

TERMS AND CONDITIONS

By engaging the services of JMS Entertainment (**JMS**) for an event (**Event**) you (the **Purchaser**) expressly acknowledge that you have read, understood and agree to be bound by the below Terms and Conditions (**T&Cs**). You expressly acknowledge that JMS will only attend and perform and provide DJ services at an Event on the condition that you have agreed to the following T&Cs.

These T&Cs apply to all Events or for the supply of any services by JMS to the Purchaser. The Purchaser acknowledges that the T&Cs prevail over any other representation to the contrary, oral or otherwise.

JMS may vary these T&Cs from time to time. If JMS intends to do so, JMS will give you 28 days' written notice of the varied terms and conditions. If you have reasonable grounds to believe the change will be detrimental to your rights, you may terminate this agreement within 28 days of receiving JMS's written notice.

1) DEPOSIT & PAYMENT TERMS

a. JMS does not accept tentative bookings or holding of any JMS DJ on a specific date. All confirmed bookings will require payment of a minimum 50% non-refundable deposit (Deposit), payable within 7 days of the Purchaser receiving an invoice from JMS (Event Invoice).

The Deposit acts as a security fee for the Event and is neither refundable nor transferable under any circumstances. A JMS DJ is not considered booked or confirmed unless the Deposit has been paid by the Purchaser.

b. JMS requires the full payment of the Event Invoice to JMS's bank account, by way of electronic bank transfer or other method nominated by JMS, no later than 30 days prior to the commencement of the Event. For events booked within 30 days prior to the commencement of the Event, full payment is required to secure the booking. Where JMS does not receive from the Purchaser the full payment under the Event Invoice 48 hours prior to the commencement of the Event, JMS reserves the right to cancel the Event until proof of payment of the Event Invoice has been provided to JMS in writing by the Purchaser. The Purchaser's written proof of payment of the Event Invoice must be expressly approved by JMS (in its absolute discretion) prior to JMS being required to perform the Event.

2) CANCELLATIONS & LIMITATION OF LIABILITY

a. Cancellations must be made in writing or by e-mail to your event manager. No other form of cancellation will be accepted. If the Purchaser cancels the Event less than 30 days prior to the Event, the cancellation fee is 100% of the Event Invoice, including the Deposit. Cancellation by the Purchaser more than 30 days prior to the Event will result in the complete loss of the Deposit. For the avoidance of doubt, all Deposits are non-refundable unless JMS cancels the Event or the parties agree in writing otherwise.

b. Rescheduling for Events cancelled due to inclement weather or death or illness of the Purchaser shall be accommodated wherever possible, however JMS is under no obligation to the Purchaser to reschedule any Event. Rescheduled Events are subject to availability and will result in the loss of the Deposit.

c. If for any reason the JMS DJ is not able to perform at the Event due to illness, injury, accident, personal or otherwise unforeseen circumstances, all reasonable efforts will be made by JMS to source a replacement JMS DJ of a similar calibre and cost to the Purchaser.

d. If a replacement option offered by JMS (as indicated by clause 2c) and approved by the Purchaser costs a lower rate than the JMS DJ previously booked for the Event, a partial refund may be offered by JMS to the Purchaser for the cost difference between the initial JMS DJ

and the replacement. This is at the discretion of JMS, and JMS is under no obligation to provide a partial refund in this circumstance.

e. If the replacement options offered by JMS (as indicated by clause 2c) are not approved by the Purchaser, such approval not to be unreasonably withheld, a full refund for the payment of the Event Invoice (including the Deposit) will be provided to the Purchaser.

3) BUMP IN / SET UP

a. The standard bump-in time for a JMS DJ at any Event is 60 minutes prior to the Event start time. Bump-in time is used by JMS DJ to unload and set-up equipment and complete appropriate sound and quality checks.

b. If the JMS DJ is required to be set up earlier than the standard 60 minutes, an additional early set-up cost will be incurred, which will be added to the Event Invoice.

4) OVERTIME

a. A request by the Purchaser for an extension to the previously agreed Event duration, made within 48 hours from the commencement of the Event, may be accommodated (at the sole discretion of JMS). Any agreed extension to a scheduled Event time is referred to below as Overtime.

b. Overtime will be charged at a cost of 1.5X the booked JMS DJ's hourly rates. Payment for Overtime will be paid before the DJ starts the overtime.

c. JMS notes that it is preferable that, if there is a possibility that a Purchaser may wish to extend their booking to Overtime, the Purchaser informs their JMS entertainment manager more than 48 hours prior to the Event commencement to confirm that the JMS DJ booked is available to continue beyond the scheduled Event time so as to avoid any disappointment.

d. Whilst all efforts will be made to accommodate an Overtime request, JMS reserves all rights to reject an Overtime request by the Purchaser for any reason whatsoever.

