



Metro

TERMS AND CONDITIONS

These Terms and Conditions unless expressly altered or modified in writing by Metro Productions Limited (referred to in these Terms and Conditions as 'Metro'), apply and shall be deemed incorporated in and form part of all contracts of hire, sale and/or production services between you and Metro. The terms of hire, sale and production services are split into separate sections in this document. The general terms at the end of this document will apply to all contracts.

In these Terms and Conditions, whether you are hiring or purchasing goods, or engaging Metro to provide you with production services, you are referred to as 'Customer'.

HIRE TERMS

1 TERMS OF HIRE

1.1 The terms of the agreement between the Customer and Metro in relation to the hire of equipment will be as per the hire agreement form setting out particulars of the hire (**Hire Form**) and the terms and conditions set out below (together, **Hire Agreement**).

2 PERIOD

- 2.1 The hire period commences when the equipment leaves Metro's warehouse, and is for the period stated in the Hire Form.
- 2.2 The hire period ends on the working day on which the equipment is returned to Metro before 10am. Any equipment returned after 10am shall be deemed to be returned before 10am on the next working day.
- 2.3 No allowance for credit for any reason will be made for time when equipment is not in use.
- 2.4 A "working day" shall mean any Monday, Tuesday, Wednesday, Thursday, Friday, Saturday or Sunday.

3 EQUIPMENT

- 3.1 The equipment hired is agreed to be as stated in the Hire Form.
- 3.2 Metro does not represent or warrant that the equipment supplied or its capacity or performance is fit for any particular use or purpose not known to and approved by Metro prior to the Hire Agreement being entered into.
- 3.3 While every endeavour is made to supply equipment as ordered, Metro reserves the right if necessary to substitute other equipment of similar capability.
- 3.4 Metro will not be responsible for any delays, accidents or loss (including loss of profits), costs, expenses or damage of any kind whether direct, indirect or consequential, which may arise through defects or breakdowns of the equipment hired, the hire or use of the equipment or any technical assistance provided by Metro.

4 NON-SUPPLY

4.1 Metro will endeavour to supply equipment as ordered but is under no liability for non-delivery, delay in delivery or inability to supply when required.

5 LOSS OR DAMAGE

- 5.1 The Customer accepts full responsibility for all loss or damage howsoever caused from the time the equipment is taken from Metro's warehouse, depot or vehicle by the Customer or other carrier, until returned to Metro.
- 5.2 The Customer acknowledges that Metro has no insurance on the equipment while on hire, and that it is the Customer's responsibility to arrange insurance to cover the equipment on hire for the hire period with the interests of Metro to be noted as a loss payee.
- 5.3 Within 24 hours of a written request by Metro, the Customer must deliver to Metro evidence satisfactory to Metro that the Customer has appropriate insurance cover in place.
- 5.4 The Customer shall pay to Metro full compensation for the replacement or repair of any equipment damaged or destroyed while on hire or not returned at the end of the hire period or on termination of the Hire Agreement.

6 DAMAGE WAIVER ON HIRE

6.1 If the Customer elects a damage waiver, which is available for certain items of equipment specified by Metro, and pays the damage waiver fee

specified in the Hire Form, Metro will waive the Customer's liability under clause 5 for:

- 6.1.1 Accidental damage provided that the Customer has at all times acted reasonably and without negligence in Metro's opinion
- 6.1.2 Theft of any equipment from secure, locked premises provided that the Customer must immediately notify the police and Metro (providing full details of the theft and the police contact to Metro).

6.2 The Customer acknowledges that the disappearance, loss or damage to the equipment resulting from the negligence of the Customer, earthquake and war damage and breakages to glass are not covered by the damage waiver.

6.3 If the Customer's use of the equipment or the location in which it is used is of an unusual type, the Customer must notify Metro before it takes possession of the equipment. Metro will then notify the Customer of any special conditions or exclusions that apply.

6.4 In any case of damage which falls within clause 6.1 and is not excluded by clause 6.2, the Customer must pay the excess charge of 33.3% of full replacement cost, with a minimum of \$ 100.00 plus GST applying, up to a maximum of \$ 1,000.00 plus GST for any one item of equipment.

