



austage events  
audio visual excellence

## 1 Interpretation

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1.1 In these terms and conditions:

- (a) **this Agreement** means these terms and conditions.
- (b) **Equipment** means any equipment provided to you in relation to provision of the Services or otherwise as set out in Item 5 of the Schedule.
- (c) **Fees** means the fees we will charge you in exchange for the provision of the Equipment and the Services as set out in Item 7 of the Schedule.
- (d) **GST** means any goods and services tax applying to the Equipment or the Services.
- (e) **Intellectual Property Rights** means any confidential information, copyright, trademarks, registered or unregistered design rights or patents or any other intellectual property rights whether capable of being registered or not.
- (f) **Premises** means the premises set out in Item 10 of the Schedule.
- (g) **Services** means the services we agree to supply to you as set out in Item 6 of the Schedule to this Agreement.
- (h) **we, our and us** means Austage Unit Trust, trading as Austage Events.
- (i) **you and your** means your company or organisation.

## 2 Supply of Equipment and Services

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- 2.1 We will supply the Equipment and Services to you on the terms of this Agreement.
- 2.2 You acknowledge that at any time during the term of this Agreement, we may provide services similar to the Services to any other person (including a person who operates a business that competes with your business). However, in so doing we will not breach our other obligations to you under this Agreement.

## 3 Price and Payment

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- 3.1 You agree to pay us the Fees.
- 3.2 Unless otherwise stated in the Schedule, all prices we quote:
  - (a) are valid for 30 days;
  - (b) are on the basis that the Schedule is not varied; and
  - (c) exclude GST. Any GST payable in respect of a supply of Services by us under this Agreement must be paid by you in addition to the quoted price.
- 3.3 We will give you a tax invoice for each amount you have to pay us. We may give you a tax invoice for part supply of the Services.

- 3.4 You will pay each tax invoice according to the Schedule. Payment must be without deduction or set-off and in a manner, that we approve.

## **4 Intellectual Property**

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- 4.1 We retain all title, rights and interest in any Intellectual Property Rights associated with any information or material supplied to you in connection with the provision of Services or the Equipment under this Agreement.
- 4.2 Without limiting clause 4.1 above, we retain exclusive copyright in any work, plan, proposal, schematic or other material we create (or have created) and provide to you in relation to the provision of the Services or the Equipment.
- 4.3 To the extent necessary to facilitate provision of the Equipment and Services under this Agreement, we grant you a non-exclusive licence for the term of this Agreement to use any Intellectual Property Rights owned by us in connection with this Agreement.
- 4.4 We retain exclusive proprietary rights in any source code or executable computer program we may use in relation to the provision of the Services.

## **5 Your Obligations**

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You will:

- 5.1 take delivery of, collect, and return any Equipment supplied to you by us under this Agreement in the manner set out in the Schedule.
- 5.2 not sell, offer for sale, or otherwise dispose of any of the Equipment.
- 5.3 not place any charge, security interest or other encumbrance over any of the Equipment.
- 5.4 make all relevant enquiries as to the Equipment's fitness for the purpose for which it is to be hired or used by you and you will determine whether the Equipment is fit for that purpose and is in a condition suitable for such use.
- 5.5 use the Equipment only for the purpose for which it is manufactured or designed and in accordance with the manufacturer's instructions.
- 5.6 keep the Equipment adequately insured (and provide us with copies of the relevant certificates of insurance following our request) and be responsible for any loss or damage to the Equipment whatsoever.
- 5.7 indemnify us and hold us harmless for any loss of, or damage to, any of the Equipment other than through fair wear and tear in the normal course of use.
- 5.8 clean the Equipment and return it to us in the same condition in which it was provided to you by us.
- 5.9 keep Equipment at the Premises unless we have expressly authorised otherwise.
- 5.10 permit us or our representatives to enter the Premises at all reasonable times in order to inspect the Equipment or to carry out repairs to the Equipment.

## **6 Title and risk**

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- 6.1 You are liable for the Equipment for so long as it is in your possession. In circumstances where we have agreed with you that you will arrange for return of the Equipment to us, then You understand and agree that the Equipment remains in your possession until the Equipment arrives at our premises.

- 6.2 The Customer is responsible for the safekeeping of the Equipment and shall bear the risk of any loss, theft, damage or destruction of Equipment.
- 6.3 In the event that the Equipment requires repair as a result of the Customer's negligence, misuse or abuse, the Customer shall bear cost of any such repair including any freight charges.
- 6.4 Without limiting clause 5 above, in circumstances where any of the Equipment is lost, stolen, destroyed or damaged beyond repair, you will pay us the total new replacement cost as assessed by us.
- 6.5 You will pay us a reasonable refurbishing fee in the event that ownership labels, affixed to Equipment are removed or defaced.
- 6.6 Any item ancillary to the provision of the Equipment (for example, Equipment operations or product manuals) not returned to us at the conclusion of the term of this Agreement will be charged to the account of the Customer at full replacement cost and you agree to pay those additional costs.

