



## Service Agreement

### TERMS & CONDITIONS

Thank you for choosing **Bits n Bites Cart Hire** which is owned and operated by Kym Coomber trading as **Bits n Bites Cart Hire (ABN 50 886 064 542)** (hereafter '**our**', '**we**', '**us**') for your event. ('**the Event**').

This is an Agreement under which you (hereafter '**you**', '**your**' or '**the Client**') agree to purchase one of our packages for the price set out in the finalised invoice ('**the Price**') and provided by us on the day of your Event ('**Event Date**') in accordance with the terms set out below ('**the Terms**').

Please read these terms carefully before confirming your Event Booking with us or using our Services. This and an additional '**Confirmation of Booking Form**' provided to you will be referred to hereafter as '**the Terms**'. The Terms are important because they set out the rights and obligations of you as the Client, details of your Event, payment terms and the use of our Services ('**Your Booking**').

Your Booking is confirmed once we have received an executed copy of these Terms. However, where you fail to provide an executed copy of the Terms but proceed to use our Services or pay the Booking Fee, you confirm your agreement to be bound by these Terms. This Agreement expressly supersedes all prior agreements or arrangements with you.

#### 1. THE SERVICES

- 1.1. We offer our Services by way of a package ('**Services**'). We may also offer, at any point in time, the following additional services:

Confirmation of the particular service(s) offered will be agreed between the parties and expressed in **the Confirmation of Package and finalised invoice** provided to you

#### 2. BOOKING FEE

- 2.1. You must pay a non-refundable booking fee of 50% of Total Invoice amount ('**Booking Fee**') or an amount agreeable between parties
- 2.2. A Booking Fee is required for all bookings and is non-refundable and non-transferable (except where otherwise outlined within this Agreement). The purpose of the Booking Fee is for, but is not limited to, securing our Services for a specified date, related consultations, research, quoting, rent, licensing, insurances, administration and ongoing client management.
- 2.3. You may tentatively book the Event Date for a period of seven (7) days from the date that you send a written request reserving your specific date. However, the tentative booking will automatically lapse and the Event Date will not be confirmed until;
  - a) The Booking Fee is paid in cleared funds to our account;
  - b) A signed set of these Terms are received.

### 3. PRICING

- 3.1. As clients, each of you will be jointly and severally liable for all payments owing to us.
- 3.2. You should be aware that the Price quoted for the Package may change due to unforeseen circumstances not present at the time of taking your Booking. This includes where your initial expectations have exceeded what was expressed at the time of taking the Booking.
- 3.3. You are required to pay for the Package as follows:
  - a) The Booking Fee as outlined in Clause 2 being **50% of Total price** or as agreed;
  - b) A payment of the balance of the Price due **7days** before your Event Date (**Final Payment**)
- 3.4. For payments we will provide you with an invoice for the Services in advance. Any payments made to us will be made via bank transfer or credit card (credit card will be subject to current service fees and charges).
- 3.5. All packages, Services and Additional Services may be subject to a price increase at any time before the payment of the Booking Fee.

We reserve the right not to provide the services if the payments are not made by you in accordance with these Terms.

- 3.6. The parties agree to positive cooperation and communication with each other. We are not responsible for key individuals' failure to contact us, or to cooperate during any meetings with us, or the Booking itself. You understand that we require fair, realistic notice to attend to requests. Poor planning or miscommunication on your part will not be treated by us as an emergency. You understand that last minute changes can impact the quality of the Services and as a result, will not be responsible for these compromises in quality. Where we feel that there is no satisfactory cooperation and communication, we may terminate this agreement immediately.

