

## TERMS AND CONDITIONS OF HIRE

### 1. DEFINITIONS.

In these Conditions of Hire-

- [a] **"Assembly"** means the assembly of the Staging at the Venue.
- [b] **"CC Act"** means the Competition and Consumer Act 2010 as amended from time to time.
- [c] **"Charges"** means all hire fees, assembly and disassembly fees and other fees and charges as set forth in the Rental Contract including: -
- [i] The hiring costs for the Staging based on a minimum weekly hire charge.
- [ii] The cost of erecting and dismantling the Staging.
- [iii] The cost of freight or other charges incurred by the Owner in respect of delivery and return of the Staging.
- [iv] The cost of any special requirements set forth in the special conditions to the Rental Contract and charged for in the Rental Contract.
- [d] **"Conditions of Hire"** means these Conditions of Hire together with any amendments or changes to them expressly noted as special conditions in the Rental Contract.
- [e] **"Consumer"** means in the context of this Rental Contract, the Hirer of the Goods but only where:
- [i] the amount paid or payable for the hire of the Goods or Services does not exceed \$40,000 or if a greater amount is prescribed by the CC Act or any regulations made pursuant to it, then for the purposes of this definition – that greater amount; or
- [ii] the Goods or Services that have been hired are of a kind ordinarily acquired for personal, domestic or household use or consumption.
- [f] **"Consumer Guarantees"** means the guarantees as set forth in Schedule 2 Part 3-2 Division 1 of CC Act in relation to goods and services.
- [g] **"Goods"** means all of the Staging.
- [h] **"Hirer"** means the person named or described as the "Hirer" in the Rental Contract.
- [i] **"Owner"** is Megadeck Australia Pty Ltd. ABN: 32 068 156 123, its employees and agents.
- [j] **"Person"** includes where applicable any individual or an entity whether or not incorporated, recognised by the laws of Australia.
- [k] **"PPS Act"** means the Personal Property Securities Act 2009, as amended from time to time.
- [l] **"Rental Contract"** means collectively the information contained in the Owner's quotation, rental agreement and invoice, these terms and conditions which are on the reverse of the quotation, rental agreement and invoice and are on the Owner's website or have been separately provided to you in so far as they are set out. Where the quotation and rental agreement are communicated electronically, these terms and conditions can be accessed directly on the website or through a hyperlink contained in the electronic version of the quotation/order form/invoice.
- [m] **"Services"** means all of the Services described in the Rental Contract.
- [n] **"Scheduled Delivery Time"** means the time stated in the Rental Contract as the date and time for delivery of the Staging to the Venue.
- [o] **"Staging"** means the Goods as supplied to the Hirer by the Owner for Assembly at Venue.
- [p] **"Stated Load Rating"** means the particular load rating of any piece of the Staging as shown on the label affixed to the underside of the ply top, being the uniform safe load capacity of 6.6kPa for Aluminium Megadecks & 7.5kPa for Steel Megadecks as tested by Testsafe Australia.
- [q] **"Term"** means the term of the hiring by the Owner of the Goods to the Hirer and the period of such term shall be the shorter of the following periods:-
- [i] 364 Days from the date of delivery of the Goods to the Hirer, or
- [ii] The period commencing from the outdate time and expiring from the in date time as stated in the Rental Contract.
- [r] **"Venue"** is the designated delivery and/or pick-up site described in the Rental Contract, delivery note or invoice as agreed between the Hirer and the Owner also being the place where Assembly of the Staging will take place unless another location has been agreed to between the Owner and the Hirer.
- A reference to one gender includes all genders, any reference to the Owner includes all lawful successors and assigns, any reference to the Hirer includes all lawful successors and assigns and the singular includes the plural and vice versa.

### 2. RENTAL CONTRACT AND CONSUMER GUARANTEES

- [a] This Rental Contract shall be effectively entered into and legally binding upon the forwarding of the Rental Contract to the Hirer.
- [b] Where the Hirer is a Consumer, no term of this Rental Contract excludes or purports to exclude, restrict or modify or has the effect of excluding, restricting or modifying:
- [i] The application of all or any of the provisions of the Consumer Guarantees in Schedule 2 Part 3-2 Division 1 of the CC Act; or
- [ii] The exercise of a right conferred by such a provision of the CC Act; or
- [iii] Any liability of the Owner for a failure to comply with a Consumer Guarantee that applies under Part 3-2 Division 1 of the CC Act to supply of goods or services by way of hire.

