

**LUNA** STARTUP STUDIO

**WEBSITE  
TERMS AND  
CONDITIONS**

**TONIC AGENCY PTY LTD**

**ACN: 631 942 437**

# WEBSITE TERMS AND CONDITIONS

## PART A – SUMMARY AND INTERPRETATION

### 1. Agreement

- 1.1. These Terms and Conditions, together with our Privacy Policy, apply to your use of Tonic Agency Pty Ltd's ("we", "our" or "us") website located at [www.tonicagency.com.au](http://www.tonicagency.com.au).
- 1.2. By browsing or using the Site, you agree to these Terms and Conditions, together with our Privacy Policy (collectively, the "**Agreement**"). If you do not agree with the terms of the Agreement, you must not access, browse or use this Site.

### 2. Interpretation

- 2.1. In this Agreement:

"**Accommodation Expenses**" means accommodation costs incurred by an Artist in relation to a Booking due to a long commute and an early start time.

"**Additional Costs**" means any costs required for the provision of the Artist Services for a particular Booking including, but not limited to:

- (a) Travel Expenses;
- (b) Early Surcharge;
- (c) Parking Expenses; and
- (d) Accommodation Expenses.

"**Agreement**" has the meaning in clause 1.2;

"**Australian Consumer Law**" means Schedule 2 of the *Competition and Consumer Act 2010* (Cth);

"**Artist**" means a makeup artist and/or hair stylist from our network of freelance artists that we act as agent for;

"**Artist Services**" means the makeup, hair and other beauty services provided by the Artists and listed or advertised on the Site for sale;

"**Booking**" means a booking for an Artist to provide you with particular Artist Services secured by payment of a Deposit in accordance with Clause 7;

"**Booking Date**" means the date that the Booking will take place;

"**Booking Enquiry**" means an enquiry regarding the Artist Services submitted through the Site at <https://www.tonicagency.com.au/contact> with the required information set out in Clause 6.2;

**“Business Day”** means 9:00am – 5:00pm Monday to Friday, excluding Saturdays, Sundays and public holidays in Victoria, Australia;

**“Client Services”** means the services we perform in connecting you with the Artists and confirming your Booking;

**“Consumer Guarantee”** has the meaning given in Division 1 of Part 3-2 of the Australian Consumer Law;

**“Customer”** means the person or legal entity listed on the purchase invoice or sales document and includes anyone acting on their behalf or with their express or implied authority;

**“Delivery Cost”** means the costs associated with delivery of Products as specified in an Order, including, without limitation, transport, freight or shipping charges, insurance costs, import and export taxes and duties;

**“Deposit”** means a non-refundable, non-transferable payment reflecting a percentage of the total Quote amount for a Booking Enquiry (as determined by us) that is payable in order to secure a Booking; Deposit is exclusive of GST

**“Deposit Invoice”** means the tax invoice in respect of the Deposit amount;

**“Early Surcharge”** means costs that may be applied by an Artist due to an early appointment time for a Booking;

**“Fees”** means the fees associated with a Booking as stipulated by us, including any Additional Fees;

**“Final Booking Details”** means all details relevant to your Booking including the Booking destination, Booking Date, Booking time and the Artist Services to be provided. The Final Booking Details also include the contact details of the relevant Artist to enable you and the Artist to communicate with each other;

**“Final Invoice”** means the tax invoice in respect of the outstanding Fees associated with a Booking (the total Fees reduced by any Deposit paid);

**“Group Booking”** means a Booking where more than one (1) person requires Artist Services;

**“Intellectual Property”** means all present and future intellectual or industrial property rights (whether or not registered) throughout the world, including, without limitation, in respect of patents, copyright, moral rights, trade names, trade marks, logos, systems, circuit layout, designs, software, plant breeder’s rights, domain names, trade secrets and confidential information;

**“Material”** means any information, data, source codes, drawings, content, text or images in any form (whether visible or not), audio recordings, video recordings, lists, sound, video, links, layout, look and feel, control features and interfaces contained on the Site, or otherwise displayed, uploaded or published on, or via, the Site;

“**Order**” means an order for Products placed by a Customer on, or via, the Site;

“**Parking Expenses**” means costs for the Artist parking at the Booking destination on the Booking Date;

“**Privacy Policy**” means our privacy policy

“**Products**” means the products, goods or items listed or advertised on the Site for sale or otherwise;

“**Quote**” means the quote we prepare setting out the Fees associated with the Artist Services requested in a Booking Enquiry;

“**Services**” means both the Client Services and the Artist Services;

“**Site**” has the meaning in clause 1.1;

“**Travel Expenses**” means costs associated with an Artist travelling to Booking destinations. These expenses may vary and are subject to the particular Artist’s preferences in relation to travel. If the Artist is required to fly to the Booking destination appropriate flight, transfer, allowance and other costs will be outlined in your Quote;

“**Trial**” means an appointment with the Artist prior to the Booking Date to workshop the look and style prior to the Booking Date and not an opportunity to have your makeup and/or hair done for another event; and

“**you**” or “**your**” means the person or entity accessing, using or relying upon the Site and includes, when applicable, the Customer.