### 4. POSTPONEMENTS AND CANCELLATIONS

- 4.1. You may cancel this Agreement at any time, by notifying us in writing via email.
- 4.2. If you cancel your Event:
  - a) More than 8 Weeks prior to your Event Date, you will receive a full refund of your Booking Fee;
  - b) 8 Weeks and the Event Date, you forfeit the Booking Fee.
- 4.3. Cancellation does not affect your obligation to pay for any Services already provided.
- 4.4. In the event that you wish to postpone your Booking, and you wish to book a further date that is mutually agreeable and within 6 months of the Event Date, and your request to postpone is:
  - a) more than 8 Weeks prior to your Event Date, we will transfer the Booking Fee to a new date at our discretion and availability, additional fees may apply;
  - b) Less than 8 Weeks from your Event Date, you may forfeit the Booking Fee and all monies paid or due at the time of postponement, this will be at the discretion of Bits n Bites Cart Hire and availability

## **5. MENU/FOOD**

- 5.1. All handling of food, must be completed by you or your delegated persons at your own risk with no liability to us or our appointed contractors.

## **6. DAMAGES, REPAIRS AND CLEANING**

- 6.1. You are financially responsible for any repairs for damage to equipment or property or extra cleaning costs which may become necessary due to the damage or other matters caused by guests or your invitees whether accidental or otherwise. Damage Invoice will be sent to you and payable within 7 Days of invoice date.
- 6.2. You, must ensure all of your food and personal items is removed before your designated pick up time
- 6.3. If rain is to incur you must ensure that the cart is well protected undercover, failure to do so will result In a damage Invoice and will be sent to you and payable within 7 Days of invoice date.
- 6.3. Extra charges may be payable if the Booking has created cleaning needs (determined at our sole discretion). The damage will be assessed for any major stains, bodily fluids, spillages and the cost associated to clean the area will be charged to you via invoice and is payable within 7 Days
- 6.4. All guests or invitees use our equipment entirely at their own risk.
- 6.5. You must not, and must use your best endeavours to ensure that you, your guests, vendors and/or any contractors don't, do any of the following:
  - a) damage or attempt to damage any part of our equipment or its installations, fittings or fixtures;
  - b) attach any sign, decoration or other item to any part of our equipment;
  - c) interfere with or alter any of the equipment
  - d) Have any flammable materials including candles, or light or maintain a naked flame near or on our equipment
- e) Where you wish to use flowers as decorations, these flowers must not be used with water
- f) do, say or display anything defamatory, offensive or of a pornographic nature.

## **7. DELIVERY AND PICK-UP OF EQUIPMENT**

- 7.1. All deliveries for the Booking will be at an agreed time between parties pick up will be scheduled at agreed times.
- 7.2. Payment for any delivery of goods must be made by you in advance to the delivery.

## **INTELLECTUAL PROPERTY**

- 7.3. You acknowledge that we may take images and/or video of you using our Venue on the Event Date. You hereby irrevocably waive all copyright rights (including moral rights) in any such images and agree to provide us a royalty free nonexclusive licence to use any such images for our marketing purposes.
- 7.4. By accepting these terms, you confirm that you have given permission, and sought the permission from your guests and vendors, for us to take images and videos.
- 7.5. Any photographs, videos or sound recordings taken by you must be for personal use only and must be taken legally. Any use, reuse or production for commercial purposes without our express written consent is strictly prohibited.

## **8. WARRANTY, LIABILITY, AND INDEMNITY**

- 8.1. To the extent that the Australian Consumer Law allows, we provide the Services on an "as is" and "as available" basis and disclaim all representations, warranties and conditions of any kind, whether express, implied, statutory or otherwise with respect to the Services (including all information contained therein), and including any implied warranties of merchantability, fitness for a particular purpose, non-infringement, title or ownership.

- 8.2. Subject to clause 16.1 above, we accept no responsibility and are not liable for any direct or indirect, special loss or damage or injury to any person, corporation or other entity in connection with this Agreement or the Services, howsoever caused save for the event we have contributed to such loss or damage or injury.
- 8.3. We will not be liable to you or any other person for any liability or claim of any kind whatsoever arising directly or indirectly (whether under statute, contract, tort, negligence or otherwise) in relation to any indirect or consequential loss (including but not limited to any loss of actual or anticipated profits, revenue, savings, production, business, opportunity, access to markets, goodwill, reputation, publicity, or use) or any other remote, abnormal or unforeseeable loss or any similar loss whether or not in the reasonable contemplation of the parties.
- 8.4. To the maximum extent permitted by law, you will indemnify us against any liability arising from or in connection with:
- (i) Any act or omission by you;
  - (ii) Any breach of these terms; and
  - (iii) Any third-party claim against us;
- arising from or in conjunction with this Agreement, but this indemnity will be reduced proportionately to the extent the liability was caused by our negligence.

