



Gel Events Pty Ltd (ACN 600 044 620) ("Gel Events")

Trading Terms and Conditions for the provision of Event Services

These Trading Terms and Conditions ("Terms") apply to the Agreement for the provision of Services by Gel Events to a Customer. These Terms apply in substitute of any other terms and conditions. Any other terms and conditions including terms provided by or from a Customer are void and not applicable to the supply of Services by Gel Events.

1. Interpretation

In these Terms unless the contrary intention appears:

"Agreement" means the agreement for the supply of Services by Gel Events to the Customer which incorporates the Order Terms and these Terms.

"Additional Charges" means the Additional Charges set out in the Order Terms and, where advised by Gel Events, otherwise includes relevant delivery, handling and storage charges, goods and services tax, stamp duty, interest, legal and other costs of recovery of unpaid money and all other government imposts and all money, other than the Fees, payable by the Customer to Gel Events arising out of the provision of the Services.

"Customer" means the Customer set out in the Parties section of the Agreement for whom the Services are to be supplied by Gel Events.

"Corporations Act" means the Corporations Act 2001 (Cth).

"Customer Background Material" means all material independently created by the Customer (or licensed to the Customer by a third party) which is in existence before the date of the Agreement, or which comes into existence after the date of the Agreement other than in connection with the Agreement.

"Dangerous Goods" means Goods that are or may become explosive, inflammable, radioactive or which otherwise are or may become capable of damaging any property of any nature and in any manner including without limitation Hazardous Goods.

"Fees" means the fees payable by the Customer for the services as set out in the Order Terms subject to any variations made under these Terms.

"Force Majeure Event" means an act of God, lightning, storm, flood, earthquake, fire, explosion, war, terrorism, pandemic or epidemic, government direction or order or any other event beyond the reasonable control of a party but only where the relevant event prevents the party from complying with their obligations under the Agreement.

"Gel Events" means Gel Events Pty Ltd ACN 600 044 620.

"Gel Events Background Material" means all material provided by or on behalf of Gel Events or an employee of Gel Events to the Customer under the Agreement.

"Goods" means the goods accepted by Gel Events from or on behalf of the Customer or any other person in relation to the provision of the Services and includes without limitation all plant, machinery, Dangerous Goods, chattels and goods and any container or other unit load device used to consolidate goods not supplied by or on behalf of Gel Events.

"Hazardous Goods" means Goods which are hazardous goods as defined from time to time by the Insurance Council of Australia Limited.

"Insolvency Event" means the happening of any of the following events:

- (a) committing an act of bankruptcy;
- (b) a party is, or states that it is, unable to pay all of its debts as and when they become due and payable, or it has failed to comply with a statutory demand as provided in section 459F(1) of the Corporations Act;
- (c) an order is made for the winding up or dissolution, or a resolution is passed or any steps are taken to pass a resolution for the winding up or dissolution;
- (d) an administrator, provisional liquidator, liquidator or person having a similar or analogous function under the laws of any relevant jurisdiction is appointed or any action is taken to appoint any such person and the action is not stayed, withdrawn or dismissed within 14 days;
- (e) a controller (as defined in the Corporations Act) is appointed in respect of any property of the party;
- (f) the party is deregistered under the Corporations Act;

(g) the party enters into, or takes any action to enter into, an arrangement (including a scheme of arrangement or deed of company arrangement), composition or compromise with, or assignment for the benefit of, all or any class of its creditors or members or a moratorium involving any of them; or

(h) anything analogous to or of a similar effect to anything described above under the law of any relevant jurisdiction occurs in respect of the party.

"Intellectual Property Rights" means all industrial and intellectual property rights throughout the world, including all copyright and analogous rights, all rights in relation to inventions or discoveries (including patent rights), designs, registered and unregistered trade marks (including service marks), trade names, brand names, indications of source or appellations of origin, know-how, software, circuit layouts and all other rights throughout the world resulting from intellectual activity in the industrial, scientific or artistic fields.

"Order Terms" means the order terms as set out in the Agreement.

"Services" means the services set out in the Order Terms to be provided to the Customer by Gel Events.

