

Definitions:

The Agent is the duly authorized agent of the Performer. The Agency shall not be liable for any default under this agreement or negligent act or omission of either party in any way whatsoever from this agreement or any related matter.

The terms "the Agent" or "the Agency" shall mean The Music Factory Group (Australia), its proprietor, its employees, servants, agents and sub-contractors, and its successor or assigns.

The Performer will mean an employee, servant, agent or sub-contractor of The Music Factory Group (Australia).

The Employer will mean the person, group and/or organisation that specifically by way of Contract engage The Agent for the purposes set out in the Booking Agreement, his successor or assigns.

The Contract means the Booking Agreement, read in conjunction with these Standard Terms and Conditions with respect to the equipment and services and the hire thereof made between The Agent and The Employer.

The Equipment means any equipment supplied by the Agent and referred to on the Booking Agreement, or required without reference, in order to provide the services agreed to under the Contract between the Agent and Employer.

The Service means any actions required to be performed by the Agent for and on behalf of the Employer and/or Venue management.

The Package means any and all equipment and services offered as a singular offering by the Agent to the Employer as detailed in the Agents literature and as outlined in the Booking Agreement and Contract.

The Function means the event or gathering for which the Agent is being hired as specified in the Contract. For the purpose of these Standard Terms and Conditions, Function specifically excludes any event where the general public are admitted with or without consideration.

The Venue means the location whereby the function will take place. For the purposes of these terms and conditions it is agreed that the Venue is a location specifically hired by the Employer for the purposes of hosting the Employer's function. In the case that the Venue is owned by, managed by or otherwise under the direct control of the Employer, then the definition of Venue will be the same as the definition for Employer.

Except where specifically noted, the singular will mean the plural and vice versa. References to the masculine gender shall include all other genders and vice versa.

For the purpose of the Contract entered into between the Employer and the Agent, the Employer / Venue understands and agrees without exception to the following conditions:

1 - Payment

(a) Payment for functions, packages and services booked by the Employer is required to be made in full and in conjunction with the return of the Contract for the purpose of securing the function date required by the Employer of the Agent. A Seven (7) Day Trading Account may be offered by the Agency to a regular Employer. See Section 1(j).

(b) Cheque payments will not be accepted on the day of the performance for any reason whatsoever.

(c) In the case of the booking being made seven (7) days or less prior to the function, the entire amount of the booking shall be payable at the signing of the Booking Contract. Bookings made seven (7) days or less prior to the Employer's function will not be held tentatively and shall not be considered a firm booking unless accompanied by payment in full.

(d) Funds from payments made by cheque must be available to the Agent no less than fourteen (14) days prior to the function date. If funds are not cleared, the Employer will be notified by the contact means supplied in the Contract and unless funds are made immediately available or other arrangements are made, the Contract will be deemed null and void.

(e) Payment of a deposit (if applicable) by the employer shall not be a condition precedent to this agreement.

(f) Payment may be made by cash, Electronic Funds Transfer (EFT), or by money order or cheque made payable to "The Music Factory Group (Australia)".

(g) The Employer shall be responsible for all taxes including a Goods and Services Tax (GST)

(h) The Employer shall repay to the Agent all fees and charges incurred by the Agent as a result of default of any payment including but not limited to fees imposed upon the Agent by the Agent's bank, and fees and charges incurred by the Agent in the course of the recovery of any outstanding amounts owed to the Agent by the Employer.

(i) Where the fee to be paid to the Agent is in a way related to or connected with the amount of door takings of the function then the Employer agrees that the Agent's representatives shall be entitled to station a person or persons at the entrance or entrances and further that all such persons aforesaid shall be given reasonable access to the records of the Employer relating to the ticket sales and takings of the function and that no ticket shall be given away or sold at other than the advertised price without the consent of the Agent.

(j) Where a seven (7) day account is established with regular clients, payment in full must be received by The Agent within 7 days from the date of invoice. The Agent shall impose Late Payment Fees at the rate per invoice of AUD \$65.00 + gst for invoice amounts of less than AUD \$1,000.00 or 10% of the amount outstanding + gst for amounts of more than AUD \$1,000.00 where an invoice remains unpaid after seven (7) days from date of issue. An additional Late Payment Fee of the same amount shall be incurred every seven (7) days until the debt (including Late Payment Fees) is cleared in full. The Agent may also cancel all future bookings and recall all equipment and software issued to the Employer or Venue until outstanding debts are paid in full. Re-installation fees will apply.