### 3. ASSEMBLY AND USE OF STAGING BY THE HIRER

- [a] Unless the Owner has expressly agreed in its quotation/order to Assemble the Staging, the Hirer must Assemble the Staging and dismantle it at its own expense and must carry out such Assembly and dismantling at its own cost.
- [b] The Hirer acknowledges and represents to the Owner, and the Owner has relied upon this acknowledgment and representation that the Hirer has:-
- [i] Obtained separate and independent advice as to the suitability of the Staging for the Hirer's purposes over the Term;
- [ii] Satisfied itself as to the suitability and functionality of the Staging over the Term for the uses of, purposes of, activities and performances to be conducted thereon, and the Hirer further acknowledges that it has not relied upon any representations or any advice given to the Hirer by the Owner on the above matters, and
- [iii] Satisfied itself as to the suitability and stability of the surface of the Venue under and surrounding where the Staging is to be Assembled and used by the Hirer and the capacity of the surface of the venue to cope with the weight of the Staging and all anticipated loads to be placed on the Staging. In particular the Staging must not be located on surfaces that are subject to flooding or inadequate to support the weight of the Staging and the loads or which otherwise expose the Staging to risk of damage.
- The Hirer indemnifies the Owner against damage the Owner might suffer as a consequence of any damage to the Staging caused by the surface under or surrounding the Staging collapsing or flooding.
- [c] Before using the Staging, the Hirer shall examine the Staging and satisfy itself as to the quality and fitness for the Hirer's intended purpose. Unless the Hirer has expressly informed the Owner of an intended purpose, that purpose shall be deemed to be the usual and ordinary purpose for which the Staging can be reasonably used.
- [d] It is the responsibility of the Hirer to ensure that throughout the Term:-
- [i] All bolts, nuts and any other fixing or clamping devices are securely fastened and are checked regularly;
- [ii] The Staging is maintained and kept in a safe condition for its normal or expressly stated intended use;
- [iii] The Staging will not be painted or stained, nor will the Hirer permit the Staging to be 'oversprayed' or any other type of negligent or deliberate painting;
- [iv] No holes, saw cuts or any other marks to be made into the plywood top or any other part of the Staging;
- [v] No loads above the Stated Load Rating specified for any piece of the Staging is placed on that part of the Staging;
- [vi] No activities are conducted on the Staging or adjacent to it which could cause damage to the Staging; and
- [vii] No flammable materials or liquids are to be stored or used on or in the vicinity of the Staging. The Staging must be kept clear of all other work and structures or rubbish, both on and around the Staging, and shall be clean and ready for dismantling at the end of the Term.
- [e] Unless otherwise stated in the special conditions in the Rental Contract, the Staging is not to be used for household or domestic purposes and only for commercial purposes.
- [f] Delivery and pick up will be at the Venue. Unless, other arrangements have been made and agreed upon by the Owner, any equipment or components of the Staging which are not present at the time of scheduled pick up will be deemed missing/lost and will be charged to the Hirer at their wholesale cost. Any equipment or components of Staging not returned by the due date will be charged for at the normal weekly hire rate, until it is returned.
- [g] The Owner has the right to deduct a credit card payment from the Hirer if the Hirer fails to pay for lost/stolen equipment within 14 days of issuing an invoice for the lost/stolen equipment.

### 4. STATED LOAD RATING

- [a] The Hirer must not exceed the Stated Load Rating Any stage pieces showing signs that loads have placed on them that exceed the Stated Load Rating will be destroyed by the Owner and the full cost of their replacement will be charged to the Hirer.
- [b] It is the responsibility of the Hirer to ensure our Stated Load Ratings are not exceeded. If you are unsure about the load activity you intend to carry out upon the stage or whether or not you may exceed the Stated Load Rating of the stage equipment, please read our test report before confirmation.
- [c] The Hirer acknowledges that if loads in excess of the Stated Load Rating are placed on the Staging, this may result in the Staging being damaged and/or becoming dangerous.
- [d] The Hirer shall fully indemnify and keep indemnified the Owner against any loss or liability the Owner may sustain as a direct or indirect result of the Hirer overloading the Staging.
- [e] To the extent that Clauses 4[a], 4[b] and 4 [c] are inconsistent with any other clauses herein, Clauses 4[a], 4[b] and 4 [c] over-ride inconsistent clauses.

