

## TERMS AND CONDITIONS

### 1. ACCEPTANCE

- 1.1 These Terms are between **Inceptive Technical Direction Pty Ltd** ATF The EA Chapman Family Trust (ABN: 62 461 303 150), its successors and assignees (referred to as “**we**” and “**us**”) and you, the person, organisation or entity described in the Proposal (referred to as “**you**”), each a “**Party**” and collectively the “**Parties**”. These Terms apply to all Services provided by us to you.
- 1.2 We provide technical services in the audio-visual industry for a wide range of events, including but not limited to design and install audio-visual equipment for product launches, events of all kinds and provide a concept and design, costings and other services (the **Services**). Details of your event are set out in the Proposal.
- 1.3 **You agree that these Terms form the agreement under which we will supply Services to you. Please read these Terms carefully.** Please contact us if you have any questions. Purchasing Services from us indicates that you have had sufficient opportunity to read these Terms and contact us if needed, that you have read, accepted and will comply with these Terms, and that you are 18 years or older.

### 2. CONFIRMATION OF BOOKINGS

- 2.1 You have requested our Services as set out above and in the attached Proposal. You accept the Proposal and these Terms by either:
- (a) signing and returning the Proposal;
  - (b) confirming by email that you accept the Proposal;
  - (c) instructing us to proceed with the Services; or
  - (d) paying any Deposit set out in the Proposal, or making part or full payment for the Services.
- 2.2 Your booking is confirmed once you have accepted these Terms, as above. We will start providing the Services to you once you have paid the Deposit.

### 3. SERVICES

- 3.1 We agree to perform the Services with due care and skill.
- 3.2 We may provide the Services to you using our employees, contractors and third party providers, and they are included in these Terms.
- 3.3 Third parties who are not our employees or our direct contractors will be your responsibility. We are not responsible for the products or services provided by those third parties.
- 3.4 The Fees and Services can be varied by written agreement between us, including by email. If you request a change to the Services you have engaged us to provide, we have discretion as to whether we accept the change and whether an adjustment to the Fee may be required. You understand and agree that a premium may be charged if you request last minute changes.
- 3.5 If we agree to vary the Services, we will inform you of any change to the Fees (the **Variation Fee**). You must pay the Variation Fee before we change the Services to be provided. We will invoice you accordingly for the Variation.

### 4. PRICE, INVOICING AND PAYMENT

- 4.1 You agree to pay us the Price, using the Payment Method, as set out in the Proposal including any Deposit. All amounts are stated in Australian dollars. All amounts include Australian GST (where applicable).
- 4.2 The Price and Services can be varied by written agreement between us, including by email.
- 4.3 We may charge interest at a rate equal to the Reserve Bank of Australia’s cash rate from time to time plus 8% per annum, calculated daily and compounding monthly, on any amounts unpaid after the payment date.
- 4.4 You agree to pay our invoices by the payment date set out on the invoice. If an invoice is unpaid after the payment date, we may cease to provide the Services to you until we receive payment.
- 4.5 If invoices are unpaid after the payment date, we have the right to engage debt collection services for the collection of unpaid and undisputed debts, and the right to commence legal proceedings for any outstanding amounts owed to us.
- 4.6 We reserve the right to report bad debts to independent credit data agencies.
- 4.7 If the Proposal states that the Fees and Expenses are an estimate only, you acknowledge that the final Fees and Expenses may be more or less than the estimated amounts. We will endeavour to inform you of any material variation as it becomes apparent.

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### 5. DAMAGE TO PROPERTY AND EQUIPMENT

- 5.1 You agree and acknowledge that we will be providing you with certain equipment in order to provide the Services (**Equipment**) and the Equipment is often provided through third party providers.
- 5.2 You will, at all times:
- (a) properly and carefully secure and protect the Equipment;
  - (b) keep, set, place and protect the Equipment from water damage and overheating;
  - (c) use, operate, load and unload the Equipment carefully and under competent supervision;
  - (d) be responsible for any all loss or Damage to the Equipment; and
  - (e) comply with all our requirements in relation to the Equipment including but not limited to those relating the use, operation and supervision of the Equipment or any part thereof and arising under requirements pertaining to occupational use and safety.
- 5.3 Any Damage that is perceived to have been caused purposefully or resulting from a person or persons standing on the Equipment, throwing items at it, placing drinks on it or pushing it over or treating it without due care and attention, will result in an additional repair or full replacement charge being charged to you.
- 5.4 We are not responsible for any damage to property that we did not cause.
- 5.5 You indemnify us against any loss or damage to the Equipment and the property of any venue owners or other property, from and against any claim, demand, action, suit or proceeding that may be made or brought by any person against us, our employees or agents in respect of damage to property.

