# TERMS AND CONDITIONS
# ENCORE EVENT TECHNOLOGIES PTY LIMITED ABN 46 006 668 702

1. **Application of Terms & Conditions**

1.1. These terms and conditions (**these Terms**) govern the supply of any audiovisual, event staging, event production or other services including hire of equipment and other items (all **Services**) by Encore Event Technologies Pty Limited (**us, we, our**) to you the Customer (**you/your**). These Terms apply to the exclusion of any terms or conditions you may notify to us including under any purchase order.

2. **Proposal for Service**

2.1. We will give you a written estimate of our proposed charges for any Services requested (**Estimate**).

2.2. Services are subject to availability. You must notify us in writing if you accept the Estimate (**Notice**) within 5 working days, or the Services and our estimated charges (**Charges**) are subject to change and we may provide a revised Estimate at our option.

2.3. If you provide a Notice, or if in our discretion we otherwise provide any Services under an Estimate at your request, you agree to these Terms and that the Estimate together with these Terms (the **Agreement**) comprises a legal agreement between you and us.

3. **Charges**

3.1. Any duration specified in the Estimate for the Services will be the minimum duration charged for the Services.

3.2. An outside ordinary hours labour surcharge will apply for any Services required before 6am or after midnight, at our standard applicable rate.

3.3. If additional Services not detailed in the Estimate (including for changes to the scope, duration or any requirements of your function or event (**your event**)) are required and provided then additional charges are payable by you at our standard rates for such Services and any reference to **Charges** includes any such additional Charges.

3.4. If your venue booking does not include 24-hour reservations for each multi-day Services period, additional Charges at our standard rates will apply for any additional labour required to pack down and reset any room.

3.5. Any Service Charge specified in the Estimate is for sundry items and expenses not readily able to be separately itemised.

3.6. Charges are quoted in Australian dollars unless specified otherwise in the Estimate.

4. **Payment**

4.1. If you have an account with us with sufficient available credit, you must pay the total amount of our invoice for the Services by the date specified in the Estimate and if none is specified, within 30 days of the date of our invoice.

4.2. If you do not have an account with us with available credit, you must pay us in cleared funds an amount equal to all proposed Charges by the date specified in the Estimate for payment. If no date is specified you must pay us at least 10 business days prior to the earliest of (a) the dispatch or set up date specified in the Estimate, or if none is specified (b) the first day of your event (such earliest date called the **Commencement Date**). If:

a) you do not pay the Charges in accordance with this clause we may elect not to provide the Services to you. If we elect to provide the Services to you, we will invoice you for the Services and that invoice must be paid immediately;

b) we provide additional Services then we will invoice you for the additional Charges and that invoice must be paid within 7 days;

c) you have chosen to pay us by credit card, you irrevocably authorise us to debit your credit card with the amount of the Charges.

4.3. Any application for a credit account must be completed and submitted to us at least 10 working days prior to the Commencement Date. We will advise you in writing if your application is accepted, however acceptance or otherwise is at our absolute discretion.

4.4. Even if you hold a credit account with us you may be required to pay some Charges before we provide any Services, for costs we may incur such as for manufactured or developed items, third party supplies, production and entertainment (**Preproduction Costs**).

4.5. We may charge you interest on overdue amounts at the rate of 2% above the unsecured Business Overdraft Indicator Lending Rate, (or any replacement of it) published by National Australia Bank from time to time calculated daily until paid in full. You must also reimburse us on demand for any legal expenses we incur by reason of your failure to pay on time.

5. **Cancellation**

5.1. If you cancel your event or any of the Services after the Agreement is made, you must advise us in writing, and we reserve the right to charge you as follows:

a) a percentage of the estimated Charges for the cancelled Services (excluding Preproduction Costs) as follows:

(i) 50% if notice is given less than 30 days before but not less than 15 days before the Commencement Date;

(ii) 75% if notice is given at least 14 days before but not less than 3 days before the Commencement Date; or

(iii) 100% if notice is given less than 3 days before the Commencement Date or if no notice is given,

(**Cancellation Charge**) which you agree is a genuine pre-estimate of our loss, and in addition you must reimburse us:

b) for any Preproduction Costs we have notified you of in our Estimate or that we have notified you of subsequently and to which you have approved; and

c) for any of our internal costs (eg labour in preparing any Digital Services) (**Internal Costs**) we have notified you of in our Estimate or that we have notified you of subsequently and to which you have approved;

5.2 If we cancel your event or any of the Services after the Agreement is made, we will advise you in writing and we will provide you with a full refund of any monies you have paid to us.

