

# TERMS & CONDITION 2020

M-Cloud Services PTY. LTD. – ABN 34 608 366 267 – ACN 608 366 267

The following terms and conditions between M-Cloud Services Pty Ltd (we/us/ our) and the customer (you/ your) apply to the provision of audiovisual, specialty event services, event staging and event production services including, but not limited to, the hiring of technical equipment and decorative items (Services) by us to you.

## Proposal for Service

1. We will provide you with a written advice of our proposed charges in respect of the Services requested by you in the form of a quote, proposal or hire contract (Estimate). In order for us to provide the Services you must first notify us in writing that you accept the Estimate (Notice).
2. If we do not receive a Notice from you within 5 working days after the date the Estimate is agreed, or as is stipulated in the Estimate/Quote, then the charges set out in the Estimate/Quote (Charges) are subject to change.
3. Any quote which is not an Estimate/Quote is provided by us as a guide to our charges only.  
Confirmation, Invoicing & Payment
4. The provision of Services is subject to availability. If at the time of receiving a Notice from you we are not in a position to provide the Services requested, then we will be under no obligation to provide those Services. We may elect to provide you with only some of the Services requested. If you indicate to us that you wish to acquire those Services, then we will provide you with a new Estimate for the Services.
5. As soon as we receive a Notice from you and we confirm that we are able to provide the Services requested, the Estimate together with these terms and conditions will comprise our agreement with you (Agreement). At this point, we will reserve all technical equipment and staff members required for the Services. We will also issue you an invoice and request payment for these Services according to our agreed upon terms, which is further outlined in clause 10.
6. Where the Agreement specifies a duration relating to the provision of the Services then this duration will be the minimum duration for the provision of the Services to you. (Minimum Term)
7. If you request, and (after considering the matters set out in clauses 17 and 18) we agree to provide Services to you that are not detailed in the Estimate (for example, because they are late changes to the scope or orientation of your event) (Additional Services) then we may impose additional charges (Additional Charges). Any Additional Charges will be in accordance with our standard rates applying at the time the Additional Services are requested and will be included in the invoice we issue to you.
8. We reserve the right to charge an administration surcharge (Administration Charge) of \$15 to be applied to each invoice we issue to you to recoup the cost of administering your account. The Administration Charge will be applied to the invoice in addition to incurred Service Charges.
9. Subject to clause 11, if you have an account with us with available credit then you must pay the total amount of our invoice for the Services (and any Additional Services) within 7 days after the date of that invoice unless otherwise stated on the agreed upon terms of that invoice.

10. If you do not have an account with us with available credit then you must pay to us (in cleared funds) an amount equal to all Charges prior to or at the time of despatch as is specified in the Estimate (Prepayment). Any Prepayment will be applied against the invoice we raise for the Services. In addition:

- (a) if you do not pay the Charges in accordance with this clause we may, in our absolute discretion, elect not to provide the Services to you. If we do elect to provide the Services to you, we will invoice you for the Services and that invoice must be paid immediately; and
- (b) if, after you have made a Prepayment, you require us to provide Additional Services than we will invoice you for the Additional Charges and that invoice must be paid immediately.

11. If we provide Additional Services to you then any reference in clauses 12 to 38 of these terms and conditions to "Services" includes a reference to "Additional Services" and any reference to "Charges" includes a reference to "Additional Charges".
12. If you wish to establish a credit account you must submit a credit application to us at least 10 working days prior to the commencement date specified in the Estimate we will assess your application for a credit account and advise you in writing if your application is accepted.
13. Acceptance of your application for a credit account is at our absolute discretion.
14. Irrespective of whether you hold an account with us, we may, in our absolute discretion, require you to pay some of the Charges, including, but not limited to, those Charges relating to manufactured items, cross-hired items, production charges, venue charges and entertainment charges) prior to our provision of the Services. Such payment, if requested, will be applied against the invoice we raise for the Services. If you do not pay the Charges in accordance with this clause we may, in our absolute discretion, elect not to provide the Services to you.
15. Any outstanding amounts on Overdue accounts will be subject to interest at the rate prescribed by statutory guidelines (e.g., Penalty Interest Rates Act [VIC]), calculated daily from the due date until paid in full and, together with any legal expenses incurred by us (on a fully indemnity basis) in relation to recovering the outstanding amounts, will be payable on demand.
16. If you make any payment by credit card, we reserve the right to levy a surcharge to recoup the cost of the merchant service fee we incur. A surcharge will be added the invoice total

## Cancellation

17. If you have given us a Notice then you must advise us in writing if you subsequently decide to cancel the Services. In circumstances where you cancel the Services less than one calendar month before the Commencement date and time, we reserve the right to levy a cancellation charge equal to all of the Charges for the Minimum Term.
18. In addition to the Cancellation Charge, you must reimburse us for any costs incurred by us in preparation for the provision of the Services including, but not limited to, the cost of manufactured items, production charges, venue charges and entertainment charges where such costs have not already been paid to us in accordance with clause 12.