### 6. YOUR OBLIGATIONS AND WARRANTIES

- 6.1 You warrant that throughout the term of these Terms that:
- (a) there are no legal restrictions preventing you from agreeing to these Terms;
  - (b) you will cooperate with us, and provide us with information that is reasonably necessary to enable us to perform the Services as requested by us from time to time, and comply with these requests in a timely manner;
  - (c) the information you provide to us is true, correct and complete;
  - (d) you will not infringe any third party rights in working with us and receiving the Services;
  - (e) you will inform us if you have reasonable concerns relating to our provision of Services under these Terms, with the aim that the Parties will use all reasonable efforts to resolve your concerns;
  - (f) you are responsible for obtaining any consents, licences and permissions from other parties necessary for the Services to be provided, for example obtaining an events licence, at your cost, and for providing us with the necessary consents, licences and permissions;
  - (g) you will not employ, canvass, solicit, entice, induce or attempt to employ our employees or contractors;
  - (h) you will ensure that we have full access to the event venue as and when we require and sufficient access and facilities to enable us to set up and pack down the Equipment; and
  - (i) you consent to the use of your name in relation to the Services in a way which may identify you.

### 7. OUR INTELLECTUAL PROPERTY

- 7.1 In the course of providing Services, we may take photos of the venues, setup and other arrangements we provide as part of the Services. The Intellectual Property in these photos resides with us and we may use these images for publicising our Services on our website or on our social media.
- 7.2 If you send us photos from your event, you authorise us to use these on our website and social media.
- 7.3 We own the Intellectual Property rights in:
- (a) our pre-existing Intellectual Property, including but not limited to copyright which subsists in all designs, creative and literary works incorporated into our pre-existing Intellectual Property; and
  - (b) Intellectual Property that we create during the course of the Services, including but not limited to copyright which subsists in all creative and literary works in all Intellectual Property that we create during the course of the Services;
- 7.4 Nothing in these Terms constitutes an assignment or transfer of our Intellectual Property rights, or a right to use our Intellectual Property, whether registered or unregistered, except as stated in these Terms or with our written permission.

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- 7.5 You must not breach our Intellectual Property rights by, including but not limited to:
- (a) sharing our Intellectual Property without our prior written consent;
  - (b) altering or modifying our Intellectual Property;
  - (c) creating derivative works from the Intellectual Property; or
  - (d) using our Intellectual Property for commercial purposes such as for future events or on-sale to third parties.
- 7.6 This clause will survive the termination of these Terms.
- 8. YOUR INTELLECTUAL PROPERTY AND MORAL RIGHTS**
- 8.1 You agree to provide information including any Intellectual Property to us to enable us to provide the Services. You:
- (a) warrant that you have all necessary rights to provide the Intellectual Property to us;
  - (b) grant us a perpetual, non-exclusive, royalty-free, irrevocable, worldwide and transferable licence to use the Intellectual Property in any way we require to provide the Services to you; and
  - (c) consent to any act or omission which would otherwise constitute an infringement of your Moral Rights.
- 8.2 If you (or any employee or agent) have Moral Rights in any Intellectual Property that you provide to us, you:
- (a) irrevocably consent to any amendment of the Intellectual Property for the purposes of us providing Services to you and to our using or applying the Intellectual Property for the purposes of providing Services to you without any attribution of authorship;
  - (b) agree that your consent extends to acts and omissions of any of our licensees and successors in title; and
  - (c) agree that your consent is a genuine consent under the Copyright Act 1968 (Cth) and has not been induced by duress or any false or misleading statements.
- 8.3 This clause will survive the termination of these Terms.
- 9. CONFIDENTIAL INFORMATION**
- 9.1 We, including our employees and contractors, agree not to disclose your Confidential Information to any third party (other than where necessary, to third party suppliers, or as required by law); to use all reasonable endeavours to protect your Confidential Information from any unauthorised disclosure; and only to use your Confidential Information for the purpose for which it was disclosed by you, and not for any other purpose.
- 9.2 You, including your employees and contractors, agree not to disclose our Confidential Information to any third party; to use all reasonable endeavours to protect our Confidential Information from any unauthorised disclosure; and only to use our Confidential Information for the purpose for which it was disclosed or provided by us to you, to provide better quality services to you and not for any other purpose.
- 9.3 These obligations do not apply to Confidential Information that:
- (a) is authorised to be disclosed;
  - (b) is in the public domain and/or is no longer confidential, except as a result of a breach of these Terms;
  - (c) is received from a third party, except where there has been a breach of confidence; or
  - (d) must be disclosed by law or by a regulatory authority including under subpoena.
- 9.4 This clause will survive the termination of these Terms.