5) PARKING

a. A suitable parking area must be available for the unloading and loading of JMS DJ's equipment at the venue hosting the Event. Additionally, the Purchaser must ensure adequate and direct access to the venue hosting the Event for bump-in and pack-down. Parking fees of \$30 or more incurred by JMS will be invoiced to the Purchaser. Car-parking fees incurred by JMS under the value of \$30 will be covered by JMS free of charge to the Purchaser.

b. Payment of any invoices relating to car-parking issued by JMS to the Purchaser must be paid not less than seven (7) days after such invoice is received by the Purchaser.

6) OUTDOOR EVENTS

a. The Purchaser shall be liable for any injury or damage to the JMS DJ or JMS property whilst bumping-in, attending, or packing-down the Event (unless such damage or injury is contributed to or caused by JMS, the JMS DJ in which case liability of the Purchaser shall be reduced to the extent of the contribution or causation by JMS or the JMS DJ).

b. JMS will use its reasonable endeavours to continue an Event during an inclement weather event. If the Event is located outdoors or partially outdoors, JMS and the JMS DJ fully reserve the right to stop or cancel the performance if, in JMS's sole opinion, the weather poses a potential danger to the JMS DJ or its or JMS's equipment.

c. For all outdoor performances, the Purchaser shall, at its own cost, provide or cause to be provided a marquee or overhead shelter to adequately cover and protect all JMS, JMS DJ's equipment. JMS reserves the right to cancel the Event where the protective cover provided by the Purchaser is not, in JMS's sole opinion, adequate.

7) PRICE VARIATIONS

a. Whilst every effort is made to maintain prices as quoted, invoices may be subject to increase without notice as a consequence of additional requests of the Purchaser, requirements for the Event or unforeseen circumstances. This includes but is not limited to: paid parking, induction fees, early or difficult bump-in, and additional time requirements.

b. If the Purchaser reduces the amount of time than was originally booked on the Event Invoice, JMS is under no obligation to reduce the amount of the Event Invoice. For the avoidance of all doubt, the full amount of the Event Invoice is due under all circumstances.

8) CONDUCT

a. JMS does not tolerate any violent, aggressive or abusive behaviour from any person at a venue where JMS performs an Event. If at any time any JMS representative and DJ feel that their personal safety or the safety of their or JMS's equipment is under threat then JMS DJ fully reserves the right to terminate the Event at any time. In these circumstances no refund for the Event will be provided and the Event Invoice will be forfeited in full.

b. By agreeing to these T&Cs, the Purchaser warrants to JMS that they are responsible to JMS and any JMS DJ for any harm caused to any JMS DJ or any JMS or JMS DJ's equipment by any person at the venue hosting the Event (whether a guest or otherwise).

9) PRIVACY

a. The Purchaser hereby authorises JMS to collect, retain, use and disclose consumer and/or commercial information about the Purchaser in accordance with the Privacy Act 1988 (and its subsequent amendments) to persons or legal entities who are a solicitor or any other professional consultant engaged by JMS, debt collectors, credit reporting agencies or any other individuals or organisations which maintains credit references or default listings.

10) FORCE MAJEURE

a. JMS is not responsible for any failure to perform any obligation under these T&Cs if its performance becomes impossible due to a Force Majeure Event. In such circumstances, JMS will be under no obligation to refund the Deposit or Event Invoice.

11) SITES

a. The Purchaser authorises JMS and its representative to enter Your Site for the purposes of this Agreement.

- b. The Purchaser warrants that each of Your Sites is a safe workplace and free of harmful material, asbestos and transmissible diseases.
- c. The Purchaser will take all reasonable steps to ensure Your Sites are free from risks.
- d. The Purchaser will obtain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start.
- e. The Purchaser will comply with all applicable workplace health and safety laws.
- f. The Purchaser releases and indemnifies JMS from and against any liability arising out of, or in connection with, a breach of this clause.

12) INTELLECTUAL PROPERTY

- a. JMS retains all rights, title and interest subsisting in any design(s), documentation, diagrams or plans and other information and materials ("JMS Materials") supplied to the Purchaser for the purposes of carrying out any services under this Agreement.
- b. Where the Purchaser supplies any design(s), documentation, diagrams or plans and other information and materials ("Customer Materials") under this Agreement, the Purchaser retains all right, title and interest in such Customer Materials but grants JMS a perpetual, irrevocable, royalty-free non-exclusive licence to use, reproduce and modify Customer Materials to enable JMS to fulfil its obligations under this Agreement. The Purchaser agrees to accept full responsibility for all Customer Materials provided to JMS under this Agreement and to indemnify JMS for any action, claim, liability, cost or expense arising out of any threatened or actual infringement of intellectual property rights arising out of the use by JMS of Customer Materials.

13) GST

- a. Where a supply under these terms and conditions is or becomes subject to a GST, an amount equal to the GST paid or payable in respect of that supply shall be added to the amount exclusive of GST paid or payable for that supply under these terms and conditions.
- b. Each party agrees to do all things, including providing invoices and other documentation, that may be necessary or desirable to enable or assist the other party to claim any credit, set-off, rebate or refund in relation to any amount of GST paid or payable in respect of any supply under these terms and conditions.
- c. In this clause GST has the meaning it has in "A New Tax System (Goods and Services Tax) Act 1999 (Cth)."

