

HIRE TERMS AND CONDITIONS

1. DEFINITIONS AND INTERPRETATION

- 1.1 **Definitions:** In these Conditions, unless the context or subject matter otherwise requires:
- (1) **Additional Services** means the additional services (including the hire of props) to be provided by the Owner to the Hirer as specified in the Booking Order Form (if any);
 - (2) **Agreement** means these terms and conditions and the Booking Order Form;
 - (3) **Booking Order Form** means the booking order form signed by or on behalf of the Hirer setting out the commercial terms of the Hirer's agreement to hire the Goods and acquire the Additional Services (if any);
 - (4) **Business Day** means day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act is to be performed or a payment is to be made;
 - (5) **Claim** means in relation to a person, corporation or other legal entity, a claim, demand, remedy, suit, injury, damage, loss, cost, liability, action, proceeding, right of action, claim for compensation or reimbursement or liability incurred by or to be made or recovered by or against such person, corporation or legal entity however arising and whether ascertained or unascertained;
 - (6) **Delivery Date** means the time and date for delivery of the Goods to the Site as specified in the Booking Order Form;
 - (7) **Deposit** means the deposit payable by the Hirer as specified in the Booking Order Form;
 - (8) **Hirer** means the person, firm, partnership, company or other organisation which is hiring the Goods as specified in the Booking Order Form;
 - (9) **Hiring Fee** means the fee for hiring the Goods as specified in the Booking Order Form;
 - (10) **Hiring Period** means the period of time for which the Goods are hired by the Hirer as specified in the Booking Order Form or such other longer period as agreed between the parties;
 - (11) **Goods** means Adelaide Photobooths photobooth(s) and props as specified in the Booking Order Form;
 - (12) **Owner** means Adelaide Photobooths (ABN 12 696 317 864) of PO Box 42, Athelstone SA 5076;
 - (13) **Product** means photographs produced by the Goods (whether printed, electronic or in produced other media) during the Hiring Period; and
 - (14) **Site** means the location(s) at which the goods are to be hired as specified in the Booking Order Form.

- 1.2 **Interpretation:** In the interpretation of any Agreement, unless the context or subject matter otherwise requires:
- (1) a reference to a party includes that party's executors, administrators, substitutes, successors and permitted assigns;
 - (2) each covenant by two or more persons as a party is made jointly by all and severally by each;
 - (3) the singular includes plural and vice versa; and
 - (4) time is of the essence of all the Hirer's obligations to the Owner, particularly payment of amounts owing.

2. HIRING, DELIVERY & SERVICE

2.1 In consideration of the Hirer paying the Hiring Fee to the Owner, the Owner agrees to let the Goods on hire to the Hirer and provide the Additional Services to the Hirer. The Hirer will hire the Goods and acquire the Additional Services from the Owner on the terms and conditions set out in this Agreement.

2.2 The Owner will at its own cost deliver the Goods to and provide the Additional Services at the Site on the Delivery Date and ensure that the Goods are installed, prepared and ready for operation. Once the Goods are ready for operation, and prior to commencement of the Hiring Period, the Hirer must inspect them. Unless otherwise notified by the Hirer, inspection of the Goods and delivery of the Additional Services irrevocably constitutes acceptance by the Hirer. If the Hirer fails to inspect the Goods prior to commencement of the Hiring Period the Hirer is deemed to have irrevocably accepted the Goods.

2.3 The hiring of the Goods under this Agreement is for the Hiring Period only.

2.4 In addition to the hiring of the Goods, the Owner will provide the Hirer with the Additional Services.

2.5 The Hirer is responsible for ensuring access to the Site for delivery of the Goods and the provision of the Additional Services. The Hirer must ensure adequate power point access at the Site for operation of the Goods and the provision of Additional Services.

3. DEPOSIT, HIRING FEE & OTHER MONEY

3.1 The Hirer must pay the Deposit in order to secure the Delivery Date and the Hiring Period. The Hirer acknowledges that the booking of the Goods on the Delivery Date will not be confirmed by the Owner unless and until it receives the Deposit.

3.2 The Owner must credit the Deposit against the Hiring Fee.

3.3 At least twenty-one (21) days prior to the Delivery Date, the Hirer must pay to the Owner the Hiring Fee, unless otherwise agreed to by the Owner.

3.4 The parties may mutually agree to an extension of the Hiring Period. The Hirer must pay the applicable Hiring Fee to any extension of the Hiring Period calculated at half-hourly increments in accordance with the rate specified in the Booking Order Form. Payment for Hiring Period extensions must be received in full prior to the release by the Owner of any images produced by the hiring of the Goods.

3.5 The Hirer's obligation to pay Hiring Fees in accordance with this Agreement, and the Owner's rights to those payments, are absolute and unconditional. Subject to clause 3.6, the Hirer's obligation to pay the Hiring Fee under this Agreement is not affected by:

- (1) any defect in the Goods or in the provision of the Additional Services;
- (2) the condition, operation or fitness for use of the Goods, or the Additional Services; or
- (3) any interruption or other restriction of or against the Hirer's use or operation of the Goods or the provision of the Additional Services for any reason.

3.6 No payment will be due from the Hirer to the Owner for the hire of the Goods or the provision of Additional Services during any period when the Goods or Additional Services (as the case may be)

are unable to be used due to breakdown or repairs that are the responsibility of the Owner under this Agreement.

