

SERVICE AGREEMENT TERMS AND CONDITIONS – TOP-NOTCH ENTERTAINMENT PTY LTD

Updated 22nd July, 2018

This Agreement outlines the Service Agreement Terms and Conditions entered into between the Purchaser and Top-Notch Entertainment Pty Ltd (the Supplier) who provides services upon the terms and conditions set out in this Agreement.

1. INTRODUCTION

- 1.1 This Service Agreement Terms and Conditions defines the contract agreement between Top-Notch Entertainment Pty Ltd (“us” “we” “our” “the company” “Top-Notch” “Service Provider”) and our clients (“you” “your” “the Client” “the Customer” “Principal”) for the timeframe of our agreement upon your acceptance of our written quote.
- 1.2 We reserve the right to vary our Service Agreement Terms And Conditions at any stage without notice from time to time, and suggest that clients review this Agreement for any changes on our website prior to engaging our services.
- 1.3 These Service Agreement Terms and Conditions automatically apply to any transaction where we are engaged to perform the Test and Tagging of 240 volt electrical appliances for our clients.
- 1.4 ‘GST’ refers to the Goods and Services Tax as defined by the Australian Tax Office (ATO).
- 1.5 Engaging our services verifies and acknowledges that you fully understand and accept these Service Agreement Terms And Conditions to form a binding agreement between you and Top-Notch.

2. TRADING TERMS

- 2.1 Customers paying by C.O.D. (cash on delivery) must pay in full prior to their goods being released.
- 2.2 Top-Notch requires full payment to be cleared into our nominated bank account within 7 days of the Invoice date as noted on the Invoice (unless agreed in writing by both you and Top-Notch prior to engagement of our services).
- 2.3 Invoices not paid in full within the required time frame (see Section 2.2) shall be deemed overdue (see Section 4).
- 2.4 We reserve the right to deny credit to any time to any customer.
- 2.5 We reserve the right to undertake a Credit Check on any customer if we deem it necessary prior to commencing any work.

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- 3.1 Our quote is based upon the information as provided by you, or the information we gather upon our site inspection (if required) to assist our writing of a quotation.
- 3.2 If parking charges will apply on the date we carry out our services or make a site inspection to submit our quote, then any such costs incurred will be included on our Quote and subsequent Invoice for payment by you.
- 3.3 Our quoted prices do not currently include GST as it is not currently payable on our Invoices (as per ATO requirements).

4. OVERDUE ACCOUNTS

- 4.1 We reserve the right to forward all overdue accounts to a debt collection agency or solicitor for collection.
- 4.2 All costs incurred and/or associated with the recovery of an overdue account (including forecast commissions) shall be your responsibility for full payment.
- 4.3 Top-Notch reserves the right to charge interest on any overdue account based on the current rate applicable as defined by the Penalty Interest Rates Act 1983.
- 4.4 If an Invoice is deemed to be overdue no further credit will be extended to that customer.

5. INVOICE QUERIES

- 5.1 If you have questions relating to an Invoice issued by us, it must be submitted in writing and received by our office within 7 days of receipt of the Invoice. This notice can be either emailed to info@top-notch.com.au or posted to:

Top-Notch Entertainment Pty Ltd
12/653 Mountain Highway
Bayswater VIC 3153

6. FEES

- 6.1 You agree to pay us the Fees outlined in the Quote (exclusive of GST).
- 6.2 You agree to reimburse Top-Notch for any pre-agreed out of pocket expenses incurred by us in supplying the Services.
- 6.3 Top-Notch reserves the right to apply a minimum charge for all on-site Test and Tagging at the rate of \$75 (which is the fee for the first hour). If the total value of the work engaged is below this amount, this minimum charge shall apply.
- 6.4 Our minimum charge is applicable for jobs cancelled with less than 24 hours notice.
- 6.5 A travel surcharge will apply for areas outside the metropolitan Melbourne region and will be clearly stated on your Quote and Invoice.

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- 6.6 Payment is to be made upon completion of the job by ether cash or direct bank transfer (only available for commercial customers paying upon receipt Invoice).

7. INSURANCE

- 7.1 The Service Provider (and its employees and agents) is not entitled to the benefit of any accident, third party liability, public liability or indemnity policies of insurance or workers compensation policies that the Principal may hold.
- 7.2 Top-Notch agrees to make its own arrangements to ensure adequate insurance coverage is effected and maintained throughout our engagement.
- 7.3 We agree to provide the customer with evidence of such arrangements, if requested.

8. SUPERANNUATION

The Service Provider (and its employees and agents) is not entitled to any superannuation contributions from the Principal.

9. LOCATION AND FACILITIES

- 9.1 The Service Provider will be granted access to the Customer's premises as necessary for the performance of the Services.
- 9.2 If the Services are to be performed in the Customer's premises, the Customer must ensure the Customer's premises are safe working environments.