6. **Services Delivery**

6.1. We reserve the right to suspend or withdraw any Services if yours or a third party's plans breach our policies for safe work practices or any applicable Work Health & Safety standards.

6.2. Delivery of equipment, technical, decorative and other items provided by us as part of the Services (**Equipment**) will take place:

a) at our warehouse, if you take delivery of the Equipment; or

b) at the location specified in the Estimate, if we agree to transport the Equipment.

6.3. If you are responsible for transporting Equipment, you must return the Equipment to our warehouse by the time specified in the Estimate otherwise additional Charges will be payable by you equal to our daily rate for provision of that Equipment for each day (or part day) until the Equipment is returned to us.

6.4. If we are responsible for transporting Equipment, you must:

a) ensure that the Equipment is available and able to be collected by us during the pack down time or strike time specified in the Estimate (**pack down time**); and

b) if we are unable to collect any of the Equipment during the pack down time (other than due to our failure), then additional Charges will be payable by you equal to the daily rate for the provision of that Equipment for each day (or part day) until the Equipment is accessible and available to be collected by us.

6.5. You must permit or obtain permission for us to enter any premises where any Equipment is located or in order for us to provide the Services and you must provide all reasonable assistance to enable us to provide the Services.

6.6. Unless expressly specified in the Estimate as included, the Services do not include recording or making any permanent record of any part of your event.

6.7. Specialist third party goods or services we may arrange for your event including entertainment, remain subject to availability. If any such goods or services cannot be delivered, we will consult with you, but we reserve the right either not to provide that good or service (in which case we will not charge you for it other than any Preproduction Cost we have reasonably incurred), or to substitute a reasonably equivalent item.

7. **Equipment**

7.1. You acknowledge that all Equipment remains our property at all times and that:

a) you are responsible for any theft, loss or damage (**Loss**) to any Equipment to the extent you or any of your servants, agents, contractors, invitees or users cause it;

b) for any Loss to Equipment for which you are responsible under these Terms, you must reimburse us within 7 days of written demand by us as we elect for:

(i) the cost reasonably incurred by us of repairing such damaged Equipment; or

(ii) the new for old replacement cost plus all expenses reasonably incurred by us, to replace Equipment that is stolen, lost or reasonably determined by us to be irreparably damaged; and

c) you must not interfere with the Equipment or allow its removal from any place we provide it.

8. **Additional Obligations for Equipment Not Under Our Control**

8.1. To the extent that you or any of your employees, contractors, agents, users or any third-party venue associated with you, has possession, care or control of any Equipment because you have hired Equipment to operate yourself or for any other reason, then without limiting any other obligation:

a) you are responsible for any Loss to any such Equipment however arising from the time it ceases to be under our care and control and until it is returned to our care and control, except to the extent caused by us or our personnel or contractors;

b) you must provide adequate security for the Equipment and must not take any Equipment to any location other than as agreed by us in writing;

c) you must report any shortage, or malfunction or Loss in the Equipment to us immediately you become aware of it;

d) you must return the Equipment in the same condition as when delivered, excluding fair wear and tear and you must not repair or attempt to repair or allow anyone else to repair any of it;

e) you must only use the Equipment for the purposes for which it was supplied and only permit use by properly skilled and if applicable, licensed persons; and

f) you must not sell, mortgage, pledge or assign any of the Equipment or attach the Equipment to any premises or property and you must not sublet or part with possession of any Equipment unless we have agreed in writing to your cross-hire of it to a third party.

9. **Intellectual Property and Materials**

9.1. Except to any extent specified in the Agreement, the Services do not include us obtaining any licence or consent from any third party to use or reproduce any intellectual property including any copyright, design, trade mark, rights in or to play music or film, or in any graphic, printed or other material or media of any kind (all intellectual property called **IP**) or to use any confidential information and you must obtain and you warrant that you hold all necessary licences (including music licences) and consents.

9.2. Any of your IP which you provide to us for use at your event will remain yours and we will not obtain any rights to it. All IP created, developed or provided by or for us in connection with your event and all modifications, enhancements and derivative works of such IP including in all systems, creative concepts, graphics, styling or other Services will remain our exclusive property, is made available by us for your single event only, and you will not acquire any rights to it.

9.3. You agree we may use any material we create or provide for your event, including but not limited to photos and videos of your event, **(Materials)** for our promotional purposes including as examples of our work and in any brochure, manual, report, website or other media. We will not use your name, logo, or any of your IP without your consent.