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### 10. FEEDBACK AND DISPUTE RESOLUTION

- 10.1 Your feedback is important to us. We seek to resolve your concerns quickly and effectively. If you have any feedback or questions about the Services, please contact us.
- 10.2 If there is a dispute between the Parties in relation to these Terms, the Parties agree to the following dispute resolution procedure:
- (a) The complainant must tell the respondent in writing, the nature of the dispute, what outcome the complainant wants and what action the complainant thinks will settle the dispute. The Parties agree to meet in good faith to seek to resolve the dispute by agreement between them at an initial meeting.
  - (b) If the Parties cannot agree how to resolve the dispute at that initial meeting, any Party may refer the matter to a mediator. If the Parties cannot agree on who the mediator should be, the complainant will ask the Law Society of Victoria to appoint a mediator. The mediator will decide the time and place for mediation. The Parties must attend the mediation in good faith, to seek to resolve the dispute.
- 10.3 Any attempts made by the Parties to resolve a dispute pursuant to this clause are without prejudice to other rights or entitlements of the Parties under these Terms, by law or in equity.

### 11. CANCELLATION

- 11.1 If you wish to cancel your booking, you must notify us in writing, which includes by email, that you wish to cancel your booking. The following terms apply to cancelled bookings:
- (a) We reserve the right to cancel your booking if payment is not received within 7 days of the invoice date;
  - (b) If payment is late we cannot guarantee the availability of Equipment. We will not order any Equipment on your behalf until your account/the relevant invoice is settled.

### 12. TERM AND TERMINATION

- 12.1 This Agreement will begin on the Commencement Date and continue until your event is over, or the date on which these Terms are terminated in accordance with this clause, if earlier.
- 12.2 Either Party may terminate these Terms if there has been a material breach of these Terms, subject to following the dispute resolution procedure.
- 12.3 We may terminate these Terms immediately, at our sole discretion, if:
- (a) you commit a non-remediable breach of these Terms;
  - (b) you commit a remediable breach of these Terms and do not remedy the breach within 10 days after receiving notice of the breach;
  - (c) we consider that a request for the Services is inappropriate, improper or unlawful;
  - (d) you fail to provide us with clear or timely instructions to enable us to provide the Services;
  - (e) we consider that our working relationship has broken down including a loss of confidence and trust;
  - (f) for any other reason outside our control which has the effect of compromising our ability to perform the Services within the required timeframe; or
  - (g) an invoice is overdue and you fail to pay an invoice by the due date.
- 12.4 On termination of these Terms you agree that any Deposit payments made are not refundable to you, and you are to pay for all Services provided prior to termination, including any Services which have been performed and not yet invoiced to you.
- 12.5 Within 8 weeks of the event date a percentage of the total quote will be charged as follows, 8 weeks notice – 20% of the fee, 7 weeks notice – 30% of the fee, 6 weeks notice – 40% of the fee, 5 weeks notice – 50% of the fee, 4 weeks notice – 60% of the fee, 3 weeks notice – 70% of the fee, 2 weeks notice – 80% of the fee, 1 weeks notice – 100% of the fee.
- 12.6 In the case of event postponement due to events outside of either parties control fees paid to date can be carried forward to a new date within a 12 month period of the original date of completion. Once a 12 month period has elapsed if the fees have not been used they are forfeited.
- 12.7 On termination of these Terms you agree to promptly return (where possible), or delete or destroy (where not possible to return), our Confidential Information and Intellectual Property, and/or documents containing or relating to our Confidential Information and/or Intellectual Property.