10. SERVICE PROVIDER'S OBLIGATIONS AND WARRANTIES

The Service Provider warrants and represents that throughout the Term:

- (a) it has legal capacity, power and authority to provide the Services;
- (b) there are no legal restrictions preventing it from performing the Services;
- (c) it is duly qualified to perform the Services;
- (d) in performing the Services it will act with due care and skill;
- (e) it will comply with any reasonable directions from the Principal from time to time;
- (f) it will act lawfully and will comply with any applicable licenses, laws, regulations, industry codes of conduct, health and safety requirements and Australian standards in performing the Services;
- (g) it is not aware of any actual or potential conflict of interest in it providing the Services (unless otherwise agreed in writing with the Customer);
- (h) it will not infringe any third party rights or violate any other agreement by performing the Services;

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- (i) it has complied with all applicable legislation, awards and industrial instruments in engaging or employing all persons who will perform the Services in accordance with this Agreement;
- (j) it has a valid ABN which has been advised to the Customer; and
- (k) it is not registered for GST purposes.

11. CUSTOMER'S OBLIGATIONS AND WARRANTIES

The Customer warrants and represents that throughout the term of this agreement:

- (a) it has legal capacity, power and authority to enter into this Agreement;
- (b) it will act lawfully and will comply with any applicable licenses, laws, regulations, industry codes of conduct, health and safety requirements and Australian standards in performing the Services;
- (c) it will not infringe any third party rights or violate any other agreement by performing the Services;
- (d) it will comply with any reasonable requests given to it by the Service Provider from time to time to enable the Service Provider to provide the Services; and
- (e) it has complied with all applicable legislation, awards and industrial instruments in engaging or employing any persons who will work with the Service Provider on the Services.

12. PRIVACY

In performing the Services, the Parties agree to comply with the Australian Privacy Principles as set out in the *Privacy Act 1988* (Cth) and any other applicable legislation or Privacy Guidelines.

13. WORKPLACE HEALTH AND SAFETY

- 13.1 The Parties (and its employees or agents) must comply with all applicable workplace health and safety laws and all safety instructions reasonably issued by the other Party from time to time.
- 13.2 The Service Provider must ensure that its employees, agents and subcontractors are adequately supervised at all times while performing the Services.
- 13.3 Each Party must ensure that before its employees, agents and subcontractors perform the Services they receive adequate training in security, workplace health and safety, customer service and risk management.
- 13.4 The Service Provider will promptly notify the Customer of any workplace health and safety incidents that occur or of any involvement by workplace health and safety officials in connection with the Services.

14. LIABILITY AND INDEMNITY

The Principal is liable for and agrees to indemnify the Service Provider in respect of any claim, action, damage, loss, cost, charge, expense, penalty, fine or payment which the Service Provider suffers, incurs or is liable for as a result of:

- (a) the manner in which the Services are performed, including but not limited to any act or omission in connection with the performance of the Services; and
- (b) any breach by the Principal (or its employees, agents or subcontractors) of this Agreement or its obligations or warranties under this Agreement.

15. GST**15.1 Taxable supply**

If GST is payable on any supply made under this Agreement, the payer must pay an amount equal to the GST payable on the supply. That amount must be paid at the same time that the consideration is to be provided under this Agreement and must be paid in addition to the consideration expressed elsewhere in this Agreement. On receiving that amount from payer, the recipient must provide the payer with a tax invoice for the supply.

15.2 Adjustment events

If an adjustment event arises in respect of any supply made under this Agreement, a corresponding adjustment must be made between the recipient and the payer in respect of any amount paid to the recipient by the payer under this clause, and any payments to give effect to the adjustment must be made.

15.3 Payments

If the payer is required under this Agreement to pay for or reimburse an expense or outgoing of the recipient, or is required to make a payment under an indemnity in respect of an expense or outgoing of the recipient, the amount to be paid by the payer is the sum of:

- (a) the amount of the expense or outgoing less any input tax credit in respect of that expense or outgoing that the recipient is entitled to; and
- (b) if the recipient's recovery from the payer is in respect of a taxable supply, the amount equal to the GST payable by the recipient in respect of that recovery.

15.4 GST terminology

The terms "adjustment event", "consideration", "GST", "input tax credit", "supply", "taxable supply" and "tax invoice" each has the meaning which it is given in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

16. NOTICES**(a) Form of notice**

A notice or other communication must be in writing in English and may be:

- (i) delivered personally;
- (ii) given by an agent of the sender;
- (iii) left at a Party's current delivery address for notices as set out in this Agreement;
- (iv) sent by prepaid mail to a Party's current postal address for notices as set out in this Agreement.

(b) Receipt of notice

A notice or communication is taken as having been given:

- (i) when left at a Party's current delivery address for notices; or
- (ii) if mailed within Australia to an Australian address, on the third Business Day after posting; or
- (iii) if mailed outside of Australia to an Australian postal address or within Australia to an address outside of Australia, on the tenth Business Day after posting.