## **7 Liability**

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- 7.1 We make no warranties to you in relation to the provision of the Equipment or the Services unless expressed in the Schedule or required by statute and which we cannot by law exclude from this Agreement.
- 7.2 Subject to this Agreement and to the fullest extent permitted by law, we:
- (a) exclude all liability to you for any loss or damage of any kind (including liability to a third party), including but not limited to loss of revenue, business profits, goodwill or data, or indirect, consequential, incidental special, exemplary or punitive loss or damage (Loss) suffered by you in any way relating to this Agreement, use of the Equipment or the provision of Services by us to you, regardless of the basis of such liability and even if advised of the likelihood of such Loss;
  - (b) exclude all terms, conditions, warranties and guarantees implied by custom, the general law or any statute; and
  - (c) limit our aggregate liability to you in connection with this Agreement to the Fees.
- 7.3 We are not liable to you for any loss that you or anyone else may suffer as a consequence of:
- (a) the use or installation of the Equipment;
  - (b) any breach by a manufacturer of its warranties or any loss you may suffer because of any action or inaction by a manufacturer;
  - (c) the content of any website, the accuracy of information on it, the content of information passing through any network supplied to you as part of the Services, interruptions to your internet services or the functionality of links from your website to other websites;
  - (d) any virus contained in or corruption to your computer system caused by use of the Equipment or the provision by us of the Services.

## **8 Your default**

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- 8.1 If you breach this Agreement:
- (a) all amounts you owe us, whether or not due for payment, become immediately payable;

- (b) you must pay interest at 10% per annum on any outstanding amount calculated daily from the date due for payment until the date of payment;
- (c) we may, without penalty to us or notice to you, suspend or terminate the supply of Services to you or any other obligation we may have under this Agreement. Without limiting that generality, we may access the premises to remove any Equipment and immediately cease provision of the Services. In that case we are not liable to you if you suffer any loss of or interruption to your business, loss of data or other consequential loss;
- (d) you indemnify us for all loss we suffer as a result of such breach (including legal costs, on a full indemnity basis, for enforcing this Agreement or protecting our interests); and
- (e) we may exercise these and any other remedies against you separately or concurrently.

## **9 Our default**

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- 9.1 We may, by notice to you and without penalty, cancel the supply of any Equipment and Services under this Agreement. You are not required to pay for Services that we do not supply.
- 9.2 If we breach this Agreement:
  - (a) we will, at our discretion, re-supply at our expense or refund the price of any Equipment or Services not properly supplied;
  - (b) we are not obliged to take any other action; and
  - (c) we are not liable to you for any damages, indirect loss, lost profits or other consequential loss.

## **10 Term and termination**

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- 10.1 This Agreement continues until terminated in accordance with this clause or the date stipulated in Item 15 of the Schedule, whichever comes first.
- 10.2 We may terminate this Agreement immediately by notice in writing if:
  - (a) payment of any Fees invoiced under this Agreement remain unpaid for more than 14 days from the date of issue; or
  - (b) you are in breach of any obligation under this Agreement and such a breach is not remedied within 7 days of notice to do so given by us; or
  - (c) you become insolvent, a receiver or administrator is appointed or you are wound up or otherwise deregistered.
- 10.3 In addition to clause 10.4 below, if we give notice pursuant to clause 10.2 above:
  - (a) we will, in our absolute discretion, retain all Fees paid to us by you under this Agreement; and
  - (b) you will permit us, or will procure permission for us, to enter the Premises to take possession of any Equipment provided under this Agreement.
- 10.4 You must pay for any Equipment or Services supplied (or ordered by us from any third party but not yet delivered to you) before a termination notice is received.
- 10.5 Termination does not affect your or our rights regarding anything occurring before the termination.

## **11 General**

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- 11.1 We are an independent contractor. You and we are not agents or partners of each other, are not in a relationship of employer and employee, and neither can bind the other.
- 11.2 This Agreement constitutes the entire agreement between you and us relating to the Equipment and the Services.
- 11.3 Neither you nor we have relied on any statement by the other regarding the Equipment or the Services which is not expressly included in this Agreement or otherwise agreed in writing.
- 11.4 This Agreement takes effect from the earlier of:
- (a) you providing us with written acceptance of it without alteration; or
  - (b) you making any payment for the Equipment or the Services pursuant to the Proposal.
- 11.5 A variation to this Agreement is binding only when it is in writing and both you and we have signed it. Without limiting that generality, upgrades, enhancements or improvements to Equipment or the Services are excluded unless expressed in the Schedule.
- 11.6 We may subcontract all or any of our obligations under this Agreement at any time without your consent. You cannot assign your rights under this Agreement without our consent.
- 11.7 If there is any conflict between the Schedule and these terms and conditions, the Schedule prevails.
- 11.8 This Agreement is governed by the law in force in Western Australia, Australia. You agree to irrevocably submit to the non-exclusive jurisdiction of courts exercising jurisdiction in Western Australia, Australia and courts of appeal from them in respect of any proceedings arising out of or on in connection with this Agreement, and irrevocably waive any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.
- 11.9 If a part of this Agreement is invalid or unenforceable under the law of any jurisdiction, it is enforceable in that jurisdiction to the extent that it is not invalid or unenforceable, whether it is in severable terms or not.
- 11.10 You acknowledge that you have had the opportunity to obtain independent legal advice before entering into this Agreement.
- 11.11 Any notice under this Agreement has no effect unless it is in writing and either given to your or our representative or posted by registered post to your or our address. The notice takes effect when received.

## SCHEDULE 1

<b>Item</b>		
1	<b>Customer Details</b> Name Address Phone ABN	
2	<b>Customer representative</b>	
3	<b>Austage project manager</b>	
4	<b>Commencement Date</b>	
5	<b>Equipment</b>	
6	<b>Services</b>	
7	<b>Fees</b>	
8	<b>Equipment Delivery Date</b>	
8	<b>Equipment Installation Date</b>	
9	<b>Equipment Installation Requirements</b>	
10	<b>Premises</b>	
11	<b>Rehearsal(s) details and timing</b>	
12	<b>Event/show details and timing</b>	
13	<b>Cancellation terms</b>	
14	<b>Additional terms</b>	
15	<b>Equipment return date</b>	
16	<b>Invoicing requirements</b>	