2 - Tentative Bookings

(a) The Agent reserves the right to refuse tentative bookings for any reason whatsoever.

(b) The Agent reserves the right to release tentative booking dates to other prospective Employers without notice if payment is not made as outlined in Section 1 by the due date provided on the Contract, Invoice or within the cover letter provided with the Contract, or in the event that the Employer of an unpaid function cannot be contacted.

3 - Cancellation (Prior to function)

(a) The Employer may cancel this booking by delivery of written notice to the office of the Agency not later than thirty (30) days before the date set for the performance, whereupon the Employer will refunded any amount paid, less administration costs equal to the amount of 25% of the Contract fee.

(b) The Agent may cancel this booking for any reason whatsoever by delivery of written notice to the Employer at the address shown on the Contract not later than thirty (30) days prior to the performance, whereupon any monies paid to the Agent by the Employer, will be refunded in full. The Agent reserves the right to substitute another performer of equal calibre where the original performer is forced to cancel for health or compassionate reasons. The Performer may cancel this booking upon less than fourteen (14) days notice for reasons of ill health, and if requested by the Employer will produce a certificate from a registered medical practitioner certifying that he/she is unable to perform for reasons of ill health.

(c) If a booking is made within thirty (30) days of the date of the performance, the Employer shall have no right of cancellation and the performer shall be entitled to his fee as specified within notwithstanding any purported termination by the employer

4 - Cancellation (Function in progress)

(a) The Agent reserves the right to, in its absolute discretion, cancel a function in progress without notice if it deems that the continuance of the function endangers the safety of the Agent, Employer, Employer's guests, the Agent's equipment or for any other safety or welfare reason.

(b) The Agent will immediately cancel a function in progress if so directed by the Venue, the Employer, any member of the Victoria Police, Metropolitan Fire Brigade, Country Fire Authority, Victorian Ambulance Service or any other emergency service or public welfare body.

(c) The Agent reserves the right to cancel a function in progress should the provision of mains power supply be interrupted and the restoration of said mains power not be possible, or that continuous supply of mains power not be guaranteed.

(d) In the event that the Agent cancels a function in progress for reasons stated above or for any other reason, the Employer shall not be entitled to any refund in part or in whole of any monies paid to the Agent, and the Employer shall pay any outstanding balances (if any) due to the Agent within seven (7) days without further notice.

(e) If a function in progress is cancelled for safety reasons, the Employer/Venue shall immediately become responsible for the Agent's/Performer's equipment, hardware and software left on the premises. If the equipment is damaged or stolen after the Agent/Performer has left the performance area, the Employer/Venue shall become liable and compensate the Agent for any damages, repairs or replacements required to the said equipment within a period of seven (7) days from the event.

5. Safety

(a) The Employer acknowledges and understands that in execution of its duties the Agent may employ and/or generate high levels of audio energy and that the Agent may employ lighting effects that pulse, flash and intermittently engage and disengage high levels of light energy and heat.

(b) The Employer, in signing the Contract, agrees absolutely that all risk is acquired by the Employer with respect to any adverse effect to any person or persons as a result of direct or indirect contact with or being within proximity of any and all equipment supplied by the Agent.

(c) The Employer undertakes to indemnify the Agent from any action as a result of the Employer or Employer's guests having been exposed to any audio or light energy including heat energy used by or generated by the Agent and/or the Agent's equipment.

(d) The Employer assumes all liability for any hearing loss, be it partial or total, temporary or permanent to any person or persons as a result of being in attendance at the function hosted by the Employer. Further the Employer assumes all liability for any adverse reaction by any person or persons caused directly or indirectly as a result of any lighting effect supplied by and/or operated by the Agent.

(e) The Agent may in its absolute discretion disallow access to its equipment and impose an exclusion area around its equipment in order that the safety of the Agent, the Employer and Employer's guests be maintained. The Employer agrees to abide by directions issued by the Agent with respect to any clearance or exclusion area around the Agent's equipment.