14) TERMINATION

- a. Either party may terminate a supply if:
 - (i) the other party commits any material or persistent breach of its obligations under this Agreement which in the case of a breach capable of remedy, shall not have been remedied within 14 days of receipt by the party in breach of a notice identifying the breach and requiring its remedy within such other reasonable period depending on the circumstances; or
 - (ii) a party has reasonable grounds to believe that the other has, or is about to, become insolvent or where an individual becomes bankrupt or enters into a scheme of arrangement with creditors. JMS may terminate this Agreement, or a proposal, immediately if, in its absolute

discretion, the provision of the Goods or Services at any of Your Sites poses a risk to any of JMS's personnel. Termination under this clause must be effected by written notice served on the other party. Termination under this clause shall be without prejudice to any rights that may have accrued for either of the parties before termination and all sums due under this Agreement shall become payable in full when termination takes effect. If the Purchaser wish to terminate or cancel a supply of Services prior to the expiry of the minimum term, the Purchaser will be required to pay the remaining payments up to the end of the minimum term. JMS may suspend provision of Services immediately and for such period as JMS considers appropriate if any monies owing to JMS are due and unpaid.

15) LIABILITY

a. This Agreement shall be subject to any rights conferred upon JMS and the Purchaser by the Competition and Consumer Act 2010 or similar legislation which cannot by agreement or otherwise be excluded, restricted or modified. Where any warranty or condition cannot be excluded then liability shall be limited to, at the election of JMS, repair or replacement in the case of Goods, or supplying the Services again or the payment of the cost of resupplying the Services in breach of such warranty or condition.

b. JMS will not be liable to the Purchaser for:

(i) Any loss or damage sustained to any person or to any property howsoever caused, arising out of or in connection with this Agreement, a health pandemic, or a Force Majeure Event;

(ii) any indirect, consequential, special or economic loss, cost or liability; or

(iii) any loss or damage suffered by You except if such loss or damage is caused by the sole negligence of JMS or its employees.

c. Notwithstanding any other provision of this Agreement, liability of JMS whether in contract, tort (including negligence), in equity, under statute, or under an indemnity, or otherwise will be limited to a maximum amount equal to the annual contract value of this Agreement, in respect of the aggregate of all claims arising out of or in relation to any one event or series of events.

d. The Purchaser shall notify JMS in writing of any claim within one (1) month from the occurrence of any event that gives rise to a claim under this Agreement. If no such notice is given the Purchaser will be deemed to have waived and abandoned completely any such claim, which shall not be allowable or admitted after the expiration of such period. Time shall be of the essence in this clause.

e. The Purchaser shall keep JMS indemnified at all times against any loss arising from claims made against JMS by any party with respect to any theft, loss, damage, destruction, health pandemic, death or injury arising out of or in connection with the provision or failure to provide the Services except in the case of negligence on the part of JMS, its employees or agents.

16) MISCELLANEOUS

a. **Laws of NSW:** The T&Cs are governed by and interpreted in accordance with the laws of the State of NSW, Australia. The Purchaser irrevocably submits to the non-exclusive jurisdiction of the Courts of the State of NSW, Australia. If any provision of the T&Cs is found to be invalid or unenforceable by a court of law, such invalidity or unenforceability will not affect the remainder of this agreement, which will continue in full force and effect.

b. **Severance:** If any part of these terms are found to be void, invalid, unlawful or unenforceable then that provision or part will be deemed to be severed from these terms and the remaining terms and provisions of these terms will remain in force and constitute a binding agreement between the Purchaser and JMS.

c. **No set off:** The Purchaser may not set off any amounts owing to JMS under this Agreement from any amounts you claim JMS owes you.

d. **No assignment:** The Purchaser shall not assign any of your interest in this Agreement without the prior written consent of JMS, which shall not be unreasonably withheld by JMS. JMS may at any time assign, sub-contract or licence any part of its rights and obligations under this Agreement.

e. **Further Action:** Each party must do, at its own expense, everything reasonably necessary (including executing documents) to give full effect to this Agreement and any transaction contemplated by it.

DEFINITIONS

Force Majeure Event means an event beyond the reasonable control of JMS, including but not limited to, acts of God, natural disasters, extreme weather conditions, storms, lightning strikes, fires, floods, health pandemics, epidemics, or similar public health emergencies, acts of war or terrorism, riots, civil disturbances, explosions, national emergencies, government interference, strikes, labour disputes, significant or sustained disruption to power services, embargoes, mechanical breakdowns, road closures, peak hour traffic, delays at other customers' premises.

Goods mean any goods supplied by JMS to the Purchaser under this agreement.

Services mean any services provided by JMS to you under this Agreement, including but not limited to the supply of DJ s and any additional services as required from time to time during the term of this Agreement.

Your Sites means the Purchaser's premises, or premises the Purchaser request JMS to attend