

## 1. General

### Smoke & Mirrors AV Event Hire Terms & Conditions

1.1 If you are hiring on behalf of a business or organisation you confirm that you have the necessary authority to enter into this contract on behalf of that business or organisation, and that you will indemnify us against all losses and expense which may be incurred if this is not the case.<sup>[1]</sup> 1.2 Smoke&Mirrors reserve the right to decline some or all of your order, for any reason.

## 2. Contract

2.1 You may place your hire order with Smoke&Mirrors by returning a signed quote by email, phone, fax, mail or in person. Quote acceptance via email for an event will be binding and taken as full acceptance of our terms and conditions. 2.2 We will provide you with an order quote confirming hire the exact Equipment to be hired by you (“the Equipment”) and stating total costs including installation, delivery or other applicable charges. You will check the delivery time and date on the quote, acceptance of the order will be taken that those details are correct.

## 3. Hire Charges

3.1 Smoke&Mirrors hire charges and all other applicable charges will be as shown in the order quote. The order quote will also show the date the charges will start from and the period of the hire. 3.2 You should return all equipment to us no later than 10:00am on the date shown on the contract and all equipment should be clean and in good working condition.

3.3 You agree to reimburse Smoke&Mirrors for all costs in connection with cleaning, repairing or replacing lost or stolen equipment. Equipment not returned in clean and good working condition and will be liable for charges at the daily rate shown in the order quote for the period of such repair, cleaning or replacement.

3.4 Smoke&Mirrors reserve the right to impose additional charges at the daily rate for the period in which any item of Equipment is not available for use by our other customers because of your breach of these terms and conditions.<sup>[1]</sup>

3.5 Where we have taken a deposit we may retain the whole or part of this in order to set against any liability you have to us in relation to the hire of the Equipment

## 4.

4.1a All Hires and Events are to be paid in full prior to the event or collection of equipment.<sup>[1]</sup> 4.1b At our discretion we may allow payment to be within a 7, 14 or 30 day time frame or we may ask for a deposit prior to delivery with the balance within the allowed time frame. The precise structure of payment will be specified in the order quote.<sup>[1]</sup> 4.2 Smoke&Mirrors accept payment by cash, credit card, eftpos or Via Bank transfer. Surcharges may apply for credit card payment.<sup>[1]</sup> 4.3 Where any payment is not made by the date specified in the order quote we shall be entitled to charge reasonable collection fees and interest on the outstanding amount/s at the rate of 1.5% per month to be calculated on a daily basis from the date of due payment until the date of actual payment or judgment.

## 5. Hire only delivery

5.1 Smoke&Mirrors only deliver to customers who have asked for delivery and have agreed on a time and price; all goods must be signed for by an adult aged 18 or over. The person who signs for our equipment will produce a WA drivers license for identification and by signing our hire contract accept full responsibility for our equipment.<sup>[1]</sup> 5.2 Equipment will be delivered in good working order, the equipment will be demonstrated to the client as working and the client by signing the hire contract will accept the equipment is in full working order. 5.3 Our estimated time for delivery will be stated in the order quote. We

hope to deliver these estimates but occasionally delays will occur, despite our best efforts. We will not be liable for any loss, damage, or expense resulting from any delay or failure to deliver within such estimated timescales or for loss or damage to Equipment occurring during delivery.

## **6. Installation & Operational Charges**

6.1 Installation, operational and all other staff related charges will be shown in the order quote, Smoke&Mirrors reserve the right to impose additional delivery cost where the customer has not been accurate with information in regards to access, parking, terrain etc.<sup>{1}</sup><sub>{SEP}</sub>6.2 Where we are prolonged or unable to carry out installation through error or fault on your part or the venues, we reserve the right to charge for our time at the rates shown on the order quote if the event does not run to the time instructed at time of quoting. The delivery, installation & removal cost quoted is on the basis that we are not kept waiting. The client will attend installation on time to give direction on exact setup location and how the event will run. Additional travel, installation and hire charges may be applicable if changes to requirements are made after the booking has been made.