- 2.2. Any reference in this Agreement to the singular includes the plural, to any gender includes all genders, to any act or statute includes any Act or statute which supersedes, replaces or modifies any earlier Act or statute, to persons includes all bodies and associations both corporate and incorporated and vice versa. Paragraph headings are for reference purposes only and all references to clauses are to clauses in this Agreement unless otherwise specified.

## **PART B – TONIC SITE**

### **3. Site Use**

- 3.1. To purchase the Products or make a Booking Enquiry for the Services listed or advertised on the Site, you must provide your name, address, telephone number, and a valid email address. If you do not provide accurate and complete details, we may not be able to supply Products or provide the Client Services to you.
- 3.2. You warrant and represent that your access to, or use of, the Site is not unlawful or prohibited by any laws which apply to you. You understand and agree that any suspected fraudulent, abusive or illegal activity may be referred to appropriate law enforcement authorities.

- 3.3. We may, in our absolute discretion, restrict your access to the Site (temporarily or permanently) where you have breached the Agreement or for any reasonable reason and at any time. Under these circumstances, you may be prevented from accessing all or parts of the Site. We will not be liable to you or any third party if this occurs. We may impose limits or restrictions on the use you may make of the Site. Further, we may, for any reason, at any time and without notice to you, withdraw the Site, or change or remove Site functionality.
- 3.4. The Site may contain links to third party websites. Any links to such websites provided on the Site are for convenience only. We do not represent that we have any relationship with any linked websites nor recommend or endorse any goods, services or third-party content appearing on, or via, other websites linked to this Site. We are not responsible for any loss or damage that may arise from your access to, and/or use of, third party websites, products and services. Additionally, we are not responsible for the content or privacy practices associated with linked websites. You should make your own enquiries before using and/or accessing third party websites.
- 3.5. You may not use the Site other than for its intended purpose. You agree that you will not engage in any activity that interferes with or disrupts the Site or the servers and networks that host the Site. You agree not to, circumvent, disable or otherwise interfere with security-related features of the Site or attempt to do so or otherwise interfere with, or restrict, any person or visitor from accessing or using the Site.
- 3.6. Unless otherwise expressly stipulated in this Agreement, you must not copy, adapt, distribute, display, reproduce or transmit any content displayed or published on the Site.
- 3.7. You must take your own precautions to ensure that the telecommunications equipment and computer systems used by you to access and use the Site does not expose your telecommunications equipment and computer systems to any viruses, malicious computer code or other forms of interference which may damage your computer system. We accept no responsibility for any loss or damage to you or anyone else which may arise out of, or in connection with, your access to, and use of, the Site.

#### **4. Legal Capacity**

- 4.1. You must be eighteen (18) years of age or over to Order and/or purchase Products or make a Booking Enquiry via the Site. If you are under the age of 18 years ("**Minor**"), you must immediately cease accessing and using the Site unless you have permission from a parent or guardian in accordance with clause 4.3 of this Agreement. If you are found to be a Minor, we are entitled, at our absolute discretion, to cancel or terminate any Order and/or purchase of Products or Booking made on, or via, the Site.
- 4.2. Any Order, Booking Enquiry and/or purchase made by you using this Site and your continued use of the Site is an acknowledgement by you that:

- (a) you are over the age of eighteen (18) years, or have obtained the relevant permission from a parent or guardian; and
  - (b) you accept the Agreement and agree that you have entered into a binding legal contract with us in relation to the Agreement.
- 4.3. If you are a parent or guardian permitting a Minor to submit an Order and/or Booking Enquiry, you agree to:
- (a) exercise supervision over the Minor's use of the Site;
  - (b) assume all risks associated with use of the Site as outlined in this Agreement;
  - (c) ensure that all content and information that the Minor may encounter on the Site is suitable and appropriate for the Minor;
  - (d) assume all liabilities resulting from the Minor's use the Site;
  - (e) ensure the accuracy and truthfulness of all information submitted by the Minor; and
  - (f) provide the consents contained in this Agreement on behalf of the Minor.
- 4.4. We may, at any time, request written confirmation from a parent or guardian that you have permission to access and use this Site or Submit an Order or Booking Enquiry.
- 4.5. We reserve the right to take legal action and/or seek compensation for any loss or damage we may suffer as a result of, or in connection with, any transaction entered into by a Minor or from the parent or guardian of a Minor who causes an Order to be placed.