- 12.8 On termination of these Terms, we agree to promptly return (where possible), or delete or destroy (where not possible to return), your Confidential Information and Intellectual Property, and/or documents containing or relating to your Confidential Information and/or Intellectual Property.
- 12.9 On completion of the Services, we will retain your documents (including copies) as required by law or regulatory requirements. Your express or implied agreement to these Terms constitutes your authority for us to retain or destroy documents in accordance with the statutory periods, or on termination of these Terms.

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- 12.10 The accrued rights, obligations and remedies of the Parties are not affected by the termination of these Terms.

### 13. CONSUMER LAW, LIMITATION OF LIABILITY AND DISCLAIMERS

- 13.1 **Service Standard:** We will provide the Services with due care and skill, the Services will be fit for the purpose that we advertise, and we will supply the Services within a reasonable time.
- 13.2 **ACL:** Certain legislation including the Australian Consumer Law (ACL) in the *Competition and Consumer Act 2010* (Cth) and similar consumer protection laws and regulations may confer you with rights, warranties, guarantees and remedies relating to the provision of Services by us to you which cannot be excluded, restricted or modified (**Statutory Rights**).
- 13.3 **Statutory Rights:** Nothing in these Terms excludes your Statutory Rights as a consumer under the ACL. You agree that our liability for the Services is governed solely by the ACL and these Terms. We exclude all conditions and warranties implied by custom, law or statute except for your Statutory Rights.
- 13.4 **Delay:** Where the provision of Services depends on your information or response, we have no liability for a failure to perform the Services in the period set out in the Proposal where it is affected by your delay in response, or supply of incomplete or incorrect information.
- 13.5 **Warranties:** Except for your Statutory Rights, we exclude all express and implied warranties representations and guarantees and all material and work is provided to you without warranties, representations and guarantees of any kind, either express or implied. We expressly exclude all warranties including but not limited to implied warranties of merchantability and fitness for a particular purpose.
- 13.6 **Availability:** To the extent permitted by law, we exclude all liability for the Services being unavailable.
- 13.7 **Limitation:** To the extent permitted by law, our total liability arising out of or in connection with the Services, however arising, including under contract, tort including negligence, in equity, under statute or otherwise, is limited to us re-supplying the Services to you, or, at our option, us refunding to you the amount you have paid us for the Services to which your claim relates. Our total liability to you for all damages in connection with the Services will not exceed the price paid by you under these Terms for the 12 month period prior to the act which gave rise to the liability. We are not liable for the venue's electricity or if any blackouts occur during your event. We are not responsible for any inherent limitations in the venue and we are not responsible for dismantling or removing any objects or items we did not provide.
- 13.8 If adverse weather affects your event, we will do our best to proceed as agreed in adverse weather, however we are responsible for the safety of our staff and if adverse weather endangers our staff, we may not be able to proceed with your event.
- 13.9 This clause will survive the termination of these Terms.

### 14. INDEMNITY

- 14.1 You are liable for and agree to indemnify, defend and hold us harmless for and against any and all Claims, liabilities, suits, actions and expenses, including costs of litigation and reasonable legal costs, resulting directly or indirectly from:
- any information provided by you that is not accurate, up to date or complete or is misleading or a misrepresentation;
  - your breach of these Terms;
  - any misuse of the Services by you, your employees, contractors or agents; and
  - your breach of any law or third party rights.
- 14.2 You agree to co-operate with us (at your own expense) in the handling of disputes, complaints, investigations or litigation that arise as a result of your use of the Services including but not limited to

disputes, complaints, investigations or litigation that arises out of or relates to incorrect information you have given us.