## **9. FORCE MAJEURE**

- 9.1. We will not be liable or responsible for any failure to perform, or the delay in performance of, any of its obligations under the Agreement that is caused by any act or event beyond our control. Examples include, but are not limited to, acts of God, flood, bushfire, warfare, government laws or regulations, electrical fire, strikes by suppliers (known as 'force majeure circumstances').
- 9.2. If a genuine force majeure circumstance occurs and means that the performance of our obligations under the Agreement becomes impossible, we will contact you as soon as reasonably possible to notify you. Our obligations under the Agreement will be suspended and the time for performance of our obligations will be extended for the duration of that force majeure circumstance.
- 9.3. In genuine force majeure circumstances, we will endeavor to arrange a new date for the Booking with you after the event outside of its control is over. We must use all reasonable endeavors to mutually agree on a new date, but if we are unable to agree on an alternative date, the Booking will be considered cancelled under the terms outlined in Clause 4.
- 9.4. This clause does not apply in circumstances where an event outside of our control occurs but the circumstances still make the Booking possible (notwithstanding inconvenience or financial hardship). If events beyond our control occur (such as restrictions to numbers of guests, or density requirements) but it is entirely possible for us to provide a substantial part the Services, any choice to cancel your event is done so at your own initiative and the usual cancellation clauses in these Terms apply.
- 9.5. If you cancel the booking or vary the booking because the alleged event outside of our control causes mere inconvenience or changes the booking in a manner that does not suit you, our postponement and cancellation policies apply.

## **10. ENTIRE AGREEMENT**

The terms and conditions contained in this Agreement constitute the entire agreement between us with respect to the Services and shall not be amended, except where mutually agreed in writing.

## **11. DISPUTES**

Both parties agree that any disputes arising from provision of the Services shall be negotiated with a view to settlement prior to either party issuing legal proceedings.

## **12. TERMINATION**

12.1. We may immediately terminate, or suspend the performance of this Agreement and you must immediately pay any money owed to us if:

- (i) we experience harmful or threatening behaviour;
- (ii) you fail to provide instructions or cooperate with requests for information;
- (iii) you breach a term of this Agreement and you do not remedy the breach within fourteen (14) days;
- (iv) any invoice rendered by us remains outstanding;
- (v) you breach a term of this agreement which is not capable of remedy.

12.2. You may immediately terminate, or suspend the performance of, any agreement in the event of substantial breach by us of my obligations hereunder, where any such breach has not been remedied within 30 days of written notice from you requiring the breach to be remedied.

## **13. GOVERNING LAW AND JURISDICTION**

Any Agreement between us is governed by the laws of the state of Queensland. The parties submit to the non-exclusive jurisdiction of the courts of the State of Queensland and any courts which may hear appeals from those courts in respect of any proceedings in connection with any Agreement.

## **14. SEVERABILITY**

If any of these terms are invalid or unenforceable in any jurisdiction, that term must be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable, and is otherwise capable of being severed to the extent of the invalidity or unenforceability, without affecting the remaining terms or affecting the validity or enforceability of that term in any other jurisdiction.

## **15. MISCELLANEOUS**

15.1. If any provision of this Agreement is unenforceable, the provision will be severed, and the remaining provisions will continue to apply.

15.2. We may assign any rights or benefits under this Agreement to any third party.

15.3. You may only assign any rights or benefits under this Agreement with our prior written consent.

15.4. This Agreement incorporates the entire understanding of the parties. Any waiver of a breach or default hereunder shall not be deemed a waiver of a subsequent breach or default of either the same provision or any other provision of this Agreement.

## **16. EXECUTION BY PARTIES**

16.1. This agreement must be executed by each party named. In instances where it is signed by one party, the signing party acknowledges and warrants that they have the authorisation to execute the agreement on behalf of the other party. In doing so, they also warrant that the other party has read and understood the Terms prior to providing permission to execute.