10. **Insurance**

10.1. It is your responsibility to hold your own insurance. Our policies of insurance apply only in relation to our provision of Services and do not provide any insurance cover for you or for your event.

11. **Risk and Responsibility**

11.1. Yours and your third parties' property used or located at your event is your responsibility. If you do not retrieve any such property held by us within fourteen (14) days of written request, you authorise us to destroy or dispose of all such property as we determine in our absolute discretion.

11.2. Neither party shall be responsible to the other or entitled to terminate this Agreement for any failure, in whole or in part, of the other party to perform any obligations hereunder (other than an obligation to pay any sum) to the extent and for the length of time that performance is rendered impossible owing to acts of nature, public insurrection, flood, fire, pandemic, Government order or regulation, strike, lockout, or other labour dispute, and other circumstances of substantially similar character beyond the reasonable control of and not reasonably able to be prevented by the affected party (**Force Majeure**). Any party so affected (**affected party**) must:

a) use all reasonable efforts to minimise the effects thereof; and

b) promptly notify the other party in writing of the Force Majeure and the effect of the Force Majeure on the affected party's ability to perform its obligations.

The affected party must promptly resume performance after it is no longer subject to Force Majeure.

11.3. To the extent permitted at law, any liability of a party arising in connection with the Agreement for any loss or damage which is indirect or consequential to the other party (including loss of profit, revenue or data) is excluded. However, this subclause does not relieve you from liability for the Charges or any Cancellation Charges.

11.4. To the extent we have any liability under any statutory guarantee which cannot be excluded, to the extent permitted by law we limit such liability at our option to:

a) in the case of goods (i) replacement of the goods or the supply of equivalent goods; (ii) repair of the goods; (iii) payment of the cost of replacing the goods or of acquiring equivalent goods; or (iv) payment of the cost of having the goods repaired;

b) in the case of services (i) supplying of the services again; or (ii) payment of the cost of having the services supplied again.

11.5. If either party (**defaulting party**) materially breaches any term of the Agreement and fails to remedy the breach within a reasonable time of written request, ceases to carry on business or has a liquidator, receiver, trustee in bankruptcy or other form of insolvency administrator appointed to it or any of its property, then without limiting any other rights, the other party may immediately terminate the Agreement by written notice to the defaulting party. If you are the defaulting party, without limiting our rights we may elect to immediately suspend Services and retrieve Equipment. If we terminate the Agreement under this clause, Cancellation Charges and any incurred Preproduction Costs and Internal Costs are immediately payable as if you had cancelled the Services.

11.6. You warrant that the person(s) signing the Estimate or Notice for you is authorised to do so.

12. **Privacy**

12.1. The information provided to us may contain personal information within the meaning of the Privacy Act 1988 (*Cth*) (**Personal Information**). The purpose for which information is collected is to enable us to consider your requests and communicate with you, consider any request for credit, manage your account, obtain payment, provide the Services and protect our interests in Equipment. You and each person whose Personal Information you provide to us, consent and you warrant that they consent, to us collecting, using and disclosing the information including to our subcontractors for these purposes and as disclosed in our Privacy Statement available on our website.

12.2. In this Clause 12.2:

a) Eligible Data Breach means an 'Eligible Data Breach' as defined in the Privacy Act 1988 (Cth).

b) Each party must comply, and ensure that its officers, employees, agents and subcontractors comply with the Privacy Act 1988 (Cth) and not do anything, which if done by that party would breach an Australian Privacy Principle as defined in that Act.

c) Each party will notify the other if it becomes aware that it may be required to disclose Personal Information by law or to the Australian Information Commissioner.

d) If a party (**Party A**) becomes aware that there are reasonable grounds to suspect that there may have been an Eligible Data Breach in relation to any Personal Information held by Party A as a result of this Agreement, Party A agrees to:

(i) notify the other party (**Party B**) in writing as soon as possible, which must be no later than within three (3) days of becoming aware; and

(ii) unless otherwise directed by Party B, carry out an assessment in accordance with the requirements of the Privacy Act 1988 (Cth).

e) Where Party A is aware that there are reasonable grounds to believe there has been, or where Party B notifies the other party that there has been, an Eligible Data Breach in relation to any Personal Information held by Party A as a result of this Agreement, Party A must:

(i) take all reasonable action to mitigate the risk of the Eligible Data Breach causing serious harm to any of the individuals to whom the Personal Information relates; and

(ii) unless otherwise directed by Party B, take all other action necessary to comply with the requirements of the Privacy Act 1988 (Cth) and take any other action as reasonably directed by Party B.