## **PART C – ARTIST SERVICES**

### **5. Relationships**

- 5.1. We are appointed by the Artists to act as their agents and make Bookings on their behalf. We are not an employer of the Artists.
- 5.2. When you submit a Booking Enquiry, you are engaging us to provide the Client Services in our capacity as an independent agent of the Artists.
- 5.3. The Artists will provide the Artist Services to you.
- 5.4. You are solely responsible for paying us for the Client Services Provided exclusive of GST, and for paying the Artists for the Artist Services provided to you, including any Additional Costs.
- 5.5. No Artist has any right or authority to:
- (a) bind us;
  - (b) assume or create any obligations for, or on behalf of, us; or
  - (c) make any representations or warranties for, or on behalf of, us.

5.6. While there is a contractual relationship between you and the Artist insofar as payment of the Artist Services, note that Artists are expressly prohibited, in their agreements with us, from attempting to book with you directly.

## **6. Booking Enquiry**

6.1. To book any Artist Services you must submit a Booking Enquiry to us through the Site at <https://www.tonicagency.com.au/contact> and not with the Artists directly.

6.2. To be valid, a Booking Enquiry must specify the following information:

- (a) the nature, scope and quantity of Artist Services you require;
- (b) the time and location at which you require the Artist Services to be provided, including specifying a “ready by” time and “ceremony” time (if applicable); and
- (c) the number of people to whom the Artist is requested to provide the Artist Services (noting if a Group Booking is required).

6.3. Your Booking Enquiry may specify your desired Artist (as listed on the Site). If you do not specify an Artist, we will use our best endeavours to determine, in our absolute and sole discretion, the most suitable Artist based on your needs as contained in your Booking Enquiry.

6.4. The information you provide in your Booking Enquiry will form the basis of our Quote and your ultimate Booking and it is your responsibility to ensure that this information is accurate at the time it is submitted.

6.5. On receipt of your Booking Enquiry we:

- (a) may disclose the information you provide in your Booking Enquiry to the relevant Artist requested by you or selected by us (as the case may be); and
- (b) will prepare a Quote for the total Fees that apply to your Booking Enquiry (including any known Additional Costs that apply based on the time(s) and location(s) requested by you in the Booking Enquiry).

6.6. Once we have prepared a Quote that applies to your Booking Enquiry, we will send this Quote to you which will include a deposit payment section, invoice or link.

6.7. All queries and communication regarding Fees (including Additional Costs) for a Booking must be directed directly to us and not the Artists until the Deposit Invoice or link is paid in full by you. Any communication regarding Fees (including Additional Costs) made by an Artist will not be legally binding on us.

6.8. Additional Costs include Parking Expenses. Valet parking will be nominated if applicable as Artists will have kits with them. If valet parking is applicable, the expense will be billed directly

to your room as part of the Parking Expense for the Booking. Additional Costs are payable directly to the Artist.

- 6.9. The Fees prescribed by us in a Quote are not subject to negotiation or reduction. We will not vary the Artist Services for a reduced fee (for example, “eyes only”, “half makeup”, “light makeup” or “hair touch-up”).

## **7. Booking and Payment**

- 7.1. Payment of the Deposit exclusive of GST is required in order to secure your Booking.
- 7.2. Until we receive payment of the Deposit in accordance with the payment directions in the Deposit Invoice or Section and notify you of such receipt, we make no representation, warranty or promise that any particular time or date remains or will remain available or that any Artist is or will be available on such time or date.
- 7.3. Once we receive payment of the Deposit, we will provide email confirmation of our receipt of the payment, confirm your Booking and set out the next steps for the Booking.
- 7.4. We are responsible for sending you an email which includes the Final amount due and your artist payment details and Terms. You are arranging for payment of all outstanding Fees less the Deposit amount only to your Artist. The Final Amount Due will be sent by us no earlier than four (4) weeks prior to the Booking Date. The GST added to your Deposit Amount will not be deducted from the Final Balance Due to your Artist.
- 7.5. Payment of the Fees less the Deposit Amount must be made directly to the Artist. We are not responsible in any way for ensuring payments other than the Deposit.
- 7.6. Any additional Artist Services must be approved by us and quoted by us before they are binding on the parties. Artists are not authorised to impose their own terms to the Booking.
- 7.7. From the time we confirm receipt of the Deposit payment to the week of the Booking, all Client Services related questions should be communicated with the Bookers, but on the day of your booking, communication should be directly with your Artist. Prior to the payment of the Deposit, all correspondence, including your initial Booking Enquiry, must only be submitted directly to us.
- 7.8. For the avoidance of doubt, following the payment of the Deposit:
- i. General Booking inquiries and questions;
  - ii. Payment of the Fees (other than the Deposit); and
  - iii. Requests to amend the Booking,



