



## General Terms & Conditions

### 1) APPLICATION OF CONDITIONS AND INTERPRETATION

These conditions apply to the hire of any item including marquees and any other piece of equipment by the Service Provider (*defined below*) to you ("the Customer") your successors, executors and personal representatives.

"Commencement Date" means the date set forth in the Contract Details.

"Conditions" means the general terms and conditions set out in this document.

"Equipment" includes any temporary structures (including but not limited to Arena Super Deck (ASD), marquees and tents) hired to the Customer by the Service Provider and shall include all replacements and accessories and additions thereto whether made before or after the Commencement Date.

"Contract" means the Contract Details signed by both parties, these Conditions and any schedules appended thereto, and the Special Terms and Conditions.

"Contract Details" means the relevant order confirmation or quotation signed by both parties or invoice issued by the Service Provider in relation to the provision of the Equipment.

"Fee" is the sum paid by the Customer to the Service Provider in consideration of the services rendered hereunder as set forth in Schedule 1.

"Period of Hire" means the period commencing from delivery of the Equipment to the Customer and ending upon the removal of the Equipment from the Site.

"USD" means United States Dollar, the lawful currency of the United States of America.

"Service Provider" means the Arena contracting legal entity referenced in the Contract.

"Special Terms and Conditions" means any special terms and conditions further executed between the parties in relation to the provision of the Equipment (e.g., variation in the form of a separate quotation issued by the Service Provider).

"Site" means the site designated by the Customer as the location at which the Equipment will be delivered and installed.

"Writing" includes email, facsimile transmission and comparable means of written communications.

Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time. The headings in these Conditions are for convenience only and shall not affect their interpretation.

### 2) ALTERATION OF CONDITIONS

The terms of these Conditions can only be altered with the Service Provider's written agreement. No term or condition contained in any order from or other communication by the Customer to the Service Provider, which is inconsistent with the Conditions, will be deemed to have been accepted unless the Service Provider has agreed to in Writing.

Subject to any variation executed in accordance with the terms and conditions herein, the terms of these Conditions can only be altered with the Service Provider's written agreement. These Conditions form part of the agreement between the parties to the exclusion of all other terms and conditions, including any terms or conditions which the counterparty purports to apply under any purchase order, confirmation of order, invoice, specification or other document. No term or condition contained in any order from or other communication by the Customer to the Service Provider, which is inconsistent with these Conditions, will be deemed to have been accepted unless the Service Provider has agreed to it in writing.



### 3) BASIS OF CONTRACT

All services are provided subject to the following conditions:

- (a) unless otherwise agreed by the parties, hire charges do not include attendance by the Service Provider's employees for any purpose other than erecting and dismantling the Equipment;
- (b) the Fee is subject to a Site survey being carried out by the Service Provider;
- (c) the Site should be firm, flat and level with good access for plant and 38 tonne trucks;
- (d) all underground services must be marked by the Customer prior to the Service Provider's commencement on Site;
- (e) notification in Writing of any special Site restrictions such as but not limited to height/weight restrictions must be received by the Service Provider at the time of order;
- (f) no allowance has been made for scaffolding to sub-bases (unless itemised in the Customer's quotation);
- (g) for all structures, anchoring will usually be made by use of steel stakes, between 1.2m – 2.4m dependant upon the type of structure;
- (h) no allowance has been made for the supply of special anchors to fix into concrete (unless itemised in the Customer's quotation);
- (i) the Customer is responsible for repairing and making good any damage caused to the Site by the erection or dismantling of any Equipment;
- (j) the Fee is based on Equipment stillages and cover boxes remaining on Site in a secure area from the end of the build through to clearing the Site at the end of the project;
- (k) the quantity/quality and description of and any specification for the Equipment shall be those set out in the Service Provider's quotation (if accepted by the Customer);
- (l) the Service Provider reserves the right to make any changes in the specification of the Equipment which are required to conform with any applicable statutory requirements or, where the Equipment is to be supplied to the Service Provider's specification, which do not materially affect their quality or performance and the Service Provider shall not be contractually obligated to implement any such change unless agreed upon in writing by both parties;
- (m) the Service Provider reserves the right, by giving notice to the Customer at any time before delivery, to increase the price of the Equipment to reflect any increase in the cost to the Service Provider which is due to any change in delivery dates, quantities or specifications for the Equipment which are requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give the Service Provider adequate information or instructions;
- (n) the Price is exclusive of any applicable value added tax, which the Customer shall be additionally liable to pay to the Service Provider;
- (o) the duty of care for the provision of relevant facilities for disabled persons lies with the Customer at all times.