4. OPERATION, MAINTENANCE AND STORAGE OF GOODS

4.1 The Hirer warrants that it will operate the Goods with due care and diligence and in compliance with the instructions and recommendations of the manufacturer as to operation (if any), and indemnifies the Owner for any breach by it of this warranty.

4.2 The Owner agrees to have the Goods operational for a minimum of 80% of the Hiring Period, unless otherwise agreed with the Hirer.

5. RISK AND INSURANCE

5.1 The Hirer is liable for all excess, premiums and other costs associated with any insurance claim in relation to the Goods that arises from use by the Hirer or its employees, agents or subcontractors during the Hire Period and must meet any shortfall in repair or replacement of the Goods following payment of any amount received under insurance, including any loss suffered by the Owner as a result of not being able to hire the Goods after the Hire Period. The Hirer is liable for the cost of replacing any missing or broken props.

5.2 The Hirer acknowledges that:

- (1) the Goods are at the sole risk of the Hirer and the Owner is not liable for any Claim the Hirer may incur or that may arise from any cause whatever including any fault or other defect in the Goods; and
- (2) the Owner is not responsible for and is released from all liability in respect of all such Claims.

6. INDEMNITY

6.1 The Hirer accepts full responsibility for, and indemnifies the Owner against all Claims:

- (1) in respect of any injury to persons, or damage to property, arising out of the use of the Goods and the provision of the Additional Services during the Hire Period however arising;
- (2) as a result of, or in connection with, a breach or non-performance of this Agreement or any of the Hirer's obligations under this Agreement; or
- (3) as a result of, or in connection with, the Owner exercising its rights under clause 8.3.

6.2 The Hirer remains liable for any Hiring Fees during the period of repair or unavailability of the Goods due to loss, damage or theft while in the possession or control of the Hirer.

7. RELIANCE AND WARRANTIES

7.1 The Hirer acknowledges that, in deciding to enter into this Agreement, the Hirer has satisfied itself as to the condition and suitability of the Goods and their fitness for the Hirer's purposes.

7.2 The only conditions and warranties which are binding on the Owner in respect of the state, quality or condition of the Goods or Additional Services supplied by the Owner to the Hirer or the advice, recommendation(s), information or services provided by the Owner to the Hirer regarding the Goods or Additional Services, their use and application are those imposed and required to be binding by trade practices law.

7.3 All conditions and warranties implied by trade practices law in respect of the state, quality or condition of the Goods and Additional Services which may, apart from this clause, be binding on the Owner are, to the extent permitted by law, excluded. Where any condition or warranty cannot be excluded the Owner's liability to the Hirer is limited to the Hiring Fee or the cost of re-hire of the Goods or the cost of providing the Additional Services again. The Owner's liability to the Hirer for non-provision of the disc of digital images captured in the photobooth(s) is capped at \$300.

8. CANCELLATION

8.1 If the Hirer cancels the booking of the Goods and Additional Services 21 days or less from the Delivery Date, the Deposit will be retained by the Owner.

8.2 If the Hirer cancels the booking of the Goods and any Additional Services but desires to make an alternate booking, the Owner may credit the Deposit to the new booking, but the Owner is under no obligation to do so. The Owner will act reasonably in making any such decision.

8.3 The Owner may cancel the booking at any time by giving the Hirer not less than 7 days' written notice without being responsible for loss, provided that the Owner must, in such case, refund in reasonable time any Deposit or Hiring Fee already paid by the Hirer.

9. HIRER'S WARRANTIES & GUARANTEE

9.1 The Hirer warrants and represents to the Owner that the Hirer, being a company, is duly incorporated, and has full power and authority to enter into and observe and perform the terms of this Agreement, or the Hirer, being an individual, has full power and capacity to enter into and observe and perform the terms of this Agreement.

9.2 The person or persons that enter this Agreement on behalf of the Hirer, being a company, hereby personally guarantee due performance of the company's obligations under this Agreement, including the Hirer's obligations to pay money.

10. GST

10.1 All prices specified in the Booking Order Form are inclusive of any GST payable, unless otherwise stated. To the extent that any supply made under or in connection with this Agreement is a taxable supply, the GST inclusive consideration otherwise to be paid or provided for must be paid at the same time and in the same manner as the GST exclusive consideration is otherwise to be paid or provided. A party's right to payment under this clause is subject to a valid tax invoice being delivered to the recipient of the taxable supply.

11. RELEASE OF IMAGES

11.1 Unless otherwise mutually agreed by the parties in writing, the Hirer grants to the Owner an irrevocable right and licence (including, without limitation, an intellectual property licence) to use and publish in any and all media all images produced by the Goods during the Hiring Period for the purpose of the Owner's marketing and advertising.

12. MISCELLANEOUS

12.1 This Agreement will be governed by and construed in accordance with the laws of the State of South Australia and the parties submit to the non-exclusive jurisdiction of the Courts of that State.

12.2 If any provision of this Agreement is found to be void, voidable or unenforceable, the validity and enforceability of the remaining provisions will not in any way be affected or impaired.

12.3 The headings in this Agreement are inserted for convenience only and must be ignored in construing this Agreement.

12.4 Any terms inferred by Hirer which are contrary to this Agreement will have no force or effect.

12.5 A term of this Agreement may only be varied if it is in writing and signed by the parties to be bound.

12.6 Notices sent by the Owner to the Hirer are deemed received the second Business Day after being posted to the address the Hirer provides to the Owner on the Booking Order Form.