- (f) The Employer will provide a proper number of attendants and stewards to ensure the sufficient supervision of the venue and to prevent the entry of undesirables and ensure proper conduct of the audience, the safety of the audience, the safety of the Agent and the preservation of order.
- (g) The Employer will ensure the Agent is provided with a safe and secure area to perform. If the Agent in his/her sole discretion considers that the area in which he/she is to perform is unsafe because of a lack of shelter from the elements including rain, winds, extremes of heat and cold or other adverse weather conditions, or for any other reasons whatsoever, he/she may require that the Employer make that area safe or make available another area that is safe. The decision on whether an area is safe for performance shall be solely that of the Agent. If the Employer fails to make the area safe, or make available an alternative safe area, the Agent shall not be obliged to perform but his/her fee shall nevertheless remain payable.
- (h) The Employer shall take all reasonable precautions to prevent any other person other than the Employer, his/her representatives, stagehands and other performers from seeing the Agent before and after, if so requested by the Agent.
- (i) The Employer shall provide proper dressing room facilities if so required by the Performer. This specifically excludes publicly accessed rest rooms, toilets, or any other publicly accessed amenity, unless otherwise agreed to by the Agent.
- (j) The Employer will provide access to sufficient mains power outlets. Where normal power supplies are not available, the Employer will provide a safe and properly supervised generating system operated by qualified persons. The Employer will make known to the Agent that such a system will be in use at the function when booking the function. The Agent may, at his absolute discretion, refuse to use an unsuitable generating system. The Employer will be liable for any damages to the Agents equipment as a result of the use of any power generating system. He will also indemnify the Agent for any loss, damage or injury arising through any malfunction thereof.

6 - Smoke Detectors

- (a) The Agent uses dry ice and/or smoke fluid in all systems that have smoke machines, fog machines and/or hazers supplied as part of the entertainment packages provided. The Employer will ensure that smoke detection devices at the venue are isolated or switched off by an authorised representative of the venue where and when required. The Agent will not be held liable nor responsible for call outs made by Local, State or Federal Fire Fighting Authorities or Emergency Services under any circumstances.

7 - Insurance, Licenses & Copyright

- (a) The Performer will obtain and annually renew an insurance policy covering loss of and damage to his/her own equipment at his/her own expense. Such insurance may or may not contain a public liability component.
- (b) The Employer will obtain any and all insurance as necessary to cover loss of the Employer's property, and loss caused by delay or cancellation of the Employer's function for any reason.
- (c) Where the Employer arranges a function whereby consideration is paid for admittance to the Employer's function, and/or the general public may be admitted, the Employer shall assume all responsibility for obtaining adequate insurance to cover total loss of both Employer's and Agent's interests and equipment. Additionally in this instance the Employer shall obtain public liability insurance covering both Employer's and Agent's interests and equipment. The Agent reserves the right not to proceed with the booking if the Employer cannot meet the conditions outlined in this clause.
- (d) The Venue shall obtain and annually renew a license from the Phonographic Performance Company of Australia (PPCA) and Australian Performing Rights Association (APRA) for the public performance of copyrighted works at its own expense.
- (e) The Employer is responsible for the obtaining of any further licenses from any statutory bodies as required in order to host the Employer's function in full compliance with the law.
- (f) The Employer undertakes not to cause the Agent by way of direct or indirect action to cause any breach of the Copyright Act. This includes but is not limited to solicitations to play a burnt or copied Audio CD / mp3 file/ mpg file/ Video-CD / VHS tape or DVD by the Employer or its clients, or duplicate any copyrighted works in the possession of the Employer, the Agent or any third party. The Employer shall guarantee to the Agent that works submitted to the Performer to be used during the performance have Copyright clearance.
- (g) The Employer will indemnify the Agent against any action as a result of the Employer's failure to fulfill the requirements in clauses 7(b), 7(c), 7(e) and 7(f) above.
- (h) Where the Agent installs equipment on the Employers premises the Employer shall be responsible for altering their insurance coverage to cover the additional equipment installed by the Agent, according to the values submitted by the Agent in the Inventory List supplied to the Employer.

