment to its full replacement value.

9.4 In the event that the equipment is damaged, destroyed, lost or stolen, then the Hirer must

immediately compensate Feel Good Events up to the full replacement cost of the equipment.

- 9.5 If the equipment is involved in any accident resulting in injury to persons or damage to the equipment or other property, immediate notice must be given to Feel Good Events by telephone and confirmed in writing to Feel Good Events. The Hirer must not make any admission, offer, promise, payment or indemnity without Feel Good Event's prior written consent.

10. Default and Termination

10.1 If the Hirer:

- (a) breaches any of the Terms;
- (b) allows the equipment to be damaged or lost or the equipment is damaged or lost while under the responsibility of the Hirer;
- (c) defaults in payment by the due date of any amount payable;
- (d) is an individual and becomes bankrupt or enters into any scheme of arrangement or composition of the benefit of his or her creditors;
- (e) is a corporation and becomes insolvent or enters into any scheme of arrangement, any assignment or composition with or for the benefit of its creditors, has as a liquidator, administrator, receiver or manager appointed, or any action is taken for winding up or dissolution;

Then Feel Good Events may, without prejudice to any other remedy available to it:

- (f) require immediate payment of all money which would become payable by the Hirer to Feel Good Events at a later date on any account, without further notice;
- (g) charge the Hirer interest on any sum due at the prevailing rate pursuant to the *Penalty Interest Rates Act 1983 (VIC)* plus 4 per cent for the period from the due date until the date of payment in full;
- (h) charge the Hirer for, and the Hirer must indemnify Feel Good Events from, all costs and expenses (including without limitations all legal costs and expenses) incurred by it resulting from the default or in taking action to enforce compliance with the Terms or to recover the equipment;
- (i) charge the Hirer for the cost of repairing or replacing any lost, damaged or destroyed equipment;
- (j) charge the Hirer for subsequent lost hire fees as a result of the equipment being lost, damaged or destroyed until the equipment is repaired or replaced;
- (k) immediately terminate the Hire Contract.

10.2 On termination, the Hirer must immediately make the equipment available for collection. If the Hirer does not, Feel Good Events is entitled to enter any premises of the Hirer where the equipment is suspected to be to repossess the

equipment. Feel Good Events will not be liable for any damage caused and the Hirer must indemnify Feel Good Events from any liability to it or any third party in respect of any damage, demands, proceedings, costs and expenses howsoever arising.

11. Liability

11.1 Except as specifically set out herein, or contained in any warranty statement provided with the equipment, any term, condition or warranty in respect of the quality, merchantability, fitness for purpose, condition, description, assembly, manufacture, design or performance of the equipment whether implied by statute, common law, trade usage, custom or otherwise, is hereby expressly excluded.

11.2 Repair or replacement of the equipment or refund of the hire fees, as determined in the absolute discretion of Feel Good Events, is the absolute limit of Feel Good Events liability howsoever arising under or in connection with the hire, use of, storage or any other dealings with the equipment by the Hirer or any third party.

11.3 Feel Good Events is not liable for any indirect or consequential losses or expenses suffered by the Hirer or any third party, howsoever caused, including but not limited to loss of turnover, profits, business or goodwill or any liability to any other party.

11.4 Feel Good Events will not be liable for any loss or damage suffered by the Hirer where Feel Good Events has failed to meet any delivery date or cancels or suspends the hire of equipment.

11.5 Nothing in the Terms is to be interpreted as excluding, restricting or modifying or having the effect of excluding, restricting or modifying the application of any State or Federal legislation applicable to the hire of equipment which cannot be excluded, restricted or modified.

12. Miscellaneous

12.1 The law of Victoria from time to time governs the Terms and the parties agree to the non-exclusive jurisdiction of the courts of Victoria, the Federal Court of Australia, and of courts entitled to hear appeals from those Courts.

12.2 Failure by Feel Good Events to enforce any of these Terms shall not be construed as a waiver of any of Feel Good Events' rights.

12.3 If any of the Terms are unenforceable it shall be read down so as to be enforceable or, if it cannot be so read down, the term shall be severed from these Terms without affecting the enforceability of the remaining terms.

12.4 A notice must be in writing and handed personally or sent by facsimile or prepaid mail to the last known address of the addressee. Notices sent by pre-paid post are deemed to be received upon posting. Notices sent by facsimile are deemed received on the facsimile machine confirming transmission.