### 5. DAMAGE TO OR LOSS OF STAGING

- [a] In addition to any other indemnity, the Hirer shall be responsible for any loss or damage to the Staging caused to it during the Term for any reason whatsoever including without limitation where such loss or damage is a result of theft, misuse, loss accident, flood, fire or explosion except any loss or damage caused by fair wear and tear. Where the Hirer is responsible for any loss or damage to the Staging, the whole or any part of the cost of replacement or repair of the Staging will be separately invoiced to the Hirer and must be paid by the Hirer within 14 days of the date of invoice and if not paid within that time shall be a debt immediately due and owing to the Owner.
- [b] The Owner recommends that the Hirer takes out insurance in the name of the Hirer and the Owner to cover any damage to the Staging.

### 6. INDEMNITY AND LIMITATION OF LIABILITY

- [a] Subject to the CC Act and where applicable the overriding test of fairness therein, the Hirer shall indemnify and keep indemnified the Owner from all damages, suits, actions, claims and demands of every description whatsoever brought by any third party against the Owner, including claims involving loss or damage to property or death or injury to any individual, arising either directly or indirectly from the use, maintenance, transport, operation of or the conducting of any activity or performance on the Staging and whether or not such actions or claims are a result of any negligence, act or omission of the Owner.
- [b] Subject to the CC Act and where applicable the overriding test of fairness therein, the Owner's liability to the Hirer is limited to an amount not exceeding the total amount of the Charges. To the extent that the Hirer may have any claim for any sum greater than the total amount of the Charges, the Hirer hereby expressly abandons, waives and forgoes all such claims and expressly releases the Owner from any liability to the Hirer whatsoever, including all claims in which negligence is alleged against the Owner.
- [c] Subject to the CC Act and where applicable the overriding test of fairness therein, the Owner limits its liability in relation to a breach of the Consumer Guarantees with regards to the supply of Goods or Services [other than for goods ordinarily acquired for personal, domestic or household use] by way of hire, to (where applicable), one or more of the following:
- [i] the repair of the goods;
- [ii] the replacement of the goods or the supply of equivalent goods;
- [iii] refund the cost of hiring the goods;
- [iv] the supplying of the services again; or
- [v] the payment of the cost of having the services supplied again.

### 7. ASSIGNMENT

- [a] The Hirer shall not attempt to sell, transfer, assign, part with possession, mortgage, charge or encumber any of the goods the subject of this Rental Contract or any right under these Conditions of Hire.

### 8. PAYMENT OF CHARGES

- [a] The Hirer must pay the Owner the whole of the amount of the Charges as set forth in the Rental Contract as follows:-
- [i] 100% of the total amount prior to delivery (COD);
- [ii] Within the stated payment terms of an account granted to Hirer;
- [iii] A Hirer who does not pay a charge in accordance with the payment terms of an account granted to a Hirer, will be charged interest at the rate of 15% p.a. on any balance outstanding until full payment has been made. Interest will accrue daily;
- [iv] A Hirer must pay any other Charge(s) which may become payable by the Hirer to Megadeck within 14 days of the date of invoice for that Charge(s) and if the Hirer fails to pay for that Charge(s) as per that invoice then the Hirer hereby irrevocably authorises Megadeck to deduct payment of that invoice from the credit card provided by the Hirer, without any requirement to give any notice to the Hirer or obtain any further authorisation from the Hirer.

### 9. WAITING TIME AND ACCESS TO SITE

- [a] If the delivery, pick-up, assembly or dismantling of the Staging takes longer than one half hour of the designated time for such work the Owner at its absolute discretion may return crew and/or Staging to base and charge a 'Lost Call' fee or wait at the Site and charge an additional fee at the rate of \$40 per man per every half hour. Any 'Lost Call' fee is to be separately invoiced and must be paid by the Hirer within 14 days of the date of invoice. If not paid within that time such amount shall be a debt immediately due to the Owner.

### 10. CANCELLATION

- [a] The Hirer may cancel this Rental Contract by notice to that effect at any time up to 48 hours before the scheduled delivery time stated in the Rental Contract. The Hirer will only be liable for the amounts referred to in Paragraph [c].
- [b] Where the Hirer cancels this Rental Contract within 48 hours of the Scheduled Delivery Time, the Hirer and the Owner agree that the Hirer will pay to the Owner agreed reasonable compensation if such cancellation notice is received:-
- [i] less than 48 hours but more than 24 hours before the Scheduled Delivery Time the Hirer must pay to the Owner 20% of the Charges as agreed reasonable compensation;
- [ii] if within 24 hours of the Scheduled Delivery Time but before the Staging has been delivered to the Venue, the Hirer must pay to the Owner 50% of the Charges as agreed reasonable compensation within 24 hours of the Scheduled Delivery Time; and
- [iii] if the Staging has left the warehouse on the way to or been delivered to the Venue 95% of the Charges as agreed reasonable compensation, plus all of the costs as set forth in paragraph [c].
- [c] The Hirer must pay the Owner the full cost of materials and labour for any special requirements irrespective of when a cancellation notice is given.
- [d] Any cancellation fee is to be separately invoiced to the Hirer and must be paid by the Hirer within 14 days of the date of invoice and if not paid within that time shall be a debt immediately due and owing to the Owner.