7 PROPER USE

7.1 The Customer shall only use the equipment for the purpose and within the limits for which it has been designed, and will not alter, repair or modify the equipment. The equipment shall only be used in the locations specified, and shall not be removed without Metro's written consent from the location unless for the purposes of return.

8 CONSUMABLES

- 8.1 The Customer shall only use the consumables supplied or approved by Metro. Should consumables other than those supplied or approved by Metro be used, the Customer shall be liable for the cost of any repairs or replacement of the equipment as may be necessary.
- 8.2 Where spare lamps are provided with the equipment, the Customer shall return these at the completion of the hire. Should a lamp have to be replaced, the blown lamp is also to be returned to Metro prior to or at the completion of the hire. Should this requirement not be complied with, the Customer shall pay to Metro the cost of all the lamps not returned.

9 FAULTY OR DAMAGED EQUIPMENT

- 9.1 If the Customer considers any equipment to be faulty as supplied, the Customer shall immediately notify Metro.
- 9.2 Metro will arrange where possible to service the equipment and remedy any fault that arises during the hire period. Where faults have arisen because of abuse or misuse, the Customer shall pay Metro the cost of repairing the fault.
- 9.3 The Customer will advise Metro in detail of any loss or damage to or breakage of any of the equipment within 24 hours of the loss, damage or breakage occurring. The Customer shall not use the equipment if such use would in any way aggravate the defect or otherwise prejudicially affect the equipment.
- 9.4 Metro may require the Customer to: (a) have the repair or maintenance carried out by a third party specified by Metro, or (b) arrange for the repair or maintenance to take place at a location specified by Metro.
- 9.5 If any equipment is damaged or Metro asks the Customer to do so, the Customer will immediately return the equipment to Metro.

10 RETURN OF EQUIPMENT

- 10.1 The Customer shall return the equipment on the due back date shown on the Hire Form. The Customer shall pay Metro for any overdue days at the rate equivalent to the first day multiplied by the number of overdue days.
- 10.2 Should any equipment be returned in a dirty condition, the Customer will pay Metro the cost of cleaning of the equipment.
- 10.3 If the Customer does not return any item of equipment or any part of an item of equipment, the Customer will pay all costs of replacing the equipment or part of the item of equipment.

11 DELIVERY

- 11.1 Hire charges are ex. Metro's warehouse or depot. The Customer shall pay Metro any freight or delivery charges incurred by Metro on the Customer's behalf.

12 PACKING AND CONTAINERS

- 12.1 Metro shall suitably pack all equipment. The Customer shall return all equipment appropriately packed using the packaging and containers supplied and will comply with any instructions provided by Metro. The Customer shall pay the cost of replacing any packaging and/or containers not returned at the completion of the hire or that is damaged or destroyed.

13 PAYMENT

- 13.1 The Customer agrees to pay the hire charges for the hire period as set out on the Hire Form.
- 13.2 Unless otherwise agreed, the Customer shall pay all hire charges before the hire commences.
- 13.3 Unless otherwise stated, all prices in the Hire Form exclude GST.

14 TERMINATION

- 14.1 If the Customer defaults in making any payment for a period exceeding seven working days from the date when payment is due, or breaches any term or condition of the Hire Agreement, Metro shall have the right to terminate the hire immediately, and to take steps to recover possession of the equipment but without prejudice to Metro's rights to recover all amounts due for the full period of the hire and compensation for any damage or destruction to the equipment and the costs of exercising its powers under this clause.
- 14.2 Metro is entitled to terminate the Hire Agreement by notice in writing without prejudice to any rights, actions or remedies which have accrued or may accrue in favour of Metro if the Customer becomes insolvent or goes into liquidation, or does anything that could prejudice the rights of Metro, or fails to comply with its obligations under the Hire Agreement and does not remedy that failure within ten working days' notice from Metro requiring the failure to be remedied.
- 14.3 On termination of the hire, the Customer shall deliver up the equipment to Metro complete with all accessories, clean and in the same good order as supplied.

