



Hire of Facilities – Terms and Conditions

(to accompany the Hire of Facilities – Booking Form)

1. Definitions and interpretation

1.1 The following definitions apply in this Agreement unless the context requires otherwise:

Agreement means the agreement between the Hirer and DOBCEL on behalf of the School comprising these terms and conditions and the Booking Form.

Attendees means all persons who enter the Facility by invitation or in connection with the Hirer during the Hire Period including but not limited to employees, contractors, agents, members, guests and clients of the Hirer.

Booking is a booking to use the Facility for the Hire Period as requested by the Hirer and confirmed in writing by the School.

Booking Form means a written request by the Hirer to use the Facility in a form approved by the School.

Claim means any claim, complaint, demand, proceeding, suit, litigation, action, cause of action or other legal recourse (whether in contract, tort, under statute or otherwise).

Common Areas means the shared areas at the School which the Hirer and its Attendees may require access to for the purpose of accessing or using the Facility such as entries and exits, hallways and bathroom facilities, as designated by the School as permitted for use.

Contact Person means the person nominated by each party in the Booking Form as the person that will be the first point of contact for the other party in respect of a Booking.

Deposit means any deposit due as specified in the Booking Form

Facility means the facilities specified in the Booking Form and includes, where applicable, Common Areas.

Fee means the fee payable for use of the Facility as set out in the Booking Form.

Hire Period means the period of hire specified in the Booking Form.

Hirer means the party named on the Booking Form as the Hirer.

GST has the same meaning given to that expression in the GST Law.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cth), as in force from time to time.

GST Law has the same meaning given to that expression in the GST Act.

Losses means any loss, damage, debt, cost, charge, expense, fine, outgoing, penalty, diminution in value, deficiency or other liability of any kind or character (including legal and other professional fees and expenses on a full indemnity basis) that a party pays, suffers or incurs or is liable for.

Permitted Use means the permitted use described in the Booking Form.

Property means the land, buildings and property forming the School within which the Facility is located.

Representatives means, in respect of the School, the employees, officers, consultants, agents and professional advisers of that party.

School means the party described in the Booking Form.

School Rules means the rules, guidelines and regulations of the School as set down, amended and enforced from time to time at the School by the School or its Representatives.

Special Conditions means any special conditions set out in the Booking Form.

1.2 The following rules of interpretation apply in this Agreement unless the context requires otherwise:

- (a) a reference to any law, rule, code or regulation includes any amendment, consolidation, modification or re-enactment of it or any replacement;
- (b) an expression importing a natural person includes any individual, corporation or other body corporate, partnership, trust or association and any governmental agency and that person's personal representatives, successors, permitted assigns, substitutes, executors and administrators;
- (c) a reference to writing includes any communication sent by post or email;
- (d) a reference to time refers to time in Melbourne, Victoria and time is of the essence;
- (e) all monetary amounts are in Australian currency;
- (f) a reference to a "**liability**" includes a present, prospective, future or contingent liability;
- (g) the meaning of general words is not limited by specific examples introduced by "**include**", "**includes**", "**including**", "**for example**", "**in particular**", "**such as**" or similar expressions;
- (h) a reference to a "**party**" is a reference to a party to this Agreement and a reference to a "**third party**" is a reference to a person that is not a party to this Agreement;
- (i) a reference to any thing is a reference to the whole and each part of it;
- (j) a reference to a group of persons is a reference to all of them collectively and to each of them individually;
- (k) words in the singular include the plural and vice versa; and
- (l) a reference to one gender includes a reference to the other genders.

2. Application

- 2.1 These terms and conditions apply to all Bookings unless expressly waived by the School in writing.
- 2.2 The School may vary these terms and conditions by providing one months' notice in writing to the Hirer.
- 2.3 Where there is any inconsistency between the Booking Form (including the Special Conditions) and these terms, the Booking Form will prevail to the extent of the inconsistency.

3. Bookings

- 3.1 A potential Hirer may request the use of the Facility by completing a Booking Form and submitting it to the School. A request will only become a Booking once:
- (a) the School provides confirmation in writing to the Hirer that the request is a confirmed Booking; and
 - (b) the Hirer has paid the Deposit (if any).