2. Agreement for Services

2.1 Gel Events will supply Services to the Customer in accordance with the terms of the Agreement.

2.2 The Agreement is governed by these Terms and the Customer will be deemed to have accepted these Terms. These Terms will apply in substitute of any terms or conditions provided by the Customer, and in the event any terms and conditions provided by the Customer is deemed to apply, these Terms will prevail to the extent of any inconsistency.

2.3 The Agreement consists of the Order Terms and these Terms and Conditions. If there is any inconsistency between the Order Terms, including the Special Conditions, and these Terms and Conditions, then the Order Terms will prevail to the extent of the inconsistency.

2.4 The Customer cannot terminate the Agreement without obtaining the prior written approval of Gel Events, which Gel Events may refuse in its absolute discretion. Where Gel Events agrees to the termination of the Agreement, the Customer agrees to indemnify Gel Events against any loss, damage, liability, claim, expense or cost accrued prior to the termination or arising out of or in connection with the termination of the Agreement.

2.5 In the event the Customer requests any variation to the Services including without limitation to the specifications, location of provision of the Services, provision instructions or any other requirement in relation to the supply of the Services, Gel Events reserves the right to not agree to the variation or to agree to the variation and amend the Fees accordingly.

2.6 If any variations are made pursuant to clause 2.5, the Customer agrees to pay the Fees (as amended) for the varied Services and any additional reasonable costs and fees determined by Gel Events.

2.7 Where the provision of Services is in relation to Goods, and where such Goods are or include any Dangerous Goods or any Goods that are damaged, then the Customer must present a full description of the Goods in writing to Gel Events prior to tendering such Goods for the provision of the Services and in any event the Customer will be liable for any damage, loss, liability, claim, expense or cost arising in any way from the provision of the Services whether or not the Customer was aware of the nature of the Goods.

2.8 Any Service dates and timing provided are intended to be an estimate only.

3. Limitations of Liability

3.1 To the maximum extent permitted by law, the liability of Gel Events', its affiliates and related entities, servants, employees, and agents under the Agreement is limited to (at Gel Events' option):

3.1.1 in respect of Services:

3.1.1.1 the supply of the relevant Services again; or

- 3.1.1.2 the payment of the cost of having the Services supplied again; or
- 3.1.2 in respect of any goods sold by GEL Events to the Customer, or damage to Goods caused while providing the Services, and where such goods are the subject of a claim:
- 3.1.2.1 the replacement of the goods or the supply of equivalent goods;
- 3.1.2.2 the repair of the goods;
- 3.1.2.3 the payment of the cost of replacing the goods or of acquiring equivalent goods; or
- 3.1.2.4 the payment of the cost of having the goods repaired.
- 3.2 Where the limitation of liability under clause 3.1 does not apply, **the Customer agrees that the maximum aggregate liability of Gel Events under the Agreement or from any claim arising from or in connection with the Services in contract, tort (including negligence) or under any statute howsoever caused is limited to an amount equal to the Fees.** The Customer covenants to not commence proceedings or any legal action whatsoever where the maximum amount of damages claimed is in excess of the amount of the Fees. The Customer agrees that this clause may be used by Gel Events as a bar to proceedings that claim aggregate damages in excess of the amount of the Fees.
- 3.3 The Customer agrees that the sole remedy for any breach under the Agreement or for any claim arising from or in connection with the Services including negligence is damages.
- 3.4 Any claim in relation to the provision of Services including without limitation any incomplete provisioning of the Services or any other deficiency in the Services must be notified to Gel Events in writing within five days of the relevant service date as set out in the Order Terms.
- 3.5 Subject to clause 3.6, to the extent permitted at law, all other warranties whether implied or otherwise, not set out in these Terms are excluded.
- 3.6 Provisions of the *Competition and Consumer Act 2010* (Cth) (or any other legislative provision) may imply warranties or conditions or impose obligations on GEL Events that cannot be excluded. This Agreement is to be read and construed as subject to any such non-excludable statutory provision.
- 3.7 Warranties provided by Gel Events for Services do not extend to any claim arising out of damages caused by the act, omission or negligence of the Customer or its personnel or any third party.
- 3.8 Gel Events, its affiliates and related entities, employees, and agents will not be liable for economic or consequential loss, injury, expense or damage to the Customer or any third party arising from or in relation to the Services, notwithstanding negligence on the part of Gel Events, its suppliers, employees, agents, successors or assigns or that Gel Events may have been aware of the possibility of the economic or consequential loss, injury, expense or damage.
- 4. Fees and Payment**
- 4.1 The Customer must pay the Fees and the Additional Charges to Gel Events within 14 days of the date of the relevant invoice issued by Gel Events. Unless otherwise agreed with Gel Events in writing, the upfront payment set out in the Order Terms (if applicable) must be paid on the date of the Agreement.
- 4.2 If the Customer is in default or fails to make payment in accordance with clause 4.1, Gel Events may at its sole and discretionary option, do one or more of the following:
- 4.2.1 immediately suspend the provisioning of the Services to the Customer;
- 4.2.2 seven days after a notice of failure to pay has been provided to the Customer, terminate the Agreement without prejudice to any of its existing rights;
- 4.2.3 charge interest on the outstanding balance at a rate of 1.5% per month or part of a month from the due date for payment until full payment is received by Gel Events; and
- 4.2.4 charge any administrative charges and other charges (including enforcement and legal costs) incurred by Gel Events in relation to this failure to pay to the Customer.
- 4.3 All amounts payable by the Customer under these Terms must be paid without set-off or counter claim of any kind.
- 4.4 Any consideration to be paid or provided for a supply made under or in connection with the Agreement, unless specifically described in the Fees as being GST inclusive, does not include an amount on account of GST.
- 4.5 Despite any other provision in the Agreement, if a party (**supplier**) makes a supply under or in connection with the Agreement in respect of which GST is imposed (not being a supply the consideration for which is specifically described in the Agreement as GST inclusive):
- 4.5.1 The consideration payable or to be provided for that supply under the Agreement is increased by, and the recipient of the supply (**recipient**) must also pay to the supplier, an amount equal to the GST payable by the supplier on that supply; and
- 4.5.2 The amount by which the GST exclusive consideration is increased must be paid to the supplier by the recipient without set off, deduction or requirement for demand, at the same time as the GST exclusive consideration is payable or to be provided.
- 4.6 If an adjustment event arises in respect of a supply made under or in connection with the Agreement, then:
- 4.6.1 if the supplier's corrected GST amount is less than the previously attributed GST amount, the supplier will refund the difference to the recipient; or
- 4.6.2 if the supplier's corrected GST amount is greater than the previously attributed GST amount, the recipient will pay the difference to the supplier; and
- 4.6.3 the supplier must issue an adjustment note to the recipient.
- 5. Indemnity**
- To the maximum extent permitted by law, the Customer agrees to indemnify and at all times thereafter to keep indemnified and hold Gel Events, its affiliates and related entities, servants, employees, and agents harmless against any claims, liability and loss or damage the indemnified parties may sustain, as a result of any breach, act or omission, arising directly or indirectly from or in connection with any breach of any of the Agreement by the Customer or its representatives;
- 6. Termination**
- 6.1 Gel Events may terminate the Agreement immediately by giving the Customer written notice if:
- 6.1.1 the Customer breaches a material condition of the Agreement and the breach is incapable of remedy, or where the breach is capable of remedy the Customer does not remedy that breach within 30 days of the date of notice of the breach; or
- 6.1.2 the Customer is subject to an Insolvency Event.
- 6.2 Gel Events may, by written notice to the Customer, terminate the Agreement without cause within 14 days of the date of the Agreement.
- 7. Force Majeure**
- 7.1 If Gel Events is prevented from providing the Services as a result of a Force Majeure Event the obligations Gel Events under these terms shall be suspended for the period of the Force Majeure Event. In the event of a Force Majeure Event occurring Gel Events will as soon as practical in the circumstance notify the Customer in writing of:
- 7.1.1 the nature of the Force Majeure Event; and
- 7.1.2 the extent to which Gel Events is prevented from providing the Services.
- 7.2 If the Force Majeure Event continues for a period of one month from the date of the notice in Condition 7.1, Gel Events may without penalty, by notice in writing to the Customer terminate the Agreement.
- 8. Intellectual Property**
- 8.1 All rights including Intellectual Property Rights in the Gel Events Background Material remain vested in Gel Events or its licensor.
- 8.2 The Customer grants to Gen Events a non-exclusive, royalty-free, revocable licence to use, reproduce, modify, adapt, maintain and further develop the Customer Background Material to perform its obligations under the Agreement.
- 8.3 The Customer indemnifies Gel Events, its affiliates and related entities, servants, employees, and agents in respect of any claim,