## Service Delivery

19. We undertake to provide a safe work environment and to promote safe systems of work. We plan the provision of our Services to achieve a safe working environment through consultation with our employees and the adoption of a risk management approach for identifying, assessing, controlling and reviewing risks as an integral part of our business operations.
20. We reserve the right to withdraw our Services if you or a third party's plans are altered or the operating environment changes to such an extent as to breach our policies regarding safe work practices for our employees or any applicable WHS standards.
21. In the case of un-crewed equipment hires, you are solely responsible for the safe use of the equipment and compliance with all the WHS and other statutory requirements at your event.
22. In relation to the freighting of our Equipment:
  - (a) if you are responsible for freighting, you must return the Equipment to our warehouse; and
  - (b) if we are responsible for freighting, you must:
    - (c) permit (or obtain permission for) us to access the premises where the Equipment is located in order to collect it and ensure that the Equipment is available for collection during the pack down time specified in the Estimate (Pack Down Time).
    - (d) if, for any reason (other than a matter under our control), we are unable to collect the Equipment during the Pack Down Time then an amount equal to 100% of the daily rate for the provision of the Services will be charged to you for each day (or part thereof) until the Equipment is accessible and available to be collected by us.
23. You acknowledge that in requesting the Services from us, you are not relying up on any representation, promiser undertaking made by or on behalf of us (including, but not limited to, in relation to your requirements) unless that representation, promise or undertaking is expressly given in writing in this Agreement, or in any proposal or other document produced by us.

## Intellectual Property

24. You are solely responsible for any and all Intellectual Property (including without limitation all copyrighted material and registered and unregistered trade marks) in any way used at or forming part of your event and agree to indemnify us against any claims or actions bought against us in respect of the use of any such intellectual property (including any computer program, music, film, graphic, printed material or other copyrighted material of any kind) in any media, at your event.
25. You agree that all Intellectual Property produced in the course of providing the Services to you will remain the exclusive property of M-Cloud Services Pty Ltd.
26. You agree that all Intellectual Property used in the provision of theming and styling created by us in the course of providing the Services to you will remain the exclusive property of M-Cloud Services Pty Ltd.

## Equipment

27. In relation to any Equipment provided as part of the Services you acknowledge that the Equipment remains our property at all times.
28. You must pay within 7 days after the date of any written demand from us:

- (a) the cost of repairing the Equipment;
  - or
  - (b) the full new for old replacement cost, including all taxes or duties incurred on replacement, of any Equipment that is lost or determined by us to be irreparably damaged, unless such loss or damage is caused by us.
  - (c) from the commencement, and for the duration of the provision of service(s), you are fully responsible for any theft of the Equipment.
  - (d) You must provide adequate security for the Equipment.
  - (e) pay to us within 7 days after the date of a written demand, the full new for old replacement cost including all taxes or duties incurred on replacement, of all stolen Equipment and any additional expenses incurred by us arising from the theft.
  - (f) you must not take the Equipment or allow the Equipment to be taken overseas without our prior written consent.
  - (g) you must maintain and return the Equipment in the same condition it was in when you took delivery of the Equipment subject to any fair wear and tear as determined by us;
  - (h) you must only use the Equipment for the purposes for which the Equipment was supplied to you;
  - (i) you must permit the use of the Equipment only by properly qualified and (if applicable) licensed persons.
  - (j) you must not affix the Equipment or any part of the Equipment to any building or other property;
  - (k) you must not cause or permit any legal or equitable lien or any encumbrance to take effect or be created over or in respect of the Equipment;
  - (l) you must not sell, mortgage, pledge or assign the Equipment;
  - (m) you must not sub-let or part with possession of the Equipment ;
  - (n) you must return without demand by us all of the Equipment on the return date specified in the Estimate;
  - (o) you must permit (or obtain permission for) us to enter the premises where the Equipment is located; and
  - (p) if you breach any term of this Agreement then, without prejudice to any other rights which we may have, you must permit us to retrieve the Equipment and indemnify us for any costs incurred by us in retrieving the Equipment from you.
29. Clause 28.(m). will not apply if the sole purpose of us providing the Equipment to you is to enable you to cross-hire that Equipment to a third party in order to provide that party with services of a similar nature to the Services.