8. General

- (a) By signing the Booking Agreement, the Employer and Agent will have deemed to enter a binding Contract between the two parties.
- (b) All bookings will have a firm duration time. The Agent will not accept bookings where the completion time is "open ended" or unspecified by the Employer. Where no end time is specified, the end time shall be five hours after the commencement time.
- (c) Functions that are pre-booked to continue beyond five continuous hours are subject to an hourly overtime rate. Overtime rates are at published rates listed in the Agent's literature available upon request from the Agent's office. In considering overtime charges, part hours will be rounded up to the next whole hour.
- (d) All pricing is quoted for indoor venues only. Marquees and tents are not rigid structures and are not considered to be indoor venues. The Agent is under no obligation to perform or provide equipment where a marquee or tent is provided without the Agents knowledge, or generator power is supplied without prior notification.
- (e) All pricing includes travel to and from the venue where the venue is sixty (60) kilometres or less from the G.P.O. Melbourne. The Agent reserves the right to charge the Employer for travel in excess of this distance at an hourly rate plus applicable tolls, round trip. Travel rates are listed in the Agents current Price List.
- (f) The Agent reserves the right to substitute equipment employed in its packages to fulfil quality, access and specific venue requirements.
- (g) The Agent reserves the right to sub-contract the delivery of any or all of its Services and Equipment as it sees fit.
- (h) If these conditions become wholly or partly invalid, individual conditions shall to the extent of invalidity be served without prejudice to the continuing force of the remaining conditions.
- (i) The contract and these conditions shall be governed by and construed and take effect in accordance with the Laws of the State of Victoria
- (j) Any loss suffered by the Employer due to malfunction of the equipment shall not be the responsibility of the Agent and the Employer shall not be entitled to recover from the Agent any sum or any loss or damage of any kind whatsoever due to any malfunction of the equipment.
- (k) The Agent will not be held liable for any damage caused to the premises, property or material not under the ownership of the Agent, and the Employer hereby indemnifies the Agent against any claims or actions whatsoever or howsoever made against the Agent of any such damage to premises, property or material.
- (l) The Employer agrees to pay the Agent the full amount of any judgment recovered against the Agent arising out of or resulting from the default or neglect of the Employer for any reason.
- (m) Persons signing this Contract on behalf of the Employer warrant that they have the authority to do so and accept liability for signing this Contract. Where the organisation or company for which the undersigned has determined this agreement does not make payment or fulfil any part of this agreement the undersigned will accept full responsibility and will personally guarantee that all commitments under this agreement are met. Where the undersigned is a director of the organisation he/she will be personally liable and all other directors will be liable jointly and severally.
- (n) Once signed and a contract entered into, these conditions shall not be varied unless such variations are approved and signed by both parties in writing. No variation will be entertained or entered into by the Agent twenty-one (21) days or less prior to the date of the Employer's function without the Agent's express consent in writing.
- (o) These terms and conditions are made publicly available on the Agent's web site and/or copies are available free of charge upon request from the Agent's office during business hours. The Agent reserves the right to, from time to time, revise and/or change these Terms and Conditions. Such changes shall be posted on The Music Factory Group (Australia) website and available in print form as soon as practicable.
- (p) The Agent reserves the right to substitute equipment from time to time with other equipment of similar performance standards in accordance with changes in technology.
- (q) The Agent reserves the right to use all photographs, still images, video footage and digital images taken at the performance for promotional purposes in its brochures and on its website.
- (r) The Employer shall be liable for the replacement cost of Interactive Costumes and Props damaged or not returned by their guests as a result of their use at the performance.

9. Multiple Bookings

- (a) Where multiple bookings are placed with the Agency for the supply of a Performer/s on a regular basis, or where the Agency supplies resident DJs to a venue or venues under the management of the same Employer, be they an individual, company, or other legal entity, the Employer acknowledges that the same Standard Terms And Conditions shall apply to each and every subsequent performance as they did for the first.
- (b) Standard Terms And Conditions need only be signed once where multiple bookings are placed by the same Employer.
- (c) Each subsequent Booking shall be interpreted as per the Standard Terms And Conditions of the first signed copy.

10. Repeat Performances

- (a) All repeat performances generated from this Booking are to be directed back to The Agent.
- (b) The Agent shall not negotiate directly with the Performer for the supply of the Performer's services.
- (c) The Performer shall not negotiate with the Employer to supply his services directly.
- (d) Failure by the Employer or the Performer to abide by Clause 10 (a), 10 (b), and 10 (c) shall result in legal action being taken by the Agent for damages and/or lost income based on past and existing Contracts to the fullest extent of the law.
- (e) The Agent may elect to release both the Employer and the Performer from the Terms and Conditions listed in Section 10, Clauses 10 (a) (b) and (c) at his or her discretion, subject to payment of a fee by the Employer equal to 25% of one years income derived by the Agent from the supply of that Performer to the Employer.

The Employer is referred specifically to these Standard Terms and Conditions, which together with the Booking Contract constitute the Contract. Failure to read these Standard Terms and Conditions does not constitute a reason for cancellation of the performance/s booked by the Employer or Venue.