liability, loss or damage which the indemnified parties pay, suffer, incur or is liable for arising out of or in connection with any claim brought or threatened against the indemnified party by a third party alleging that the Customer Background Material or any material developed from the Customer Background Material infringes any rights including Intellectual Property Rights of any person.

9. **Insurance**

9.1 Where the provision of Services is in relation to or otherwise involves Goods, the Customer must take out, keep current and produce to Gel Events on request, evidence with a reputable insurer of a valid and enforceable public and product liability insurance policy (on an occurrence basis) for \$20 million per claim from the date of the Agreement until the date that all Services have been fully provided under the Agreement.

10. **Subcontracting**

10.1 Gel Events may subcontract any of its obligations under the Agreement without the prior written consent of the Customer.

10.2 Gel Events will remain fully responsible for the performance of the Services in accordance with the Agreement notwithstanding the engagement of any subcontractors.

11. **Customer Information**

11.1 The Customer agrees and consents to Gel Events disclosing commercial credit-related information of the Customer to credit reporting bodies. Any such disclosures will be in accordance with applicable legislation and Gel Events' Privacy Policy.

11.2 The Customer consents to Gel Events using the Customer's personal information other than commercial-credit related information for direct marketing purposes. The Customer may provide written notice at any time to Gel Events to retract this consent and Gel Events will promptly stop any use of the Customer's personal information for direct marketing purposes.

12. **Electronic Communications and Terms Acceptance**

12.1 The Customer agrees to electronically receive and be contractually bound by any and all relevant electronic documents from Gel Events.

12.2 The parties may electronically execute the Agreement and the parties acknowledge and agree that the electronically executed Agreement will be binding and enforceable.

13. **Notices**

13.1 Any notice, demand, consent or other communication (**Notice**) given or made under the Agreement must be in writing and be personally served, sent by post or sent by email to the party to whom the Notice is addressed at its address set out in the Parties section of the Agreement or such other address as that party may have notified to the other party.

13.2 Notices are deemed given:

13.2.1 in the case of personal delivery, when delivered;

13.2.2 in the case of delivery by post, three business days after the date of posting; or

13.2.3 in the case of email, when the message is successfully transmitted and an acknowledgement of receipt from the receiver's computer is recorded on the sender's computer,

but if the result is that a Notice would be taken to be given or made on a day that is not a business day or the Notice is sent or is later than 5.00pm (local time) it will be taken to have been duly given or made at the commencement of business on the next Business day.

14. **General**

14.1 The Agreement is to be construed in accordance with the laws from time to time in the State of Victoria and the Commonwealth of Australia. The parties submit to the non-exclusive jurisdiction of the Courts of Victoria, Australia and any courts which may hear appeals from those courts in respect to any proceedings in connection with the Agreement.

14.2 Interpretation of the Agreement shall not be interpreted for or against a party solely because that party drafted the Agreement.

14.3 The Agreement contain all of the terms and conditions of the contract between the parties and may only be varied by agreement in writing between the parties.

14.4 Any conditions found to be void, unenforceable or illegal may, to that extent, be severed from the Agreement and the remaining provisions or parts of the provisions of these the Agreement continue in force.

14.5 No waiver of any of these Terms by Gel Events or failure to exercise a right or remedy or failure to insist upon strict performance by the Customer of these Terms will be considered to imply or constitute a further waiver by Gel Events of the same or any other term, condition, right or remedy, on any subsequent occasion, and shall not discharge the Customer from any of its obligations under the Agreement.