15 PROPERTY RIGHTS

- 15.1 All equipment remains the property of Metro.
- 15.2 The Customer undertakes to keep the equipment in the Customer's control and possession, and free from all encumbrances charges, liens and any other interests whatsoever.
- 15.3 The Customer shall allow Metro and its agents free and uninterrupted access to any premises where the equipment is installed/stored for the purposes of inspecting the said equipment.
- 15.4 All intellectual property in the equipment remains the sole property of Metro. The Customer cannot use or pass on to any third party any intellectual property in the equipment whatsoever without Metro's prior written consent, which may be withheld in Metro's sole discretion.

16 OWNER'S LIABILITIES

- 16.1 Metro and the Customer agree that Metro will not be liable for any loss, damage or claim however arising as a result of the hire or use of the equipment.
- 16.2 The Customer hereby indemnifies Metro, its officers, employees, agents and sub-contractors against all claims whatsoever arising directly or indirectly from the hire, the Customer's possession or use of the equipment.

17 SECURITY INTEREST

- 17.1 The Customer acknowledges that if the equipment is hired for a period of more than one year, the Hire Agreement in respect of the equipment constitutes a security agreement for the purposes of the Personal Property Securities Act 1999 and the Customer grants a security interest to Metro in the particular equipment hired.
- 17.2 The Customer undertakes to sign any documents and/or provide any information which Metro may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register.
- 17.3 The Customer waives the Customer's rights to receive a copy of any verification statement in respect of any financing statement registered by Metro on the Personal Property Securities Register in respect of any equipment supplied by Metro to the Customer.

18 INDULGENCE

- 18.1 No indulgence waiver or further time granted to the Customer by Metro shall in any way prejudice Metro's rights under the Hire Agreement.

SALE TERMS

19 TERMS OF SALE

- 19.1 The terms of the agreement between the Customer and Metro in relation to the sale and purchase of goods will be as per the form setting out the particulars of the sale (**Sale Form**) and the terms and conditions set out below (together, **Sale Agreement**).

20 DELIVERY AND INSTALLATION

- 20.1 Metro shall not be responsible or liable in any way to the Customer for delays or defaults in delivery of the order or any part thereof nor for any direct or consequential loss or damage arising from such delay.
- 20.2 The Customer must pay Metro any freight or delivery charges incurred by Metro on the Customer's behalf.
- 20.3 Metro is not liable for any loss or damage caused by any installation of the goods.

21 PAYMENT

- 21.1 The Customer must pay the price in accordance with the Sale Form. The price is subject to:
- 21.1.1 Any variations in the rate of exchange affecting the order
- 21.1.2 Any additional costs and expenses caused by force majeure.
- 21.2 Unless otherwise stated, payment is to be made in full on or before the 20th of the month following delivery of the goods.
- 21.3 Unless otherwise stated, all prices in the Sale Form exclude GST.

22 RISK AND TITLE

- 22.1 The risk in the goods supplied by Metro to the Customer shall pass to the Customer upon delivery but the goods remain Metro's property until the goods have been fully paid for. Until then, the Customer is bailee of the goods. Until full payment is made, the Customer must comply with all of the following conditions:
- 22.1.1 Keep the goods in its possession and control.
- 22.1.2 Keep the goods in good repair and condition, excluding fair wear and tear.
- 22.1.3 Keep the goods stored separately and marked so that the goods are clearly and easily identifiable as Metro's property and inform Metro of the location of the goods, if requested.
- 22.1.4 Not sell, assign or let the goods or any interest in them, or permit any charge, pledge, lien or other encumbrance to be created in relation to them.
- 22.1.5 Maintain and allow Metro to inspect records which do any of the following:
- (a) Identify any unpaid goods owned by Metro.
 - (b) Detail third parties to whom the Customer sells or otherwise disposes of the unpaid goods.
 - (c) Detail payments made by such parties for the unpaid goods.