- 7.9. If any Additional Costs are not known at the time of our Quote but are incurred by the Artist on the Booking Date (e.g. street meter parking expenses) the Artist or us may decide to issue a further invoice for that amount following the Booking Date.

## **8. Trials**

- 8.1. For an additional Cost, you may request a Trial appointment with the Artist.
- 8.2. If you request a Trial, subject to receipt of the applicable Deposit, we will provide you with the contact details for the relevant Artist. You must organise Trial appointments with the Artist directly using these details.
- 8.3. Artists may allocate specific time in their weeks for Trials and they reserve the right to determine the time, place and applicable Fees associated with the Trial. In some cases, Trials can take longer than the applicable Booking time and the Fees for a Trial may be greater than those for the ultimate Booking. Additional fees such as travel may apply.
- 8.4. Fees for Trial appointment bookings will be invoiced by us separately or will be included in your initial booking proposal or invoice.
- 8.5. Once the Artist has informed us that a Trial date and time has been confirmed, we will send you an invoice for the Fees associated with the Trial. The Deposit exclusive of GST must be paid at least 7 Business Days before the Trial appointment occurs unless otherwise agreed.
- 8.6. If you cannot make yourself available during the Artist's available allocated times for a Trial, the Artist reserves the right to refuse the Booking (notwithstanding payment of the Deposit).
- 8.7. If, following a Trial, the Artist feels that the relationship between you and the Artist is not right for the purpose of the Artist Services, the Artist reserves the right to refuse the Booking.
- 8.8. If the Artist refuses the Booking for the reasons set out in clauses 8.6 or 8.7, we will endeavour to place your Booking with the next available, most appropriate Artist.
- 8.9. If, following a Trial, you feel that the relationship between you and the Artist is not right for the purpose of the Artist Services, you must notify us within 2 Business Days of the Trial of your intention to change the Artist.
- 8.10. If you provide us with notice set out in clause 8.9, we will endeavour to place your Booking with the next available, most appropriate Artist; however, any changes or cancellations to the Booking are subject to clauses 9 and 10.

## **9. Changes**

- 9.1. After a Booking is confirmed (following our receipt of the Deposit payment) any requests for changes to the Booking require notice must be provided to us and/or the Artist at least four (4) weeks prior to the Booking Date and we and the Artist retain the discretion to approve or reject the changes and to apply additional Fees (including any Additional Costs). In particular:

- i. Changes to the Artist or requests for additional artists must be approved by us and we may, in our sole discretion, apply a 15% change fee for the additional administration work required in accommodating your change request
  - ii. requests for additional Artist Services to be performed by the particular Artist already booked but outside the scope of the Quote will be considered and are subject to the Artists availability and discretion. Additional Fees for these requests are to be arranged between the Artist and you.
  - iii. requests for a reduction in the total Artist Services to be provided will be at the Artists' discretion to accept. Artists may have a minimum number of services required to be provided on the day. Deposit Amounts are non refundable and non transferable notwithstanding a reduction in the Artist Services; and
  - iv. changes to the 'ready by' time specified in your Booking Enquiry may incur Additional Costs at the Artist's discretion. Early Surcharge fees are payable if Artists are required prior to 6:30AM AEST.
- 9.2. During a Booking, an Artist will make reasonable efforts to accommodate reasonable adjustments and changes to any style agreed prior to, or at the commencement of, your Booking. However, the Artist is not obliged to accommodate unreasonable and/or fundamental changes to the style and the Artist reserves the right to decline requested changes or charge for additional Artist Services.
- 9.3. The Artist is not obliged to provide the Artist Services beyond the times agreed in the Booking. If you cause delay to the Booking time you acknowledge that this may result in a compromised delivery of the Artist Services.

