



Building 1, 130 Melrose Drive
Tullamarine VIC 3043
ACN 116 879 513

p: 1800 MPH AUS
e: info@mphaus.com

MPH Australia Pty Ltd Terms and Conditions (2021)

1. DEFINITIONS

In this Agreement:

"AGREEMENT" means any agreement or contract entered into for the hire of Equipment or provision of Services by MPH to You;

"CONFIRMATION DATE" means the closer calendar day that is a period 14 days from date the Cost Estimate was created or a period 14 days prior to the Start Date;

"COST ESTIMATE" means any verbal or written cost estimate provided by MPH to the Hirer concerning the proposed hire of Equipment or provision of Services;

"DAY RATE" means the rate per day for the hire of the Equipment or for the provision of Services as set out in the Cost Estimate;

"DELIVERY FEE" means the delivery fees payable as outlined in the Cost Estimate;

"EQUIPMENT" means the equipment listed in the Cost Estimate, and

"EXTRAS" means Equipment or Services supplied in addition to that quoted on the original Agreement

"FINISH DATE" means the date and time upon which the provision of the Services or the hire of the Equipment finishes (as set out in the Cost Estimate);

"HIRE FEE" means the fees payable as outlined in the Cost Estimate for the hire of Equipment or provision of Services;

"HIRE PERIOD" means the period commencing on the Start Date and finishing on the Finish Date;

"MPH" means MPH Australia Pty Ltd (ACN 116 879 513) and includes its servants and agents;

"PAYMENT SCHEDULE" means the timeframe for payments as specified in the Cost Estimate;

"SERVICES" means the provision of labour including but not limited to labour for production planning, management, design, Equipment delivery, set-up, operation, pack-down, and collection, as described in the Cost Estimate;

"START DATE" means the date and time upon which the provision of the Services or the hire of Equipment starts (as set out in the Cost Estimate);

"TERMS" means these Terms and Conditions;

"YOU" or "YOUR" means the company or person, jointly and severally if there is more than one, hiring Equipment or obtaining Services from MPH.

2. AGREEMENT

- 2.1. Unless otherwise agreed in writing, these Terms apply exclusively to every Agreement and cannot be varied or replaced by any other conditions, including Your Terms and Conditions (if any).
- 2.2. Any Cost Estimate provided by MPH to You is valid for 30 days.
- 2.3. The Terms may include additional terms in the Cost Estimate which are consistent with these Terms.
- 2.4. MPH may at its absolute discretion refuse to accept any order.
- 2.5. MPH may vary these Terms by written notice to You at any time. Any variations will apply to orders made by You after the date of notice.



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3. PRICING & PAYMENT

- 3.1. All fees, charges, costs, and expenses are quoted in Australian dollars and are exclusive of Goods and Services Tax ("GST") and other applicable taxes and duties. You must pay GST and other applicable taxes and duties to MPH in addition to the fees payable under this Agreement.
- 3.2. If You request any variation to the Agreement, MPH may increase the price to account for the variation.
- 3.3. Standard payment terms, being full payment of the Hire Fee prior to the Start Date of Services, applies to all Agreements unless otherwise agreed to in writing.
- 3.4. You may apply for a Credit Account in accordance with the requirements of the Credit Account Application trade terms.
- 3.5. Variations made to the original Agreement after the Hire Period has commenced will be charged separately as Extras and must always be paid for in full before the Equipment will be delivered to You including for Credit Account clients.
- 3.6. Payment terms may be revoked or amended at MPH's sole discretion, immediately upon giving You written notice.
- 3.7. Invoices 30 days or more overdue will incur a 5% late payment fee, calculated, and charged monthly on the original invoice amount.

4. HIRE OF EQUIPMENT

- 4.1. Hire of the Equipment must be agreed to electronically by accepting the quote sent to You from our quoting software. In doing so You agree to our Terms and Conditions.
- 4.2. The hire of the Equipment and/or the provision of Services will commence from the Start Date and continue for the Hire Period. Any extension of the Hire Period must be agreed to in writing.
- 4.3. Extension of the Hire Period will be charged as agreed to in writing and must be paid in accordance with the above payment terms.
- 4.4. You are entitled to use the Equipment for its intended and proper use during the Hire Period.
- 4.5. The Equipment will be delivered to You or collected by You on the Start Date or as otherwise agreed to in writing.
- 4.6. The Equipment must be returned by You or collected by Us on the Finish Date specified on the Agreement, in a working, complete and clean state.
- 4.7. You must allow MPH, its employees, agents and insurers, access to the Equipment at all reasonable times to deliver, install, remove, inspect, test, adjust, maintain, repair, or replace it.

5. PROVISION OF SERVICES

- 5.1. Where MPH provides the Equipment or Services to You at a venue or location specified by You ("Venue"), You must:
 - a) ensure that MPH is able to gain access to the Venue at all reasonable times.
 - b) ensure that the Equipment, once installed remains in place at the Venue for the Hire Period and that the Venue is not required for any other purpose which would require the Equipment to be dismantled and re-installed.