### 4) PAYMENT

Unless otherwise explicitly agreed between the Customer and the Service Provider, the following payment terms shall apply:

- (a) Contracts over the value of USD 30,000:
  - To pay 50% of the Fee as a deposit within 7 days of executing this Contract;
  - To pay 50% of the Fee on handover of Equipment at commencement of Hire Period.
- (b) Contracts to the value/or less than USD 30,000:
  - To pay 75% of the Fee as a deposit within 7 days of executing this Contract;
  - To pay 25% of the Fee on handover of Equipment at commencement of Hire Period.
- (c) If the Customer fails to make any payment on the relevant due date then, without prejudice to any other right or remedy available to the Service Provider, the Service Provider shall be entitled to:
  - (i) terminate the Contract or suspend any further deliveries to the Customer. In the event the Service Provider elects, at its sole and absolute discretion, to suspend any further deliveries to the Customer, the Customer shall be liable to pay for any storage, transportation, and insurance costs and expenses incurred by the Service Provider in relation to such suspension of deliveries;



- (ii) appropriate any payment made by the Customer to any items of Equipment (or any items of Equipment supplied under any other contract between the Service Provider and the Customer) as the Service Provider may think fit (notwithstanding any purported appropriation by the Customer); and
  - (iii) charge the Customer interest (both before and after any judgement) on the amount unpaid, at the rate of 6% per annum base rate from time to time calculated on a daily basis, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).
- (d) The Customer agrees and acknowledges that all payments to be made pursuant to this Contract shall be made in USD, or the local currency equivalent if specified in writing by the Service Provider acting in its sole and absolute discretion.
  - (e) The time of payment of the Fee shall be of the essence. Receipts for payment will be issued only upon request. Payment shall be due without previous demand or invoice and shall be made so as to be received by the Service Provider in cleared funds on the due date. If the date on which any amount is payable by the Customer shall not be a day on which banks in Malaysia are open for business ("a Business Day") then such amount shall be paid by the Customer on the next subsequent day which is a Business Day.
  - (f) The parties agree and acknowledge that all prices will be exclusive of any and all duties and taxes, and the Customer will pay all applicable taxes in addition to any sum or consideration on receipt of a valid tax invoice from the Service Provider, as applicable.
  - (g) The Service Provider reserves the right by giving notice to the Customer at any time before delivery of the Equipment in accordance with the Contract, to increase the price set out in the Contract to reflect any increase in the cost to the Service Provider which is due to (i) any factor beyond the control of Service Provider (such as, without limitation, any significant increase in the costs of labor, materials or other costs of manufacture), (ii) any change in delivery dates requested by the Customer, (iii) any delay caused by instructions of the Customer, (iv) any delay caused by the Customer in supplying any goods, materials, or services as set out in the Contract or as otherwise required by the Service Provider and communicated to the Customer, (v) any delay brought on by the Customer or any of its contractors, personnel, or third party service providers in having the Site available and in a suitable condition for the erection/installation of the Equipment at the time stated for delivery, or (vi) any failure of the Customer to give the Service Provider accurate information or instructions.

**5) TERMINATION & SUSPENSION**

- (a) In the event that the Customer terminates the Contract, irrespective of cause, any deposit which the Customer has paid shall be forfeited. In addition, the Customer will be liable to pay the following percentage of the Fee dependent on the period of notice given prior to the Commencement Date. There shall be deducted from the percentage payable the amount of any deposit forfeited, but under no circumstances shall the payment be less than the amount of the deposit if that is greater.