### 11. CHANGE OF DESIGN

- [a] Should the Hirer change the design and give the Owner less than 4 days' notice of those changes prior to the scheduled delivery date as specified in the Rental Contract then the Charges will be varied as follows:-
- [i] If the cost of the new changed design is less than the original quoted cost, then the Charges in the Rental Contract shall remain the same.
- [ii] If the cost of the new changed design is more than the original quoted cost figure, then the additional cost plus labour shall be added to the Charges in the Rental Contract. All additional charges, for a change in the design will be separately invoiced to the Hirer and must be paid by the Hirer within 14 days of the date of invoice and if not paid within that time shall be a debt immediately due and owing to the Owner.
- [b] Should the Hirer change the design and give the Owner 4 days or more notice of those changes prior to the scheduled delivery date as specified in the Rental Contract then the Charges will be varied as follows:-
- [i] If the cost of the new changed design is less than the original quoted cost, then the Charges in the Rental Contract shall be reduced to the lesser amount.
- [ii] If the cost of the new changed design is more than the original quoted cost figure, then the additional cost plus labour shall be added to the Charges in the Rental Contract. All additional charges, for a change in the design will be separately invoiced to the Hirer and must be paid by the Hirer within 14 days of the date of invoice and if not paid within that time shall be a debt immediately due and owing to the Owner.
- [c] Should the Hirer change the design and give the Owner less than 4 days' notice of those changes prior to the scheduled delivery date as specified in the Rental Contract then the Owner may at its discretion inform the Hirer that it is not prepared to make those changes to the design on short notice. The Hirer may then terminate the Rental Contract and Clause 10 shall apply. If the Hirer does not promptly terminate the Rental Contract under Clause 10 then the Hirer accepts that the Staging will be delivered as originally designed and shall be responsible for the full Charges in the Rental Contract.

### 12. REMOVAL OF STAGING AT END OF TERM

- [a] The Hirer expressly consents to the Owner removing the Staging at the end of the Term from the Venue. The Hirer must co-operate with the Owner and render reasonable assistance to facilitate the removal of the Staging.
- [b] The Hirer indemnifies and must keep the Owner indemnified against all losses, liabilities damages, suits, actions and claims of every description whatsoever brought by any third party against the Owner, including claims involving loss or damage to property or death or injury to any individual, arising either directly or indirectly from any removal of the Staging from the Venue.

### 13. RE-POSSESSION

- [a] The operation of this Rental Contract is in all respects conditional upon due payment of all monies and should the monies due be paid partially or wholly by a cheque which is not duly honoured, then the Hirer shall immediately be in default under this Rental Contract and the Owner shall be entitled to re-possess the Staging.
- [b] The Owner may notwithstanding the specified period of hire and notwithstanding any waiver of some previous default, re-possess the Staging in any of the following events;
- [i] If the Hirer shall fail to pay any monies by due date;
- [ii] If the Hirer shall do or permit to be done any act or thing whereby the Owner's rights in the Staging could be prejudiced;
- [iii] If the Hirer becomes or is made insolvent or bankrupt or make any arrangement or composition with his creditors or in the case of the Hirer being a company, should an order be made or a resolution for the winding up of such a company or;
- [iv] If the Hirer commits any breach of this Rental Contract.
- [c] The Hirer indemnifies and must keep the Owner indemnified against all losses, liabilities damages, suits, actions and claims of every description whatsoever brought by any third party against the Owner, including claims involving loss or damage to property or death or injury to any individual, arising either directly or indirectly from any re-possession of the Staging.

### 14. WHOLE AGREEMENT

- [a] The Rental Contract represents the whole agreement between the Owner and the Hirer. All implied Terms that can be excluded are hereby expressly excluded. The Rental Contract supersedes all previous negotiations, understandings, written or oral representation, warranties, memorandum or commitments.