## **10. Cancellation and Postponement**

- 10.1. Deposits are non-refundable and non-transferable.
- If you cancel a Booking or fail to be available for a Booking we are not obliged to refund the Deposit amount to you or transfer to another booking or date, as our Client Services have already been provided and costs incurred on our end.
- 10.2. If a Confirmed Booking Date is more than 6 weeks away, Tonic will retain a 25% deposit if choosing to cancel. If due to certain circumstances (COVID, health reasons), we may offer to postpone at our discretion. A postponement may incur a 15% surcharge to the total quote of your booking.
- 10.3. If a Confirmed Booking Date is within 6 weeks, Tonic will retain a 25% deposit if deciding to cancel, postpone or reduce services.
- In addition, a \$50 charge of per services booked may apply as a cancellation fee to the artist. This will be charged to the client's credit card listed on stripe, otherwise bank details will be requested.

If the artist assigned to the booking is able to be rebooked with another client for the same number of services for the same date of the booking, the additional fee may be removed.

10.4. If a Confirmed Booking Date is more than 6 weeks away, you may choose to transfer the booking to another party and we may transfer the Deposit Payment as long as the booking remains the same number of services. Timing & location can be subject to change but a travel fee and/or early fee may apply.

10.5. COVID-19

In terms of rescheduling due to COVID related circumstances, we can offer to postpone your booking to another date. A cancellation fee of \$50 per service may apply at your artist's discretion.

Your artists will do their best to reschedule to your new wedding date depending on their availability. In the instance that your artists are already booked on another confirmed wedding and can't accommodate your needs, we will offer an alternative artist based on availability.

Here, we will do our best to assign you a new team to roll the booking over.

If the change to the booking requires additional administrative work, Tonic reserves the right to charge an additional 15% surcharge of the total quote of your booking. We will always do our best to accommodate within reason. In addition, a 20% charge of total services per artist booked may apply.

10.6. Tonic Studio Booking

- If you notify us that you can no longer attend your appointment prior to 7 days of your appointment date, we can offer to reschedule or provide a credit note valid for 6 months only with no additional fees. Otherwise if you wish to cancel your appointment, a \$25 fee will apply.
- If you cancel or change your mind within 7 days of your booking but prior to 48 hours of your booking, you will forfeit a 50% fee of your total booking. You will be refunded the remaining amount, otherwise you are welcome to use this as a studio credit valid for 6 months only.
- If you would like to cancel within 48 hours notice of your appointment, the total amount paid of your booking will be forfeited.
- Studio booking credits are valid for 6 months from the date of cancellation and cannot be redeemed towards other services booked such as weddings or trials.

10.7. Tonic Studio Booking COVID-19

By proceeding with this booking you are confirming that;

- You do not currently have a fever, sore throat or any respiratory symptoms.
- You do not knowingly have COVID19

At our discretion we may offer a postponement if COVID affects your confirmed appointment & you need to reschedule.

#### 10.8. Races x Tonic Studio Bookings

- During the race period Saturday 4th November - Saturday 11th November 2023 please note there will be no refunds or credits issued for all studio bookings. You are welcome to transfer your booking to a friend or family member to be used on the date and time booked only.
- Any bookings prior to November 4th 2023 and after Saturday 11th November 2023, our usual cancellation policy will apply.
- Please understand this is our busiest week of the year, with multiple artists and appointments each day that need careful management. We are not able to swap or change appointment times or dates during this period

#### 10.9. Tonic Makeup Workshop Bookings

Workshop Bookings are non-refundable.

- If you would like to change or cancel your booking prior to 7 days of your workshop date, you may transfer your booking to another workshop date to use within 6 months only, subject to availability. Please note we do not provide refunds for workshop bookings.
- If you would like to change or cancel your booking within 7 days, you may transfer your ticket to another person otherwise your ticket will be forfeited.
- If a workshop class advertised has less than 75% attendees booked, we reserve the right to cancel/postpone this session to a later date. If you are unavailable for the new date, you will be provided with a credit.
- Workshop booking credits can not be redeemed towards other services such as studio appointments, weddings or trials.

### 11. Artist Delays and Cancellations

11.1. There are certain situations or events that occur, which are not within our reasonable control or the reasonable control of the Artist (e.g car accident or road closure). Where one of these events occurs:

- (a) we will notify you of such event as soon as is reasonably possible;
- (b) we will do our best to assist the Artist to attend your Booking, offer an alternate Artist or extend the time of your Booking; and
- (c) if there is no solution available, and the Artist (or an alternate) is unable to fulfil the Booking, a full refund will be given to you.

11.2. We accept no liability for any consequential losses that may be incurred by an Artist's delay or failure to fulfil the Booking (such as delays to other wedding vendors).