<b>Period of Notice</b>	<b>Fee Payable</b>
Less than or equal to 60 days prior to the Commencement Date but greater than 45 days prior to the Commencement Date	50%
Less than or equal to 45 days prior to the Commencement Date but greater than 30 days prior to the Commencement Date	75%
Less than or equal to 30 days prior to the Commencement Date	100%

- (b) In the event the Customer suspends or reschedules the Delivery of the Equipment, irrespective of cause, the Service Provider shall be entitled to additional compensation for costs and expenses incurred in connection with such suspension or rescheduling, including without limitation any storage, transportation, and insurance costs and expenses.

**6) DELAY**



The Service Provider shall not be liable to the Customer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Service Provider's obligations in relation to the Equipment, if the delay or failure was due to any cause beyond the Service Provider's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Service Provider's reasonable control:

- (i) act of God, explosion, flood, tempest, fire or accident;
- (ii) war or threat of war, sabotage, insurrection, civil disturbance or requisition;
- (iii) acts, restrictions, regulations, by-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority, import or export regulations or embargoes including those related to a pandemic or epidemic;
- (iv) strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Service Provider or of a third party);
- (v) difficulties in obtaining raw materials, labour, fuel, parts of machinery;
- (vi) power failure or breakdown of machinery;
- (vii) the Site being unsuitable or access being unavailable on the date stated for delivery;
- (viii) adverse wind or weather conditions;
- (ix) loss or damage to Equipment by fire or flood;
- (x) grass sites which have not been cut;
- (xi) pandemics or epidemics.

#### **7) NON-AVAILABILITY OF EQUIPMENT**

If for any reason beyond the Service Provider's control (including without limitation any of the events set out in Clause 6 above), any item of Equipment booked is not available for the Period of Hire, the Service Provider reserves the right to substitute an alternative Equipment to meet as near as possible the Customer's requirement. In such circumstances the Customer hereby acknowledges that the Service Provider shall not be liable to the Customer or be deemed to be in breach of the Contract. In the event that the Service Provider cannot substitute alternative items of Equipment, the Service Provider shall notify the Customer of the termination of the Contract in which event any deposit paid by the Customer will be refunded immediately but otherwise no claim shall lie against the Service Provider.

#### **8) DELIVERY TO SITE**

- (a) The Customer must at its own expense have the Site available and in a suitable condition for the erection/installation of the Equipment at the time stated for delivery.
- (b) The Customer should either be available personally or have a representative available at the Site at the time stated for delivery to check the Equipment delivered and sign the appropriate delivery note.
- (c) The Customer shall afford to the Service Provider or its representatives all facilities reasonably required by it to enable delivery and installation of the Equipment to take place and if so required will permit the Service Provider to oversee the same.
- (d) If the Customer fails to take delivery of the Equipment or fails to give the Service Provider adequate delivery instructions at the time stated for delivery, then the Customer will be deemed to have accepted delivery of the items of Equipment specified in the delivery note and without prejudice to any other right or remedy available to the Service Provider, the Service Provider may either:
  - (i) store the items of Equipment until physical delivery and charge the Customer for the reasonable costs including but not limited to storage, transportation, and insurance costs, or
  - (ii) erect/install the items of Equipment in such a manner and location as the Service Provider considers appropriate provided that the Service Provider shall follow insofar as possible any plan supplied to it by the Customer.
- (e) If the Customer requires the Service Provider to relocate any Equipment previously installed or erected by the Service Provider then the Customer will be liable for any additional charge to cover the Service Provider's costs for such relocation except in the circumstances that the Service Provider agrees in writing that the Service Provider, its employees or agents were at fault in the initial location of the marquee or other item of Equipment being relocated.

#### **9) OWNERSHIP**

All Equipment hired remains at all times the Service Provider's sole property. The Customer must not sub-hire or part with possession of the Equipment and must not allow any charge, lien or encumbrance to be created over the



Equipment. The Customer shall at all times use his best endeavours to assist the Service Provider to resume possession thereof whether during the hiring if the Customer has lost or relinquished possession of the Equipment or at the end of the hiring if it is not then returned to the Service Provider, and hereby authorises the Service Provider or its servants, agents or appointees to enter upon the Customer's premises during normal working hours for those purposes.