## **7. Risk**

7.1 The risk and responsibility for the Equipment will pass to you upon delivery or installation, or, where you choose to uplift the Equipment directly, at the moment of uplift.<sup>{1}</sup><sub>{SEP}</sub>7.2 When uplifting the Equipment directly from us you should ensure that you have suitable transport as we reserve the right to refuse removal of Equipment where appropriate arrangements for safe and lawful transport of the Equipment has not been made. If the start of the hire is delayed for this reason we reserve the right to charge at the daily rate shown in the order quote during the period of delay.

## **8. Cancellation**

8.1 You will not be entitled to cancel the contract once the Equipment has been uplifted or delivered, unless we agree to such cancellation.<sup>{1}</sup><sub>{SEP}</sub>

8.2 Smoke&Mirrors reserves the rights to charge cancellation fees. Cancellation fee's will apply for events cancelled with less than 48hrs notice with the exception of events closed due to government Covid19 restrictions in which case we will negotiate on a case by case basis depending on what stage the job is at, if it can be re-scheduled etc. Standard cancellation 24 – 48hrs prior to delivery 25% of quoted cost payable. Cancellation day prior to delivery 50% of quoted cost payable. Cancellation on the day 100% of quoted cost payable.

8.3 If you are a consumer cancelling, then you must advise us in writing immediately or by email, verbal cancellation is not acceptable. We will not accept cancellation once the hire has started. The full hire is chargeable whether the equipment is used or not.

## **9. Your responsibilities**

9.1 You will ensure that the Equipment is not damaged or misused during the period of the hire. This includes ensuring that the Equipment can safely be used with any other equipment which you use.<sup>{1}</sup><sub>{SEP}</sub>9.2 You are responsible for and required to check that all items and Equipment that has been delivered, that all items are accounted for prior to and post use at pick up.

9.3 You will make every effort to ensure that any person operating or using the Equipment during the period of the hire is instructed in the safe and proper operation of the Equipment.<sup>{1}</sup><sub>{SEP}</sub>9.4 You shall not sell or attempt to sell or otherwise dispose of the Equipment.<sup>{1}</sup><sub>{SEP}</sub>9.5 You shall reimburse Smoke&Mirros for all costs in connection with repairing or replacing Equipment not returned in good condition, pay us the full retail cost of any Equipment which is lost, stolen or damaged beyond economic repair, and insure the Equipment against such liability.

9.6 You agree to pay the full daily rate for all items of Equipment which require to be replaced or repaired until such repair or replacement has been completed.<sup>[1]</sup>9.7 Smoke&Mirrors give no warranty as to the suitability of the Equipment for any particular purpose required by you. You warrant that you have read and understood the manufacturers specifications in respect to the Equipment.

9.8 This clause 9 shall not affect your statutory rights or seek to exclude liability which cannot be excluded under the Trade Practices Act 1974 “as amended”.

9.9 You will be responsible for the security and safety of our staff and equipment on your event site.

#### 9.10 **Hire equipment is not insured**

### **10. Maintenance**

10.1 You agree to properly maintain the Equipment during the period of the hire and to notify us as soon as reasonably practicable if there is a problem with the operation of any item of Equipment.

10.2 Any damaged or faulty item of Equipment should be returned, at your expense (subject to clause 10.3) to us. In no circumstances should you proceed to repair any item of Equipment without our prior approval.<sup>[1]</sup>10.3 Where the problem with the Equipment is caused by a fault not discoverable by reasonable examination in terms of clause 5.2 above, we will reimburse you for reasonable transportation costs and for hire charges during the period when the Equipment could not be used due to this fault. However our obligation under this clause does not cover faults caused by misuse wear and tear, accident or neglect.<sup>[1]</sup>10.4 You shall not alter or modify the Equipment or use it for purposes for which it is not designed. 10.5 You agree that we have a right of access to the Equipment in order to inspect, repair or replace it and you authorise us to enter any property where the Equipment is located or where we reasonably believe it to be located, to carry out such inspection, repair or replacement.

### **11. Liability and Indemnity**

11.1 To the fullest extent permissible under law, we will not be liable for any losses (direct, indirect or consequential) you incur arising out of or in connection with the hire of the Equipment.<sup>[1]</sup>1.2 Notwithstanding the terms of clause 7.1 in the event that we are held liable for losses which you have incurred arising out of or in connection with the hire of the Equipment, our liability to you shall be limited to a sum equal to the amount paid by you for the Equipment hired or the cost to us of re- hiring the Equipment to you.