- 22.2 If the Customer does not pay for any goods on the due date for payment, the Customer authorises Metro, its employees and agents to enter the Customer's premises (and any premises under the control of the Customer or an agent of the Customer if the goods are located on those premises) and use reasonable force to retake possession of the goods without liability for trespass or damage. Metro may at its option keep or resell goods retaken from the Customer. The Customer remains bound by its obligations to Metro.
- 22.3 If the Customer sells the goods before payment in full to Metro, the Customer holds the proceeds on trust for Metro in respect of those goods, and must keep such proceeds in a separate account until the liability to Metro is discharged and must immediately pay that amount to Metro.
- 22.4 Despite the retention of these rights, Metro may recover the price of the goods from the Customer. Receipt by Metro of any cheque or other bill of exchange or any promissory note shall not be deemed to be payment or conditional payment until it has been honoured or cleared and until such time shall not prejudice or affect Metro's rights, powers or remedies against the Customer and/or the goods.
- 22.5 The Customer acknowledges that the Sale Agreement constitutes a security agreement for the purposes of the Personal Property Securities Act 1999 and the Customer grants a security interest to Metro in goods purchased until the purchase price is paid in full.
- 22.6 The Customer undertakes to sign any documents and/or provide any information which Metro may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register.

22.7 The Customer waives the Customer's rights to receive a copy of any verification statement in respect of any financing statement registered by Metro on the Personal Property Securities Register in respect of any goods supplied by Metro to the Customer.

23 INSURANCE

23.1 The Customer must keep the goods insured against all risks for goods of that kind from the time the risk in the goods passes to the Customer until the time the title in the goods passes to the Customer. The Customer holds the proceeds of that insurance on trust for Metro up to the amount it owes Metro in respect of those goods, and must keep such proceeds in a separate account until the liability to Metro is discharged and must immediately pay that amount to Metro.

24 Pyrotechnics

24.1 Where pyrotechnics are purchased by the Customer, the Customer must have an approved handler who will be in charge of and have control over the pyrotechnics. The Customer's approved handler must have a valid test certificate that certifies that the person meets the competency requirements for approved handlers specified in the Hazardous Substances and New Organisms (Personnel Qualifications) Regulations 2001 (including any amendments) which must be provided to Metro on request.

24.2 The Approved Handler must seek approval from the venue where the pyrotechnics will be used, the New Zealand Fire Service and notify an OSH Enforcement Officer from the Department of Labour.

24.3 Stage pyrotechnics are manufactured to order and are not refundable. The Customer will pay any applicable storage fee for pyrotechnic stock that needs to be returned to storage.

25 GUARANTEES AND CONDITIONS

25.1 Except as provided in clause 4.2 and clause 4.3 all conditions and warranties of any type in relation to the goods are excluded to the maximum extent allowed by the law.

25.2 Where goods or any of them are subject to an express warranty given by the manufacturer, or the parties supplying the same to Metro in either case being a warranty upon which Metro may rely, then the terms of such express warranty shall be deemed to be incorporated herein but without creating privity of contract between the Customer and such manufacturer or supplier to Metro. Where a claim is made by the Customer under such warranty, the judgement of the manufacturer or supplier as the case may be, as to whether or not there has been a breach of the said warranty shall be final and binding upon Metro and the Customer.

26 EXTENT OF LIABILITY

26.1 The liability of Metro to the Customer shall not in any case exceed the purchase price of the goods in respect of which such liability arises and this limitation shall apply to liability howsoever arising whether in contract or in tort.

26.2 In any case of liability in the part of Metro arising from breach of contract Metro shall be under no liability for damages or consequential loss to the Customer arising from such breach.

27 EXCLUSION OF LIABILITY

27.1 Metro shall not be responsible for any damages whatsoever caused either to the goods supplied or as a result of the malfunction of such goods in the event that:

- 27.1.1 such goods are fitted by unqualified tradesmen, or
- 27.1.2 if such goods are fitted in an untradesmanlike manner, and/or
- 27.1.3 if such goods are in any way adapted to a use to which they are not specifically intended, and/or
- 27.1.4 if such goods are added to or repaired by components not recommended or approved by the manufacturer of such goods.

28 RETURNS AND CLAIMS

28.1 No goods are returnable after 7 days. Claims for shortages or damages must be lodged within 7 days of delivery or pick up quoting the packaging slip numbers and date (if delivered), or the date of purchase together with the receipt (if picked up).

PRODUCTION SERVICES TERMS

29 TERMS OF PROVISION OF PRODUCTION SERVICES

29.1 Metro shall provide certain production services which may include the hire of equipment and/or the provision of technical consulting services, and the Customer shall acquire those production services on the terms set out in the production services proposal letter (**Proposal Letter**) and the terms and conditions set out below (together, **Production Services Agreement**).