4. Cancellations

- 4.1 Any request by the Hirer to cancel a Booking (or part thereof) must be in writing and received by the School:
- (a) at least seven (7) days prior to the Hire Period commencing where the Booking relates to a one off Hire Period; or
 - (b) at least 48 hours prior to the Hire Period where the Booking relates to a recurring Hire Period.
- 4.2 Where the Hirer cancels a Booking, Deposits (if any) will be refunded to the Hirer at the complete discretion of the School.
- 4.3 The School may cancel the Booking (or part of it) at any time if in the opinion of the School:
- (a) it is unsafe to allow the Booking to proceed;
 - (b) there is a conflict regarding use of the Facility for School purposes;
 - (c) the Facility is otherwise unavailable during the Hire Period; or
 - (d) the Facility is unsuitable for the Permitted Use.
- 4.4 If the entire Booking (including any recurring Hire Period) is cancelled by the School pursuant to clause 4.3 then the Deposit will be refunded in full.

5. Grant of Licence

- 5.1 Once a Booking is confirmed, the School grants the Hirer a licence to use the Facility for the Permitted Use during the Hire Period subject to these terms and conditions.
- 5.2 The rights granted by this license do not create in or confer upon the Hirer any tenancy or proprietary or other estate or interest whatsoever in or over the Facility other than that of licensor and licensee.

6. Fees and charges

- 6.1 The Hirer must pay the Fee to the School for use of the Facility pursuant to this Agreement.
- 6.2 In addition to the Fee, the Hirer will be responsible for additional charges incurred by the School in connection with:
- (a) repairs to (and where applicable, replacement of) the Facility, equipment or Property caused by the Hirer or its Attendees;
 - (b) cleaning (above and beyond ordinary School cleaning) resulting from the Hirer's use of and or access to them;

- (c) use of the Facility by the Hirer beyond the agreed Hire Period;
 - (d) security call out fees;
 - (e) storage of equipment that was not removed from the Facility at the end of the Hire Period; and
 - (f) any additional services that the School has agreed to provide at the request of the Hirer.
- 6.3 The final amount due for payment by the Hirer will be the amount shown on a tax invoice issued by the School to the Hirer for payment.
- 6.4 All amounts to be paid by a party to another party under or in connection with this Agreement must be paid by way of electronic funds transfer into the account nominated by the other party.

7. Hirer's obligations and acknowledgements

- 7.1 In addition to any other covenants made under this Agreement, the Hirer must:
- (a) Prior to the commencement of the Hire Period:
 - (i) complete a Facility induction with the School (in any form that the School deems appropriate) prior to use of the Facility;
 - (ii) take out and maintain public liability insurance for at least \$20,000,000.00 per single event and provide the School with a certificate of currency within 7 days of a request;
 - (iii) compile and maintain a register of all Attendees and provide the School with a copy of the register within 2 days of the request.
 - (b) Use the Facility only during the Hire Period;
 - (c) Ensure that:
 - (i) all persons required to have a working with children check have one and can provide evidence of one upon request (particularly where the Hire Period may coincide with students of the School being on the Property);
 - (ii) all Attendees wear appropriate footwear that will not mark or damage flooring;
 - (iii) all signage and safety procedures are strictly adhered to by all Attendees;
 - (iv) there are persons in attendance capable and qualified to provide First Aid support and resources and to adequately supervise the Attendees;
 - (v) all equipment is maintained in a clean and operable condition and returned to storage areas upon completion of use (subject to the Permitted Use);
 - (vi) the Facility is maintained in a clean and tidy condition free from damage;
 - (vii) all Attendees comply with School Rules and any other reasonable directions provided by the School regarding access to or use of the Facility or Property;
 - (viii) all rubbish is placed in allocated bins or otherwise removed from the Facility;
 - (ix) all personal belongings are removed at the conclusion of the Hire Period;
 - (x) the Facility is locked and secure upon vacating;