### 12. Your Conduct

12.1. You agree to provide the Artist with access to a large bench top and natural light at the Booking location and acknowledge that this is required to enable the Artist to deliver the Artist Services.

- 12.2. You agree to treat the Artist with respect and to ensure that the Artist Services will be provided in a safe location.
- 12.3. If an Artist reasonably believes that they are unsafe or being mistreated (including any vilification, harassment or bullying) whilst providing the Artist Services, the Artist reserves the right to end the Artist Service and not fulfil the Booking.
- 12.4. If a Booking is not fulfilled due to a circumstance in clause 12.3:
- (a) you are not entitled to a refund and forfeit all monies paid by you in respect of the Fees (including the Deposit); and
  - (b) We accept no liability for any consequential losses that may be incurred due to the Artist's failure to fulfil the Booking (such as delays to other wedding vendors).

### **13. Photography**

Unless you have notified us in the Booking Enquiry or prior to payment of the Deposit that you do not want to have any photographs taken, you agree and consent to the Artist taking photos of you and the Artist Services during the Booking for use by the Artist and us as marketing and promotional materials.

## **PART D – PRODUCTS**

### **14. Product Orders**

- 14.1. You may place an Order to purchase Products by completing the Order form on the Site and clicking the "confirm" button. Orders are subject to the availability of Products requested in the Order.
- 14.2. An Order is not accepted and legally binding on us until:
- (a) payment has been received for the Order;
  - (b) the Products are available; and
  - (c) the Order has been processed.
- 14.3. To the maximum extent permitted by law, Orders may not be cancelled by you once they have been accepted by us, unless as otherwise outlined in clause 17.
- 14.4. Each Order (once confirmed by us in writing) represents a separate agreement between the parties (and each separate Order placed by you on, or via, the Site will be subject to this Agreement).
- 14.5. We reserve the right, at our absolute discretion, to:
- (a) refuse to sell or to cancel Orders from Customers that request commercial quantities of Products; or

(b) cancel your Order at any time prior to dispatch of the Products to you.

14.6. If an Order has been cancelled, refused or cannot be met due to unavailability of Products, funds paid in relation to that Order will be refunded in full as soon as is reasonably practicable. You will be provided with email acknowledgement of the cancellation and refund.

14.7. We accept no responsibility for Orders that are declined, misplaced, not received or not accepted due to disruptions caused to our internet connections or our computer systems.

14.8. Where you have provided an incorrect or incomplete delivery address for your Order and your Order is returned to us, we may redeliver the Order at your request and charge a redelivery fee for each subsequent delivery attempt.

14.9. We do not guarantee the availability of any Products displayed or ordered on, or via, the Site.

## **15. Product Specifications**

15.1. Although we endeavour to provide accurate and complete information on the Products listed or advertised on the Site, we cannot guarantee that the information is up to date, accurate and complete at all times. We reserve the right to (but are not obligated to) make changes or updates to information displayed on the Site at any time without notice to you.

15.2. Unless otherwise stated, any accessories, decorations or furnishings shown in images of Products on the Site are not included.

15.3. All weights, heights and other measurements listed on the Product specifications are provided for reference and are approximate only.

## **16. Delivery and Ownership of Products**

16.1. We will use reasonable endeavours to ensure that all Products are delivered in a prompt and timely manner. However, delivery dates are estimates only and factors outside our control may result in delays to delivery. The estimated date of delivery may change without notice. We do not accept any liability for loss or damage suffered by you or anyone as a result of any such delays.

16.2. We will not deliver Products to PO Box addresses, post restante addresses or addresses outside of Australia (unless otherwise agreed by us in writing). We reserve the right to refuse shipping to remote or rural locations.

16.3. Delivery Costs will vary depending on the Order you have made, the method of delivery, the location for delivery and any taxes or duties that may be charged in relation to delivery of the Order.

16.4. Orders must be paid in full before delivery can be made.

16.5. You acknowledge and agree that it is your responsibility to ensure that you have nominated the correct delivery address and provided sufficient and appropriate details to identify the recipient in

making an Order, and we are not responsible for any misplaced parcels or for delivery of any Order to an unintended recipient as a consequence of incorrect details.

16.6. You must ensure that any person who collects or takes delivery of the Products on your behalf is authorised by you to do so. Title and risk in the Products pass to the Customer on signing for delivery of the Products. Where a Customer gives written authority for Products to be delivered without a signature:

- (a) any and all included insurance cover (if any) will be voided; and
- (b) title and risk in the Products pass to the Customer on delivery of the Products to your nominated delivery address.