17. FORCE MAJEURE

If performance of this Agreement or any obligation under this Agreement is prevented, restricted, or interfered with by causes beyond either party's reasonable control (**Force Majeure**), and if the Party unable to carry out its obligations gives the other Party prompt written notice of such event, then the obligations of the Party invoking this provision shall be suspended to the extent necessary by such event. The term Force Majeure shall include, without limitation, acts of God, fire, explosion, vandalism, storm or other similar occurrence, orders of acts of military or civil authority, or by national emergencies, insurrections, riots, or wars, or strikes, lock-outs, work stoppages. The excused party shall use reasonable efforts under the circumstances to avoid or remove such causes of non-performance and shall proceed to perform with reasonable dispatch whenever such causes are removed or ceased. An act or omission shall be deemed within the reasonable control of a party if committed, omitted, or caused by such party, or its employees, officers, agents, or affiliates.

18. GENERAL

- (a) **Relationship:** The Service Provider may describe themselves as a Service Provider to the Principal, but must not describe itself in any way as an employee or agent of the Principal. This Agreement is not intended to create a relationship between the Parties of

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partnership, joint venture, agency or employer-employee. Neither Party has authority to create, assume or otherwise enter into any agreement that imposes rights or obligations on the part of the other Party.

- (b) **Assignment:** This Agreement is personal to the Parties. A Party must not assign or deal with the whole or any part of its rights or obligations under this Agreement without the prior written consent of the other Party (such consent not to be unreasonably withheld). Any purported dealing in breach of this clause is of no effect.
- (c) **Waiver or variation of rights:** Any failure or delay by a Party in exercising a power or right (either wholly or partially) in relation to this Agreement does not operate as a waiver or prevent that Party from exercising that power or right or any other power or right. A Party is not liable to any other Party for any loss, cost or expense that may have been caused or contributed to by the failure, delay, waiver or exercise of a power or right.
- (d) **Powers, rights and remedies:** Except as expressly stated to the contrary in this Agreement, the powers, rights and/or remedies of a Party under this Agreement are cumulative and are in addition to any other powers, rights and remedies of that Party. Nothing in this Agreement merges, extinguishes, postpones, lessens or otherwise prejudicially affects any power, right, or remedy that a Party may have at any time against the other Party to this Agreement or any other person.
- (e) **Consents and approvals:** Where this Agreement provides that a Party may conditionally or unconditionally give or withhold any consent or approval in relation to any matter in this Agreement, that Party may in its absolute discretion, and without being obliged to give reasons for doing so, withhold any consent or approval or give consent or approval conditionally or unconditionally.
- (f) **Further assurance:** Each Party must from time to time and in a timely manner do all things reasonably required of it by the other Party to give effect to this Agreement.
- (g) **Counterparts:** This Agreement may be executed in any number of counterparts and, if so, the counterparts taken together will constitute one and the same Agreement. The date of this Agreement will be the date that it is executed by the last Party.
- (h) **Entire agreement and understanding:** In respect of the subject matter of this Agreement: this Agreement contains the entire understanding between the Parties; all previous oral and written communications, representations, warranties or commitments are superseded by this Agreement and do not affect the interpretation or meaning of this Agreement; and each of the Parties has relied entirely on its own enquiries before entering into this Agreement.
- (i) **Governing law and jurisdiction:** This Agreement is governed by the laws of Victoria and the Commonwealth of Australia. Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts operating in Victoria.

19. DEFINITIONS AND INTERPRETATION

Service Agreement Terms And Conditions**19.1 Definitions**

In this Agreement:

Business Day means a day which is not a Saturday, Sunday or bank or public holiday in Victoria.

Confidential Information means any information about a Party, its operations, products and customers acquired by the other Party (or any of its employees or agents) whilst, or as a result of, performing the Services which is not in the public domain, other than as a result of breach of confidence.

Parties means the parties entering into this Agreement.

Services are set out in the Quote.

19.2 Interpretation

- (a) words in the singular include the plural and vice versa;
- (b) headings are for convenience and do not affect the interpretation of this Agreement;
- (c) any gender includes the other gender;
- (d) a reference to a clause, paragraph, schedule or annexure is a reference to a clause, paragraph, schedule or annexure, as the case may be, of this Agreement;
- (e) if any act which must be done under this Agreement is to be done on a day that is not a Business Day then the act must be done on or by the next Business Day;
- (f) a reference to any legislation includes subordinate legislation and all amendments, consolidations or replacements from time to time;
- (g) if a word or phrase is defined in this Agreement then any other grammatical form of the word or phrase shall have a corresponding meaning;
- (h) a reference to a natural person includes a body corporate, partnership, joint venture, association, government or statutory body or authority or other legal entity;
- (i) "includes" and similar words mean includes without limitation;
- (j) no clause of this Agreement shall be interpreted to the disadvantage of a Party merely because that Party drafted the clause or would otherwise benefit from it;
- (k) a reference to a Party includes the Party's legal personal representatives, successors, assigns and persons substituted by novation;

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- (l) a reference to this or any other agreement includes the agreement, all schedules and annexures as novated, amended or replaced and despite any change in the identity of the parties;
- (m) a reference to a covenant, obligation or agreement of two or more persons binds or benefits them jointly and severally;
- (n) a reference to time is to local time in Victoria; and
- (o) a reference to “\$” or “dollars” refers to the currency of Australia from time to time.

20. FEEDBACK

Feedback may be submitted via our online enquiry form, via email or phone: 0417014173