- (xi) the Hirer and any Attendees are aware of and consent to being filmed and monitored by the School through its extensive security system which footage will only be used for the purpose of security and safety;
 - (d) Report any damage or malfunction to the Facility or any equipment therein to the School's Contact Person immediately upon becoming aware or at the next business day if out of ordinary School hours;
 - (e) Notify the School Contact Person immediately when an event occurs which may give rise to a claim under an insurance policy;
 - (f) Not:
 - (i) use the Facility for any purpose other than the Permitted Use;
 - (ii) attempt to access or use any other part of the School not included in the Facility as described in the Booking Form;
 - (iii) allow any person to bring food, alcohol or glass onto the Property without prior written approval;
 - (iv) allow any animal onto the Property (unless a genuine assistance animal);
 - (v) obstruct any part of the Property (including the Facility) required or in use by the School; or
 - (vi) erect, install or display any advertisements on the Property without the prior approval of the School;
 - (g) Must not allow inappropriate behaviour or conduct whilst on the Property and if requested by a School Representative – leave or have the offending persons leave the Property immediately.
- 7.2 The Hirer warrants that the person signing the Booking Form and thereby executing this Agreement on behalf of the Hirer has the necessary authority to enter into this Agreement.
- 7.3 The Hirer acknowledges that use of the Facility and any equipment therein is at the risk of the Hirer and such use may be inherently dangerous such that users of the Facility may be exposed to risk including injury, death or damage to property.

8. School obligations and rights

- 8.1 Subject to the Hirer complying with the terms of this Agreement, the School agrees to make the Facility available for the Permitted Use during the Hire Period.
- 8.2 The School may at any time terminate this Agreement immediately (including during the Hire Period) if in the opinion of the School or one of its Representatives:
- (a) the Hirer is in breach of these terms and conditions;
 - (b) the safety of any person is at risk; or
 - (c) there is a likelihood of damage being caused to the Facility or Property.

9. GST

- 9.1 Except as otherwise provided in this Agreement, all Fees and charges are inclusive of all taxes including duty, impost, levy, deduction, charges, withholding or tax of any kind whatsoever, but excluding GST.
- 9.2 If this licence is a taxable supply (as defined in the GST Act), the Hirer must pay to the School, an additional amount equal to the GST payable on the supply, subject to receiving a valid tax invoice at or before the time of payment.
- 9.3 If for any reason the amount recovered by the School from the Hirer on account of GST under clause 9.2 differs from the amount of GST payable at law by the Hirer in respect of the supply, the amount payable by the Hirer will be adjusted accordingly.

10. Liability

- 10.1 The Hirer indemnifies the School against any Claim or Loss suffered or incurred by the School or any third party, which may arise from:
- (a) any act or omission of the Hirer or of the Attendees in breach of the Hirer's obligations under this Agreement;
 - (b) any breach by the Hirer of any of the warranties given under this Agreement; or
 - (c) any accident, death or injury to any person or damage to any property arising out of the use or access to the Facility by the Hirer pursuant to this Agreement except to the extent that such accident, death, injury or damage is caused by the negligence of the School or its Representatives.
- 10.2 Notwithstanding any other provision and to the extent permitted by law, the Hirer agrees that the School will not be liable to the Hirer in respect of any financial or economic loss including loss of profit, loss or revenue, loss of use, loss of goodwill, increase cost of working or indirect or consequential loss.

11. General

- 11.1 **Costs.** All costs and expenses in connection with this Agreement, will be borne by the party that incurred the costs.
- 11.2 **Severability.** If a provision of this Agreement is invalid or unenforceable in a jurisdiction, it is to be read down or severed in that jurisdiction to the extent of the invalidity or unenforceability; and that fact does not affect the validity or enforceability of the remaining provisions.
- 11.3 **No waiver.** No failure, delay, relaxation or indulgence by a party in exercising any power or right conferred upon it under this Agreement will operate as a waiver of that power or right. No single or partial exercise of any power or right precludes any other or future exercise of it, or the exercise of any other power or right under this Agreement.
- 11.4 **Assignment.** A party must not assign, transfer, or otherwise deal in any other way with, any of its rights under this Agreement without the prior written consent of the other party.
- 11.5 **Governing law.** This Agreement and any disputes or claims arising out of or in connection with it are governed by the laws of Victoria, Australia and the parties irrevocably and unconditionally agree that the courts of Victoria, Australia have exclusive jurisdiction.

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