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- c) ensure that on the Finish Date, at such time specified by MPH, the Venue is available to enable MPH to dismantle and remove any Equipment from the Venue.
- d) do all things necessary to comply with Your obligations under Occupational Health and Safety legislation, regulations, and codes of practice.
- e) obtain all relevant permits and licences with respect to Your occupation and use of the Venue and ensure that such permits and licences are in place prior to the Start Date.

6. USE, OPERATION AND MAINTENANCE OF EQUIPMENT

- 6.1. At all times, the Equipment remains MPH's property.
- 6.2. You must not sell, transfer, hire, loan or give the Equipment to any other person or part with or share possession of the Equipment or do anything which may affect MPH's interest in the Equipment.
- 6.3. You are responsible for the Equipment from the time it leaves MPH's premises (or from the time of delivery as the case may be) until it is returned to MPH (or from the time of collection as the case may be).
- 6.4. You must not affect any repairs or modifications to the Equipment.
- 6.5. You will ensure that all persons operating or erecting the Equipment are instructed in its safe and proper use.
- 6.6. If MPH is required to re-attend the Venue or attend any premises at which the Equipment is being used for any reasons (including but not limited to Your incorrect ordering of the Equipment, or Your incorrect use the Equipment), then You may be charged an additional Delivery Fee and/or Hire Fee (as the case may be) and/or service fee at MPH's discretion.
- 6.7. You agree to operate, maintain, store, and transport the Equipment strictly in accordance with any instruction provided by MPH and with due care and diligence.
- 6.8. You agree that the Equipment will only be used for its intended purpose and in accordance with any manufacturer's instructions and recommendations whether supplied by MPH or posted on the Equipment in regard to its use, operation, maintenance, and storage.

7. LOSS & DAMAGE TO EQUIPMENT

- 7.1 You must advise MPH within [4] hours of delivery or pick up of the Equipment: (a) of the non-arrival of any of the Equipment;
 - b) if there is damage to any of the Equipment;
 - c) if the wrong Equipment has been received; or
 - d) if the quantity of the Equipment is incorrect.
- 7.2 If You fail to give notice in accordance with clause 7.1, You are deemed to have accepted the Hire of the Equipment.
- 7.3 You will be responsible for any loss or damage to the Equipment irrespective of how the loss or damage occurs (subject only to fair wear and tear) during the Hire Period ("Damaged Goods") and will be liable to pay for the repairs of any Damaged Goods or if the Damaged Goods cannot be repaired, the cost of replacement.

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- 7.4 You will be liable for all costs incurred by MPH in relation to the Damaged Goods including without limitation MPH's own labour costs, and for the loss of hire fees from future clients for the period during which the Damaged Goods are unable to be re-hired by MPH.
- 7.5 Equipment must be returned in the same condition in which it was supplied. MPH may charge You for the cost of any cleaning or repairs required to the Equipment upon its return by You.
- 7.6 In the event that You do not return all parts of the Equipment to MPH by the Finish Date, You may at MPH's sole discretion, be required to pay an additional fee at the applicable Day-Rate for each day or part day for which the Equipment (or part thereof) is retained by You and/or charged for the replacement cost of the Equipment (as the case may be).
- 7.7 You will be liable for the payment of the new list price of any Equipment not returned to MPH.
- 7.8 In the event of any breakdown or failure of the Equipment whatever the cause, You must notify MPH immediately so that the appropriate action may be taken by Us.
- 7.9 If the breakdown or failure results from proper or ordinary use or the development of an inherent fault not ascertainable prior to the Start Date, MPH may at its discretion, either repair the Equipment at the Venue or replace the Equipment.
- 7.10 If repair is impracticable and replacement Equipment is not available, the proportional charge for the broken or defective Equipment will be credited to the Hirer and MPH will have no other liability whatsoever to the Hirer.

8. INSURANCE

- 8.1 MPH will maintain a policy of insurance over all Equipment owned by MPH which will cover such Equipment whilst in MPH's possession or whilst such Equipment is being operated by any employee or agent of MPH as part of the Services.
- 8.2 At all times during the Hire Period, You must hold and maintain an adequate amount of insurance cover in connection with the supply, hire, use and possession of the Equipment. You are further required to hold and maintain insurance cover in connection with Your event and/or the Venue, including without limitation an insurance policy in respect of public liability.
- 8.3 You must provide MPH with certified copies of Your certificates of insurance upon request by MPH.
- 8.4 You must compensate MPH for any increases in its insurance premiums, where such premiums are increased as a result of the supply of the Equipment and/or the provision of Services to You or by Your breach of this Agreement or any negligent act or omission by You.

9. WARRANTY AND INDEMNITY

- 9.1 To the full extent permitted by law, MPH is not liable to You or to any other person for any cost, loss, expense, demand, claim, or liability arising directly or indirectly from the supply of the Equipment and/or the Services however resulting.
- 9.2 MPH is not liable to You or to any other person for any cost, loss, expense, demand, claim, or liability arising directly or indirectly from Your use or misuse of the Equipment, the incorporation or use of any third party's equipment or services, any breach of this Agreement by
- 9.3 You hereby agree to assume all risks and liabilities for, and in respect of the Equipment and for all injuries to or deaths of persons and any damage to property however so arising from Your possession, use, maintenance,



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repair, storage, or transport of the Equipment. To the full extent permitted by law, You hereby release, discharge and forever indemnify MPH from all claims and demands of any nature made against MPH arising out of or consequent on the use or misuse of the Equipment during the Hire Period.