16.7. The nominated courier will deliver the Products on a Business Day.

16.8. We are not responsible for the delivery times of Products. Once Products have been dispatched, it is the Customer's responsibility to liaise with our nominated courier company in relation to date of delivery and to make themselves available to take delivery at the nominated time for delivery. Any information provided by us to a Customer in relation to the method of delivery and estimated delivery time will be from a third party, and as such we do not guarantee the accuracy or currency of such information.

## **PART E – GENERAL**

### **17. Pricing**

17.1. All Artist Services listed on the Site are in Australian Dollars, inclusive of GST (if applicable) and do not include Delivery Costs or Additional Costs that may apply to a Booking Enquiry. Client Services such as a deposit payment is exclusive of GST.

17.2. All prices displayed on the Site are subject to change without notice. Prices for items in an Order or Quote are fixed once your deposit payment has been received and Order or your Booking (as applicable) has been confirmed. Subsequent price changes either up or down will not be retroactively applied to confirmed Orders or Bookings (however Additional Costs and additional Fees may be applied to a Booking in accordance with clauses 7.10, 8.1 and 9.1).

17.3. Promotional discount codes may be given at our sole discretion on terms and conditions notified at the time of the relevant promotional offer or discount.

17.4. If a discount code is entered at the checkout, it has the effect of applying a discount solely across the cost of the Products and the Artist Services. Any associated Additional Costs and/or Delivery Cost will be unaffected by the discount code and are payable at the ordinary rate.

17.5. You agree to pay Additional Costs and/or Delivery Costs as they are calculated and listed in the Order confirmation or Quote (as applicable) .

- 17.6. International Delivery Costs do not include insurance or any taxes or duties which may be applied by customs at the destination country and any duties or taxes incurred are the responsibility of the person who placed the Order.
- 17.7. In accordance with Australian export regulations, we are required to declare the exact value of all items and identify the Order as dutiable “merchandise”. We are also prohibited by law from identifying an Order as a “gift” for export purposes, even if you have placed the Order with the intention of delivery to a gift recipient.
- 17.8. To the maximum extent permitted by law, we reserve the right to refuse a sale or Booking to any Customer.

## **18. Payment**

- 18.1. Payment for Bookings can be made:
- (a) by direct deposit into our bank account (the details of which will be provided in the relevant Invoice or Proposal we send to you); or
  - (b) by credit card payment via Stripe (for all Bookings)
- 18.2. Payment for Products can be made by credit card payment via Stripe or other payment gateways as updated and amended by us from time to time.
- 18.3. Payment processing services for Orders and/or invoices for Bookings provided by Stripe are subject to the [Stripe Connected Account Agreement](#), which includes the [Stripe Terms of Service](#) (collectively, the “**Stripe Services Agreement**”). By placing an order and using Stripe to process payments you agree to be bound by the Stripe Services Agreement, which may be modified by Stripe from time to time. As a condition of enabling payment processing services through Stripe, you agree to provide us with accurate and complete information about you and your business, and you authorise us to share it and transaction information related to your use of the payment processing services provided by Stripe.
- 18.4. Payment processing services for Orders and/or invoices for Bookings provided by Pin Payments are subject the [Pin Payments Terms and Conditions](#). By placing an order and using Pin Payments to process payments you agree to be bound by the [Pin Payments Terms and Conditions](#), which may be modified by Pin Payments from time to time. As a condition of enabling payment processing services through Pin Payments, you agree to provide us with accurate and complete information about you and your business, and you authorise us to share it and transaction information related to your use of the payment processing services provided by Pin Payments.
- 18.5. You agree and acknowledge that we will treat an electronic instruction as authentic and are under no obligation to investigate the authenticity or authority of persons issuing or transmitting such electronic instructions, or to verify the accuracy and completeness of such electronic instructions.



18.6. If your nominated payment method triggers our internal suspect transaction protocols, we may, at our discretion, contact you to confirm additional details, or rescind the transaction.

## **19. Liability**

19.1. To the maximum extent permitted by law, we exclude all:

- (a) conditions, guarantees or warranties expressed or implied by law; and
- (b) any liability to you or to any third person however arising (and whether arising under statute, negligence or otherwise) for any personal injury or death to you or any third person, or for any special, direct, indirect or consequential loss or damage (including, but not limited to, loss of income or revenue, loss or interruption of business, loss of profits, revenue or contracts, loss of anticipated savings, loss of data, loss of use, loss of privacy or loss of goodwill),

arising out of, or in connection with, access and/or use of the Material, the Site, or any Products, Client Services or Artist Services ordered on, or via, the Site and this Agreement.