**10) CARE OF EQUIPMENT**

- (a) The Customer is responsible for the safe custody of all Equipment while on Site during the Period of Hire.
- (b) The Customer must indemnify the Service Provider against any loss or damage caused to any Equipment during the Period of Hire by any cause but will not be liable for:
  - (i) fair wear and tear to the Equipment;
  - (ii) any loss or damage caused by faulty materials or equipment.
- (c) The Customer will insure the Equipment throughout the Period of Hire against accidental loss, destruction or damage; to the full new replacement value of the Equipment. Evidence of the cover should be provided one month prior to commencement of our installation. This is the 'your risk' option.
- (d) Alternatively, if agreed to in writing by the Services Provider, the Service Provider may assume the risk of accidental damage, loss or destruction of the Equipment during the Period of Hire at an additional cost of 6% of the Fee. On payment of this additional charge the terms referred to in clause 10 I will be waived. This is the 'our risk' option. Where the Customer elects the 'our risk' option and the Service Provider claims on its insurance for accidental damage, loss or destruction to the Equipment, the Service Provider reserves the right, in addition to any other remedy it may have, to claim any excess sum not recoverable by the Service Provider from its insurers in respect of such claim.
- (e) The Customer must ensure that all Equipment is adequately heated when necessary so as to protect the Equipment from frost, snow or ice damage and must ensure that the collection or building-up of snow on any Equipment is not allowed.
- (f) Customer agrees that if any of the Equipment becomes unsafe or in a state of disrepair, Customer will immediately discontinue the use of such Equipment and promptly notify the Service Provider. Customer assumes all risk injury, and property damage relating to the use of Equipment, subject to clause 11. Customer accepts full and complete responsibility for evacuating any Equipment when wind or gusts exceed twenty-five (25) miles per hour, or when other unsafe conditions arise. The Service Provider is not responsible for any damage caused by falling Equipment resulting from adverse weather conditions. Equipment is inherently dangerous and should be used, installed, maintained and repaired with great care. If Equipment is damaged or rendered un-usable as a result of weather conditions, Customer remains responsible for the Fee. In such event, the Service Provider may, at its sole discretion, based on time and availability, install replacement Equipment. Any additional costs incurred by the Service Provider arising out of or in connection with inclement weather occurring immediately before or during the Period Hire shall be borne by the Customer.
- (g) The Customer must not make or cause or permit to be made any alteration, amendment, modification or addition to the Equipment without the Service Provider's prior consent in writing.
- (h) The Customer must take such further steps as may be properly recommended by the Service Provider or may otherwise be necessary to ensure that the Equipment will be safe without risks to health and safety when properly used by the Customer or authorised users.
- (i) The Customer must obtain, effect and keep effective all permissions, licences and permits which may from time to time be required in connection with the business of the Customer and the use of the Equipment at the Site where it is situated and to comply with all statutes and other obligations of all kinds in relation to the Equipment and the use thereof and at its own expense to add to or to install with the Equipment any safety or other equipment required by any applicable law regulation to be so added or installed for the use or operation of the Equipment.
- (j) The Customer must permit the Service Provider and any persons duly authorised by the Service Provider to enter on any Site, land or premises in which the Equipment is for the time being sited so as to inspect and/or repair the Equipment.
- (k) The Customer must not use or permit the Equipment to be used in contravention of any statutory provision or regulation or in any way contrary to law or for any purpose for which the Equipment is not designed or reasonably suitable.
- (l) The Customer must not remove the Equipment from the Site and must notify the Service Provider in writing of any change in the Customer's address and upon the request of the Service Provider to inform the Service Provider in writing of the whereabouts of the Equipment.