13. **Credit Applications**

13.1. If you make an application to us for credit then if the application is for commercial credit, you agree that we may obtain a consumer credit report about you from a credit reporting agency for the purpose of assessing your application for commercial credit and/or for the purpose of collecting overdue payments relating to commercial credit owed by you to us; and if the application is for consumer credit then you agree that we may obtain information about you from a credit reporting agency for the purpose of assessing your application for consumer credit.

13.2. You agree that, in order to assess any credit application by you and manage your account we may give Personal Information and other

information about you to a credit reporting agency including details of your identity, your application and the status of your account. You agree that we may exchange with other credit providers any information about you and your credit arrangements, including information about your credit worthiness, credit standing, credit history or credit capacity which credit providers are allowed to exchange under the Privacy Act. You agree that we may use information obtained to assess an application by you for credit, notify other credit providers of a default by you under this contract or to assess your credit worthiness.

14. **GST**

14.1. All sums are exclusive of Goods and Services Tax (**GST**) unless specified otherwise in the Estimate and the amount of any GST payable in relation to any supply we make to you is payable by you in addition to all other sums payable. We will provide you with a tax invoice in accordance with the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

15. **General**

15.1. The Agreement is governed by and must be construed in accordance with the laws of the State or Territory of Australia where the Services are to be provided, and if more than one or if the Services are to be provided outside of Australia, in accordance with the laws of New South Wales and the parties submit to the exclusive jurisdiction of the courts of that State or Territory.

15.2. Each party agrees that they are not relying on any representation by the other except as specified in the Agreement or made in writing by the other before the Agreement was made. To the extent permitted by law all terms, conditions, warranties and guarantees implied or imposed by statute are excluded.

15.3. You acknowledge that you have had an opportunity to review and if requested by you, to negotiate these Terms with us.

15.4. Neither party may assign or deal with any of their rights or obligations under the Agreement.

15.5. These Terms are subject to any applicable statute which cannot lawfully be excluded and if any of these Terms is or becomes wholly or partially void, invalid or contrary to law (**Invalid**), then that term will to the extent that it is Invalid be severed without affecting the enforceability and validity of any other part.

15.6. In the interpretation of these Terms, no rules of construction will apply to the disadvantage of a party on the basis that party put forward these Terms or any part, "including" and "includes" are not words of limitation, headings do not affect interpretation, and the singular includes the plural and vice versa.

15.7. Termination of the Agreement does not affect rights already accrued.

15.8. These Terms apply to your event specified in the Estimate. They may be updated from time to time for future events.

15.9. Neither party may commence legal proceedings in respect of any dispute between them under this Agreement unless and until the procedure set out in this clause 15.9 has been followed:

a) If any dispute arises under this Agreement, including in relation to its interpretation or any aspect of its performance, either party may give written notice to the other that a dispute has arisen and request that a meeting be held of duly authorised representatives of the parties within 14 days.

b) If a party receives written notice of a dispute from the other in accordance with paragraph (a) above, that party must cause an authorised representative to attend a meeting referred to in that notice.

c) If a meeting is held between authorised representatives of each party in accordance with paragraph (b) above and that meeting does not resolve the dispute which was the subject of the notice referred to in paragraph (a), then either party may give written notice to the other requesting that a meeting be held between Executive Officers of each party within 21 days.

d) If a party receives a written notice in accordance with paragraph (c) above, that party must ensure that its Executive Officer or General Manager (as the case may be) attends a meeting referred to in that notice.

e) If the dispute is not resolved through the above process, then at the expiry of 7 days from the final meeting, either party may commence legal proceedings.

However, nothing in this clause prevents a party commencing legal proceedings in circumstances where the process described above would be inappropriate due to the urgency of the matter in dispute.

15.10. Both you and us must ensure that in connection with this Agreement our respective personnel have complied and will comply with all applicable anti-bribery, fraud, secret commission and corruption laws.

15.11. Both you and us confirm that our respective personnel have not received, and will not receive, any payment, benefit or other thing of value (whether by way of gift, kickback or otherwise) in connection with this Agreement that is not legitimately due to you, us or our respective personnel. Neither of us must make any facilitation payment in connection with this Agreement.

15.12 In this Clause 15.12, "Modern Slavery" is as defined under the Modern Slavery Act 2018 (Cth). Each party warrants that:

a) it will comply with all applicable laws, statutes and regulations in force from time to time which relate to Modern Slavery;

b) it will take necessary steps to minimise Modern Slavery in its supply chains or in its sub-contractors' supply chains;

c) it will implement and maintain appropriate due diligence procedures for its own suppliers and sub-contractors to minimise Modern Slavery in its supply chains; and

d) it will notify the other party as soon as it becomes aware of any suspected Modern Slavery in a supply chain which has a connection with this Agreement.