14.3 This clause will survive termination of these Terms.

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### 15. GENERAL

- 15.1 **Privacy:** We agree to comply with the legal requirements of the Australian Privacy Principles as set out in the *Privacy Act 1988* (Cth) and any other applicable legislation or privacy guidelines.
- 15.2 **Publicity:** You consent to us advertising or publically announcing that we provided Services to you, including but not limited to mentioning you on our website and in our promotional material.
- 15.3 **Email:** You acknowledge that we are able to send electronic mail to you and receive electronic mail from you. You release us from any claim you may have as a result of any unauthorised copying, recording, reading or interference with that document or information after transmission, for any delay or non-delivery of any document or information and for any damage caused to your system or any files by a transfer.
- 15.4 **GST:** If and when applicable, GST payable on the Fee for the Services will be set out on our invoices. You agree to pay the GST amount at the same time as you pay the Fee.
- 15.5 **Relationship of Parties:** These Terms are not intended to create a relationship between the Parties of partnership, joint venture, or employer-employee.
- 15.6 **Assignment:** These Terms are personal to the Parties. A Party must not assign or deal with the whole or any part of its rights or obligations under these Terms without the prior written consent of the other Party (such consent not to be unreasonably withheld).
- 15.7 **Severance:** If any provision (or part of it) under these Terms is held to be unenforceable or invalid in any jurisdiction, then it will be interpreted as narrowly as necessary to allow it to be enforceable or valid. If a provision (or part of it) under these Terms cannot be interpreted as narrowly as necessary to allow it to be enforceable or valid, then the provision (or part of it) must be severed from these Terms and the remaining provisions (and remaining part of the provision) of these Terms are valid and enforceable.
- 15.8 **Force Majeure:** We will not be liable for any delay or failure to perform our obligations under these Terms if such delay is due to any circumstance beyond our reasonable control. If we are delayed from performing our obligations due to such a circumstance for a period of at least 2 months, we may terminate these Terms with you by giving you 5 Business Days' notice in writing.
- 15.9 **Notices:** Any notice required or permitted to be given by either Party to the other under these Terms will be in writing addressed to the relevant address in the Proposal. Any notice may be sent by standard post or email, and notices will be deemed to have been served on the expiry of 48 hours in the case of post, or at the time of transmission in the case of transmission by email.
- 15.10 **Jurisdiction & Applicable Law:** These terms are governed by the laws of Victoria and the Commonwealth of Australia. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts operating in Victoria.
- 15.11 **Entire Agreement:** These Terms and any document expressly referred to in them represent the entire agreement between the Parties and supersede any prior agreement, understanding or arrangement between the Parties, whether oral or in writing.

### 16. DEFINITIONS

- 16.1 **Business Day** means a day which is not a Saturday, Sunday or bank or public holiday in Victoria, Australia.
- 16.2 **Claim/Claims** includes a claim, notice, demand, right, entitlement, action, proceeding, litigation, prosecution, arbitration, investigation, judgment, award, damage, loss, cost, expense or liability however arising, whether present, unascertained, immediate, future or contingent, whether based in contract, tort or statute and whether involving a third party or a Party to this Agreement or otherwise.
- 16.3 **Commencement Date** is set out in the Proposal.

- 16.4 **Confidential Information** includes confidential information about you, your credit card or payment details and other information of either Party which would reasonably be considered confidential, whether or not such information is reduced to a tangible form or marked in writing as "confidential".

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- 16.5 **Damage** means physical harm caused to the Equipment as a result of:
- (a) the negligent use or abuse of the Equipment including impact, misuse, mishandling and faulty operation;
  - (b) operation in abnormal conditions;
  - (c) operation outside the recommendations set out in our requirements for the Equipment;
  - (d) operation not in accordance with the manufacturer's recommendations or those set out by us.
- 16.6 **Deposit** is set out in the Proposal.
- 16.7 **Expenses** are set out in the Proposal.
- 16.8 **Fees** are set out in the Proposal.
- 16.9 **GST** means GST as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as amended from time to time or any replacement or other relevant legislation and regulations.
- 16.10 **Intellectual Property** includes any and all present and future rights to intellectual and industrial property throughout the world, and includes all copyright and analogous rights, all rights in relation to inventions (including patent rights), patents, improvements, registered and unregistered trademarks, designs, any corresponding property rights under the laws of any jurisdiction, discoveries, circuit layouts, trade names, trade secrets, secret processes, know-how, concepts, ideas, information, processes, data or formulae, business names, company names or internet domain names, and any Confidential Information.
- 16.11 **Moral Rights** means the right of attribution of authorship, the right not to have authorship falsely attributed and the right of integrity of authorship, as defined in the Copyright Act 1968 (Cth).
- 16.12 **Payment Method** is set out in the Proposal.
- 16.13 **Price** means the Fees for the Services that you have requested.
- 16.14 **Proposal** means the Proposal to which these Terms are attached.
- 16.15 **Terms** means these terms and conditions.

Unless otherwise defined herein or the context otherwise requires, capitalised terms used in these Terms will have the meanings given to them in the Proposal.

Contact details  
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