30 PAYMENT

30.1 The Customer must pay the fee to Metro for the production services (including any equipment hire fee) in accordance with the Proposal Letter.

30.2 The fee is subject to any additional costs and expenses caused by force majeure.

30.3 Additional charges may be payable if the event is moved to another venue or date.

30.4 Unless otherwise stated, payment in full is due on or before the 20th of the month following the event.

30.5 Unless otherwise stated, all prices in the Proposal Letter exclude GST.

31 SUB-CONTRACTING

31.1 The Customer agrees that Metro may sub-contract or otherwise arrange for another person to perform or discharge any part of Metro's obligations set out in the Production Services Agreement, at Metro's sole discretion.

32 MATERIALS AND EQUIPMENT

32.1 The Customer must provide all materials (if any) and other necessary assistance not otherwise stated in the Proposal Letter to enable Metro to carry out its role. This includes any relevant documents, drawings, specifications, reports, models, samples, calculations, equipment, technical information, plans, charts, tables, schedules, data (stored by any means) and other information in the possession or control of the Customer necessary to enable Metro to properly carry out its role. Time is of the essence.

32.2 While every endeavour is made to supply equipment and materials as ordered by the Customer, Metro reserves the right if necessary to substitute other equipment or materials of similar capability.

32.3 Any equipment hired under this Production Services Agreement will be subject to the terms of hire set out in the Hire Agreement. Any clause in the Production Services Agreement that is contrary to or inconsistent with a clause in the Hire Agreement, will override the Hire Agreement clause.

33 INTELLECTUAL PROPERTY

33.1 The Customer must provide its existing intellectual property (if any and only as applicable) to enable Metro to carry out its role and grants Metro a non-exclusive, royalty free licence to use that intellectual property for the purposes of this Production Services Agreement.

34 OWNERSHIP OF DOCUMENTS

34.1 Ownership of and copyright in any design documentation and any other drawings and documents developed by Metro for the purposes of the event shall remain with Metro but the Customer shall have a licence to use the design documentation for the purposes of the event. Such a licence shall be revocable in the event that the Customer fails to meet its obligations as to payment pursuant to the Production Services Agreement.

35 INSURANCE

35.1 Metro will confirm to the Customer that it has appropriate public liability insurance in place. The Customer agrees for so long as any obligations remain in connection with the Production Services Agreement that it will effect and maintain the insurance stipulated on the Proposal Letter. The Customer must provide evidence of this insurance to Metro on request.

35.2 Regardless of the insurance that Metro has in place, the Customer agrees that to the extent Metro is covered by the Customer's insurance policy (evidence of which must be provided to Metro by the Customer on request), Metro has no liability.

35.3 The Customer agrees that if Metro does not have in place insurance or its insurance does not cover damage to equipment caused by the Customer or third parties, the Customer must pay the full cost of repairing or replacing the equipment to Metro.

36 CUSTOMER'S RESPONSIBILITIES

36.1 Subject to the details set out in the Proposal Letter, the Customer agrees that Metro is not responsible for the following:

36.1.1 Procuring sponsors

36.1.2 Procuring ticket sales

36.1.3 Any expenses not otherwise mentioned on the Production Services Form incurred in respect of the event.

36.2 The Customer must give to Metro in writing timely directions, instructions, decisions and information sufficient to define the services required from Metro and facilitate the proper provision of the services by Metro. The Customer must provide Metro and any of its contractors with such access to premises or sites as is reasonably necessary for Metro to properly carry out its role.

37 CUSTOMER'S INDEMNITY

37.1 The Customer shall at all times indemnify and hold harmless Metro and Metro's employees, officers, agents and contractors from and against any loss, costs, claims, damages, expenses (including legal costs and expenses on a full indemnity basis), liabilities, proceedings or demands, whether direct or indirect, incurred or suffered by any of them which were caused by a breach of the Production Services Agreement on the Customer's part or on the part of any person for whom the Customer is responsible; or caused by any wilful, negligent or unlawful act or omission of the Customer.