19.2. We accept no responsibility, make no representation, promise or warranty and will not be held liable in relation to any information on the Site or otherwise provided to you regarding the Artists including, but not limited to, their history, character, age or capabilities.

19.3. Without limiting the generality of the foregoing, you agree that our maximum aggregate liability (whether based on warranty, contract, tort, statute, misrepresentation or otherwise) will in no event exceed:

- (a) in relation to the Services: the total Fees paid (excluding GST and expenses) by you to us for the Services in the past six (6) months immediately prior to the events complained of; and
- (b) in relation to the Products: the total price paid by you to us for the Products complained of.

You acknowledge and agree that the limitations of liability contained in this clause are a fair and reasonable allocation of the commercial risk between the parties.

19.4. To the maximum extent permitted by law, all typographical, clerical or other errors or omissions in sales literature, quotations, price lists, acceptances or offers, invoices or other documents or information issued by us will be subject to correction without any liability on our part.

## **20. Intellectual Property**

20.1. You acknowledge that we or our licensors are the owners of all Intellectual Property Rights in the Site and in all Material published on the Site, and we retain all rights, title and interest in the Site

and Material (including Intellectual Property Rights contained therein) irrespective of any licence we may grant to you to access, and use, the Site.

- 20.2. You may access and use the Site (including Intellectual Property Rights contained therein) for your personal and non-commercial use only. You must not in any form or by any means reproduce, modify, distribute, store, transmit, publish, use or display the Material on another website or create derivative works from any part of the Site or the Material or commercialise any information obtained from any part of the Site or Material without our prior written consent.
- 20.3. By uploading, posting, transmitting or otherwise making available any content or material via the Site (“**Your Content**”), you:
- (a) grant to us a non-exclusive, worldwide, royalty-free, perpetual, irrevocable and sub-licensable licence to use, publish, reproduce and otherwise exploit Your Content in any form for any purpose and unconditionally waive any moral rights that you might have in respect of Your Content; and
  - (b) represent and warrant that you either own the Intellectual Property Rights in Your Content or have the necessary permission to upload, post, transmit or otherwise make available Your Content via the Site.
- 20.4. We reserve the right to terminate any licence granted to you under the Agreement and/or remove any of Your Content from the Site, at any time, for any reason and without notice to you.
- 20.5. You agree that you will not modify or copy the layout or appearance of the Site nor any computer software or code contained in the Site, and that you will not decompile, disassemble, reverse engineer or otherwise attempt to discover, interfere with or access any source code related to the Site.

## **21. Communication**

- 21.1. We operate an online business and communicate with Customers or visitors to our Site via email to their designated email address (including confirmation of Bookings and Orders). It is your responsibility to therefore ensure that the correct contact details are provided and that your nominated email address is regularly checked for correspondence.

## **22. Linking to the Site**

- 22.1. You must not establish a link to the Site in such a way as to suggest any form of association, approval or endorsement on our part where none exists.
- 22.2. You must not establish a link to the Site from any website that is not owned by you.
- 22.3. This Site must not be framed on any other website, and you must not create a link to any part of this Site other than the home page. We reserve the right to withdraw linking permission at any time without written notice.

## **23. Indemnity**

23.1. You agree to indemnify us and our officers, directors, employers or contractors (collectively, the “**Indemnified**”) and to keep indemnified and hold harmless the Indemnified from and against any and all actions, claims, demands, losses, damages, taxes, liabilities, costs and/or expenses that may be incurred by, or sustained by, the Indemnified arising out of, or in connection with, your access to, and use of, the Materials, the Site, any breach by you of this Agreement or your or anyone else’s use of the Products or Services.

## **24. Privacy**

24.1. We are committed to protecting your privacy and personal information. Please see our Privacy Policy for further details about our practices relating to the collection, use, disclosure and storage of your personal information.

## **25. General**

25.1. We reserve the right to make changes to this Agreement without notice to you. Any amendments to this Agreement will have immediate effect from the time that they are published on the Site.

25.2. Although we do our best to provide the most up-to-date information on the Site as this becomes available, we cannot warrant the accuracy or completeness of the information provided.

25.3. Any provision of this Agreement which is void or unenforceable may be severed from this Agreement without affecting the enforceability of other provisions.

25.4. A failure or delay by us to exercise a power or right under this Agreement does not operate as a waiver of that power or right, and the exercise of a power or right by us does not preclude our future ability to exercise that or any other power or right.

25.5. This Agreement is governed by, and must be construed according to, the laws of Victoria, Australia and the parties submit to the exclusive jurisdiction of the courts exercising jurisdiction there.