## Insurance

29. From the commencement, and for the duration of the provision of service(s), you must, insure the Equipment for its full new for old replacement value against loss or damage with a reputable insurer and, without limiting that responsibility, ensure that such insurance provides coverage for each of the circumstances contemplated in clauses 28.b. and 28.c. Your insurance policy must also include coverage for any charges incurred by us in hiring replacement Equipment while any lost, stolen or damaged Equipment is either replaced or repaired.
30. Upon our request you must provide to us, prior to the delivery of the Services, written evidence of the Insurance.
- In addition:
- (a) where we are providing Services outside of Australia your insurance policy must extend to the region in which the Services are to be provided;
  - (b) upon our request, you must provide us with evidence of the currency of your insurance policy at any time during the provision of the Service(s); and
  - (c) any insurance policy taken out by you must contain cross-liability and waiver of subrogation clauses.
31. If we charge insurance the insurance charge imposed by us on you provides coverage for:
- (a) public liability Insurance associated with our provision of the Services at your event (but not your own liability in respect of that event);
  - (b) Product liability Insurance associated with our provision of any Equipment at your event; and transit insurance in relation to the transportation of any Equipment to and from your event.

## General

32. You warrant that you are entitled and authorised to enter into and perform your obligations under this Agreement. Where a person enters into this Agreement in their capacity as your agent, both you and the agent agree that your obligations under this Agreement (including, but not limited to, payment of the Charges) bind both you and the agent jointly and severally. The reference to "you" in this Agreement is also a reference to your agents, assigns and appointees.
33. All terms, conditions and warranties implied into this Agreement by statute, at common law or otherwise, and all liability for any indirect or consequential loss (including, without limitation, any loss of profits, loss of revenue or loss of opportunity) arising in any way (including, without limitation, as a result of our negligence), are excluded from this Agreement except where to do so would contravene any statute or cause any part of this Agreement to be void or unenforceable.
34. To the extent that we cannot lawfully exclude liability under this clause, our liability is limited to, at our option:
- (a) in the case of goods supplied by us, replacing or repairing the goods, or paying the cost of having the goods replaced or repaired;
- and
- (b) in the case of services supplied by us, re-supplying the services, or paying the cost of having the services re-supplied.
35. You agree to indemnify us against all actions, claims, demands, judgments, costs or other expenses arising out of
- any proceedings or Date of Issue 01/01/2015 claims brought against us or in which we may be joined, as a result of our performance of the Services pursuant to this Agreement.
36. You must not assign, novate or otherwise deal with any of your rights and obligations under this Agreement (including with respect to the payment of any invoice) without our prior written consent, which will be provided in our absolute discretion.
- If you:
- (a) breach any term of this Agreement ;or
  - (b) become subject to the appointment of a liquidator, receiver, manager, trustee in bankruptcy or other form of administration or we determine that you are otherwise unable to pay your debts as and when they fall due, then, without prejudice to any other rights which we may have, we may terminate this Agreement and immediately cease to provide the Services to you.
37. Unless otherwise indicated, all amounts expressed pursuant to this Agreement are exclusive of GST. If we are liable to pay GST in respect of any supply we make to you, you must pay us an additional amount equal to the amount of the GST payable on that supply and we will issue you with a tax invoice in accordance with the A New Tax System (Goods and Services Tax) Act 1999 (Cth).
38. You must pay all stamp duties and any related fines and penalties in respect of this Agreement and each transaction effected by or made under this Agreement and indemnify us against any liability arising from your failure to do so.
39. Our Charges are subject to change without notice and are quoted in Australian dollar
40. The information provided by you to us may contain your personal information.
41. The purpose for which the information is collected is to enable us to consider your information, provide the Services and protect our interests in the Equipment and you consent to us collecting the information for these purposes.
- (a) You are generally entitled to gain access to the information. We usually disclose this information to a credit reference agency acting on our behalf. If you do not provide personal information to us, we will not be able to assess your applications and provide the Services.
  - (b) You agree that, in order to assess your application and manage your account we may give personal Information about you to a credit reporting agency including details of your identity, your application and the status of your account.
  - (c) You agree that we may exchange information about you with credit providers named in this credit application, or named in a credit report issued by a credit reporting agency, any information about your credit arrangements, including information about your credit worthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act.
  - (d) You agree that we may use this information to assess an application by you for credit, notify other credit providers of a default by you under this contract or to assess your credit worthiness.
42. If you are making an application for commercial credit then:
- (a) You agree that we may obtain a consumer credit report about you from a credit reporting agency

for the purpose of assessing your application for commercial credit.

- (b) You agree that we may obtain from a credit reporting agency a consumer credit report for the purpose of collecting overdue payments relating to commercial credit owed by you to us.

43. If you are making an application for consumer credit then:

- (a) You agree that we may obtain information about you from a business which provides information about the commercial credit worthiness of persons for the purpose of assessing your application for consumer credit.

44. If any of these terms and conditions is, or becomes, for any reason wholly or partially invalid, then that term or condition will to the extent of the invalidity be severed without affecting the enforceability and validity of the remaining terms and conditions.

45. This Agreement is governed by, and must be construed in accordance with, the laws of the State or Territory where the Services are provided and the parties submit to the non-exclusive jurisdiction of the courts of that State or Territory.

46. These Terms and Conditions of M-Cloud Services Pty Ltd are subject to change without notice.