11.2 You will be liable for replacement of equipment stolen from your event site.

11.3 You agree to indemnify us at all times in respect of all claims by any person in relation to any injury, loss, claim or expense arising out of or in connection with the use of the Equipment.<sup>[1]</sup>11.4 If you are a consumer, this clause 11 does not affect your statutory rights.

11.4 You agree to secure the event precinct from the general public and take responsibility for any injury, loss or damage caused by a member of the public.

11.5 We will not be liable for losses which you incur if any our staff are ordered to isolate by the health department due to exposure to Covid19 and we have not been given enough notice to supply alternative staff if the event suffers or does not happen at all.

11.6 We reserve the right to subcontract part or all of the audiovisual contract to another audiovisual company if necessary to avoid clause 11.5.

11.7 With high rates of Covid 19 circulating and high rates of staff off sick or isolating it may not be possible to replace staff or subcontract work we have agreed to do at short notice, we cannot be held responsible for that and will not be held liable for any cost or loss to your event.

## **12. Termination of Hire**

12.1 Smoke&Mirrors shall be entitled to terminate the contract immediately and to repossess the Equipment at any time where you are in breach of these terms and conditions, or you take any steps, or if any process or action is started which, in our reasonable opinion suggests that your solvency is in doubt.

12.2 Where the provisions of clause 12.1 apply, you authorise us to enter any property where we reasonably believe Equipment to be, in order to repossess such Equipment.

## **13. Governing law**

13.1 These terms and conditions and the contract for the hire of the Equipment are governed by law of WA and are subject to the exclusive jurisdiction of the WA Courts.

## **14. GST**

14.1 Unless otherwise stated all costs quoted by Smoke&Mirrors include GST.

## **15. Credit**

15.1 Smoke&Mirrors shall be entitled without notice to terminate any credit arrangement with you in the event of you defaulting in respect to any of these terms and conditions or our order quote or for any other reason which we need not make known to you.<sup>[1]</sup> 15.2 Smoke&Mirrors shall be entitled at any time to request such security or additional security as we shall in our discretion think fit and shall be entitled to withhold supply of the Equipment or any credit arrangements until such security or additional security is provided by you.

## **16. Damage to equipment**

16.1 Damage to equipment includes but is not limited to water/damp damage, damage from power surge, faulty power sources such as generators, power cables and associated equipment, marks, dents, cracks and any other visible damage. Damage associated with the connection of equipment or devices provided by any other person or organization will be the responsibility of the client. 16.2 Equipment returned or collected and found to be faulty will be outsourced for independent opinion to decide if the equipment has simply developed a fault or if the client is at fault as per clauses 1.1 – 16.1.

16.3 Where fencing, cable covers or other barriers are removed or vehicles allowed into a event precinct before cable are safely removed you will be liable for complete replacement of cable or equipment if damaged by vehicle traffic.

## **17. Discount & delivery/collection times**

17.1 Discounts applied to hire equipment are not on going and Smoke&Mirrors has no obligation to discount any future hire. Equipment may be delivered or collected early or returned late at our discretion, we have no obligation for the same arrangement for future hire or events.

## **18. Content Management & Digital files**

18.1 Unless outlined in "Request For Quote" Smoke&Mirrors has not quoted to receive, download, compile, test, burn, resize, edit or in any way alter or save files for event use.

18.2 If content/file management has been quoted it will be listed in the quote as

Item 1919 Audio Visual Content Management

18.3 Smoke&Mirrors reserve the right to raise a charge for content / file management to cover our time and cost of consumables.

18.4 Smoke&Mirrors take no responsibility for corrupt / incorrect file version / missing files if requested to compile files. Smoke&Mirrors will only spot check what we do receive and not listen to audio tracks from end to end. We receive hundreds of emails per week and take no responsibility if any are not received or go missing.

## **19. Ceremonial Sound Tracks**

19.1 Smoke&Mirrors do not provide anthems or other sound tracks for ceremonial use. That is the responsibility of the client to organize the correct version, put it on suitable media for replay and have permission to use it.

## **20. License to play music**

20.1 It is the responsibility of the client to have a OneMusic licence (formally APRA AMCOS) to play music in public. <https://onemusic.com.au/>