- 9.4 To the full extent permitted by law, You agree that no warranties are given by MPH in respect of the Equipment.
- 9.5 MPH will not be liable to You or to any third party for any failure to perform or delay in performing its obligations under this Agreement caused (in whole or in part) by an event beyond MPH's control including (without limitation) labour shortages, labour disputes, transport delays, data communication delays, inability to obtain products or supplies, fires, civil disobedience, mechanical breakdown, weather, acts of God, government action or regulation, computer software error or any similar event. In those circumstances MPH can delay performance of its relevant obligations without any liability to You.
- 9.6 Replacement of the Equipment or re-supply of the Services is the absolute limit of MPH's liability howsoever arising under or in connection with the hire, use of, storage or any other dealings with the Equipment or Services by You or any third party.

10. INTELLECTUAL PROPERTY

- 10.1 MPH retains all ownership in the copyright, trademarks, and other intellectual property rights ("IP") over its designs and other creative works including but not limited to printed materials, designs and any graphics/artwork used in connection with the provision of the Equipment and the Services.
- 10.2 You must not replicate or use in any format any of the IP without MPH's express written consent.

11. TERMINATION

11.1 If:

- a) You fail to pay any amounts owing by You under this Agreement on the invoice due date;
- b) You breach any term of this Agreement;
- c) MPH is of the opinion that the supply of the Equipment and/or the Services by MPH may create an unsafe environment or may damage the Equipment;
- d) You commit any negligent act or omission;
- e) You become bankrupt or insolvent or have an administrator or similar functionary appointed in respect of Your assets;

Then MPH may, without prejudice to any other remedy available;

- f) require immediate payment of all money which would become payable by You to MPH at a later date on any account, without further notice;
- g) charge You for, and You must indemnify MPH from, all costs and expenses (including all legal costs) incurred by MPH resulting from the default or in acting to enforce compliance with the Terms or in recovering any Equipment or in recovering any sum due;
- h) cease or suspend for such period as MPH thinks fit, hire of any further Equipment or provision of any further Services to You; and
- i) by written notice to You, terminate any Agreement with You so far as unperformed by MPH.



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11.2 On termination, You must immediately make the Equipment available for collection. If You do not, MPH is entitled to enter any premises where the Equipment is suspected to be and remove it, and You must indemnify MPH from and against any loss, damage, demands, proceedings, costs expenses or actions by any party arising from such action.

12. VARIATIONS AND CANCELLATIONS

12.1 If through circumstances beyond MPH's control, it is unable to provide the Equipment or the Services, then MPH may:

- a) make changes to the Equipment provided that the end performance is not materially prejudiced; or
- b) cancel the order (even if it has already been accepted) by written notice to You.

12.2 If You wish to cancel this Agreement or amend any terms of the Cost Estimate, You must give MPH no less than 7 days written notice prior to the Start Date of Your intention to do so. If You fail to give MPH the required notice, You will be liable for any expenses incurred by MPH in preparation of the provision of the Services or the hire of the Equipment ("Cancellation Fee").

12.3 If you wish to cancel the Agreement within 2 days of the Start Date you will incur a 75% Cancellation Fee.

12.4 The Cancellation Fee will be invoiced by MPH and must be paid by You within seven (7) days of the date of such invoice.

13. EMPLOYEE WORK CONDITIONS

13.1 Where a transmission or recording allowance is owed to an MPH employee/s, per the Live Performance Award 2020, Clause 60.2, the applicable amount will be added to the Agreement and charged directly to You and will be paid by MPH to the employee.

13.2 In accordance with the Live Performance Award 2020, suitable accommodation must be provided to all MPH employees meaning a single room in a modern motel or serviced apartment with private facilities. Where an employee is required to stay longer than one week at a single location, the accommodation must contain cooking facilities, have clean linen supplied and be cleaned once per week at Your cost.

13.3 Wherever possible, a minimum break between shifts of 8-hours should be allowed for when scheduling MPH employees.

14. MISCELLANEOUS

14.1 This Agreement is governed by and construed in accordance with the laws of the State of Victoria and the parties submit to the exclusive authority of the courts of such State.

14.2 MPH's failure to enforce any of these Terms will not be construed as a waiver of any of MPH's rights.

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

14.4 A notice must be in writing and handed personally or sent by fax, email or prepaid mail to the last known address of the addressee. Notices sent by fax or email are deemed to be received upon the sender's machine confirming transmission. Notices sent by mail are deemed to be received upon posting.

14.5 The parties acknowledge and agree that they must each keep the terms and conditions of this Agreement confidential. Neither party will make any statement or announcement or give or supply any information to any



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person (other than professional advisers where such information is given in confidence) relating to the affairs of either party, the terms of this Agreement or the exercise of any rights granted pursuant to this Agreement.

END