**ADDITIONAL TERMS FOR DIGITAL SERVICES**

16. **Application**

The following additional Terms also apply in respect to any Services comprising webcasting, live streaming, website hosting or development, software provision, any application or adaption for any device, any social media service, any augmented or virtual reality service, content management, or any other internet based or digital service (collectively **Digital Services**).

17. **Conditions and Acknowledgements**

17.1. Neither you nor any person using or accessing any Digital Services (**User**) will acquire any interest in or licence of any software, website, operating or other systems (including names and logos) we or our suppliers utilise to provide Digital Services (**Systems**), and you must not and must ensure that Users do not modify, tamper with, vary, reverse engineer, copy, disassemble or interfere with any Systems, or permit any other person to do so, or use any Systems IP.

17.2. We may immediately suspend and/or disconnect any Digital Services if we reasonably believe that you or any User has materially breached these Terms until such breach is remedied.

17.3. We may update or make modifications to and perform statistical analysis of any Digital Services from time to time, however the Services do not include provision of any data or analytics to you except as expressly specified in the Estimate.

17.4. You acknowledge that Digital Services may not be accessible from all operating environments and may be subject to third party rules over which we have no control and no responsibility. Users may be required to accept and comply with conditions of access notified as part of a Digital Services log in process.

17.5. All phone, internet and associated costs and charges, and all other third-party fees (other than of our own suppliers) arising from Digital Services are payable by you in addition to the Charges in the same manner as the Charges.

18. **Content and Access**

18.1. The maximum duration of any Digital Services is the duration of your event except to the extent specified in the Estimate.

18.2. You must provide all video, audio, data and other information and material including any html, image or text file to be digitally transferred via any Digital Services (collectively **Content**) by the times and in the format specified by us, uncorrupted and in a usable form.

18.3. Late additions, corrections, changes or substitutions to Content may not be accommodated. We will use reasonable care and diligence, including for any uploading, transfer or handling of Content.

18.4. You will retain all your rights in your Content however you authorise us and our suppliers to reproduce and transfer Content solely for the purpose of delivering the Digital Services to you.

18.5. Unless specified as included under the Estimate, Digital Services do not include provision of a copy of any Content to you and we exclude any liability for the unavailability or loss of Content on completion of Services, except to the extent directly caused by our act or omission.

18.6. You are solely responsible for Content and you must ensure and you warrant that Content and its distribution via any Digital Services will not infringe any person's rights, be threatening or abusive, advocate illegal activity or infringe any law or regulation of any jurisdiction where Content may be accessed or displayed.

18.7. You must obtain all necessary consents and licences (including any IP) to use and distribute any Content for Digital Services. The Services do not include provision of any such consents or licences.

18.8 Any usernames or passwords used to limit or allow User access to any Content or otherwise used in conjunction with any Digital Services are your sole responsibility to employ and safeguard. We have no responsibility for unauthorised use.

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18.9 We maintain and expect our suppliers to maintain all reasonably practical security measures to secure Content transmitted via Digital Services, but we do not warrant or promise that unauthorised access can be prevented, and we exclude any liability for the same to the extent permitted by law.

19. **Digital Services Privacy**

19.1. You acknowledge and agree that Content and User information may be stored on servers located in and transmitted across foreign jurisdictions in order to provide Digital Services and that you are solely responsible to make all disclosures and obtain any consents required in relation to any Personal Information transmitted, stored and/or hosted via Digital Services.

20. **Risks of Interruption and Liability**

20.1. We do not provide telecommunications carriage services or mobile devices, and you must independently arrange and maintain all such services from your own third-party providers. Even if we arrange, facilitate or test any such services prior to provision of Digital Services, we have no responsibility for the speed, reliability or failure of any telecommunications services or devices used to facilitate any Digital Services.

20.2. YOU ACKNOWLEDGE that the technology, telecommunications and Systems utilised to provide Digital Services involve inherent risks of interruption, delay and/or failure of transmission or access beyond our reasonable control and to the extent permitted by law, we do not promise that any Digital Services will operate continuously, be fault free or operate at their theoretical maximum quality or capacity.

20.3. To the fullest extent permitted by law and without limiting any other provision, WE EXCLUDE ALL LIABILITY for any failure, interruption, fault or delay in any Digital Services (**Failure**) and for all harm arising from any Failure, except to the extent directly caused by our act or omission.