38 CANCELLATION

38.1 In the event of cancellation for any reason, the Customer will be required to pay for all work done by Metro up until and including the date of cancellation. The Customer must pay for any increased labour costs due to the time taken to de-rig, pack and freight any live pyrotechnics (as applicable).

38.2 In the event of a cancellation, a cancellation fee is payable which is calculated as follows:

- 38.2.1 50% of Metro's fees will be payable on cancellation of the production services 24 hours or more before the scheduled set up time.
- 38.2.2 100% of Metro's fees will be payable on cancellation of the production services less than 24 hours before the scheduled set up time.

39 ACKNOWLEDGEMENTS

39.1 The Customer must ensure that Metro receives the acknowledgements on selected pieces of work specified in the Proposal Letter (if any).

40 CONFIDENTIALITY

40.1 The parties each acknowledge and agree that confidential information belonging to each party shall, subject to the Production Services Agreement, at all times remain the absolute property of that party.

41 LIABILITY

41.1 Where legislation implies any condition or warranty in the Production Services Agreement, and that legislation avoids or prohibits the exclusion or modification of the application of, exercise of or liability under such condition or warranty, such condition or warranty shall be deemed to be included in the Production Services Agreement. Any other condition or warranty which would otherwise be implied into the Production Services Agreement is expressly excluded.

41.2 Neither party shall be liable for any delay or failure to perform its obligations under this agreement if such delay is due to force majeure. The parties must take all reasonable precautions to avoid the cause occurring and use all reasonable endeavours to mitigate the consequences.

GENERAL TERMS

42 ASSIGNMENT

42.1 The Hire Agreement, Sale Agreement and/or Production Services Agreement cannot be assigned without the prior written consent of Metro.

43 ENTIRE AGREEMENT

43.1 Each of the Hire Agreement, Sales Agreement and Production Services Agreement (**Agreements**) contain everything the parties have agreed in relation to the subject matter it deals with. No party can rely on an earlier written document or anything said or done by or on behalf of another party before the applicable Agreement was executed.

44 FORCE MAJEURE

44.1 In these terms a reference to force majeure means any of the following: an event caused by war, government action, strike, lockout, other industrial disturbance or labour difficulty, variation in customs duties, act of God, act of public enemy, blockade, revolution, riot, insurrection, civil commotion, lightning, storm, flood, fire, earthquake, explosion, embargo, substitution of goods, shortage of supplies, increased shipping or other freight charges, premium on overseas funds, unavailability of or disruption to communication networks, infrastructure or services, unavoidable accident, lack of transportation, or anything done or not done by or to a person, government or other competent authority, except the party relying on force majeure.

45 GOVERNING LAW AND JURISDICTION

45.1 The Agreements are governed by the law of New Zealand. The parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The parties will not object to the exercise of jurisdiction by those courts on any basis.

46 CONSUMER GUARANTEES ACT

46.1 The parties agree to contract out of the provisions of the Consumer Guarantees Act 1993 (Act) to the extent permitted by the Act where the Customer purchases the production services and any goods (including any hire of equipment) associated with the production services for business purposes pursuant to sections 2 and 43 of the Act. The Customer agrees in this situation that any right or guarantee available under the Act is expressly excluded.

47 SEVERABILITY

47.1 Each provision of the Agreements is individually severable. If any provision is or becomes illegal, unenforceable or invalid in any jurisdiction it is to be treated as being severed from these terms the relevant jurisdiction, but the rest of these terms will not be affected. The legality, validity and enforceability of the provision in any other jurisdiction will not be affected.

48 VARIATION

48.1 Metro reserves the right to vary these Terms and Conditions at any time. Metro will notify the Customer of any changes either directly to the Customer via email or post, or by posting a notice of the change on Metro's website.

49 WAIVERS

49.1 A waiver of any right, power or remedy under the Agreements must be in writing signed by the party granting it. A waiver only affects the particular obligation or breach for which it is given. It is not an implied waiver of any other obligation or breach or an implied waiver of that obligation or breach on any other occasion.

49.2 The fact that a party fails to do, or delays in doing, something the party is entitled to do under the applicable Agreement does not amount to a waiver.