**11) LIMITATION OF LIABILITY**

- (a) In the event that the Service Provider is unable to fulfil any terms of the Contract the Service Provider's liability is limited to refund of any Fee and under no circumstances shall the Service Provider be liable to the Customer for any indirect, special or consequential loss or damage (whether for loss of profit, revenue, business or otherwise), costs, expenses or other claim for compensation whatsoever whether caused by the negligence of the Service Provider, its employees or agents or otherwise which arises out of or in connection with the hire of the Equipment and the Service Provider's entire liability under and in connection with the hire of the Equipment and the Service Provider's entire liability under and in connection with the Contract shall not exceed the amount of the Fee. This condition shall not apply to death or personal injury caused by the Service Provider's negligence subject to clause 11 (b) below.
- (b) In the event of any accident or casualty resulting in bodily injury and/or property damage in connection with the Equipment, Customer shall promptly furnish the Service Provider with a complete report of any such accident or casualty detailing the accident or casualty, the bodily injury and/or property damage, and the names and contact information of all witnesses and persons involved.
- (c) Except as otherwise expressed in this Contract, Customer fully, finally and forever waives, releases, and discharges, and further agrees to indemnify, defend and hold harmless the Service Provider and its owners, shareholders, officers, directors, employees, agents, successors and assigns, from and against any and all claims, obligations, demands, damages, causes of action, liabilities, losses, and expenses, including reasonable attorneys' and expert fees, whether now or hereafter known, foreseen or unforeseen, that Customer or any person employed, hired, invited or retained by, or otherwise associated with, Customer, had, has or may have in the future, in law or in equity arising out of this Contract, including, without limitation, the operation, use, handling or transportation of the Equipment, including, without limitation, claims based on: (i) any express or implied warranty; (ii) damage to Customer's vehicle, landscaping, building or property when loading or unloading the Equipment; or (iii) defects in or inefficiency of the Equipment, or the inability of Customer to use the Equipment for Customer's desired purpose.

**12) NO WARRANTY OR GUARANTEE**

Equipment is hired to Customer by the Service Provider without warranty or guaranty of any kind and the Service Provider assumes no responsibility in connection therewith unless otherwise expressed in this Contract. The Service Provider makes no warranties, express or implied, as to the Equipment's merchantability or fitness for any particular purpose. Customer's exclusive remedy for any failure of or defect in the Equipment shall be, at the Service Provider's sole discretion, the remediation of such failure or defect or a refund of the Fee associated therewith, following the time of such failure or defect, provided the Service Provider is immediately notified of such failure or defect.

**13) INSOLVENCY OF CUSTOMER**

If the Customer becomes insolvent or is made bankrupt or comes to any arrangement or scheme with its creditors, or if the Customer has a liquidator, receiver or administrator appointed, or if the Service Provider reasonable apprehends that any of the events mentioned before is about to occur in relation to the Customer and notifies the Customer accordingly then, without prejudice to any other right or remedy available to the Service Provider, the Service Provider shall be entitled to terminate the Contract or suspend any further deliveries under the Contract and remove any Equipment delivered without any liability to the Customer and if the Equipment has been delivered but the Customer has not paid, the Fee shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

**14) NON-SOLICITATION**

For a period of two (2) years from the Contract completion date, the Customer agrees to (i) refrain from soliciting or hiring personnel of the Service Provider with whom it becomes familiar or acquainted with during the course this Contract, (ii) not encourage any other parties or companies to solicit or hire such personnel or staff, or (iii) refrain from suggesting to such personnel or staff that they should work for or seek any employment with any company other than Service Provider

**15) PROPRIETARY BUSINESS ASSETS**

- (a) Limited License. The Service Provider hereby grants Client a limited, non-exclusive, non-sublicensable, royalty free, fully-paid, revocable license to use and benefit from the Service Provider's Proprietary Business Assets solely in connection with this Contract, subject to the other terms set forth herein.



- (b) Ownership and Control. The parties agree that ownership and control of the Service Provider's Proprietary Business Assets shall, during and after the term of the Contract, remain exclusively with the Service Provider. Client agrees to not copy, duplicate or distribute any of the Proprietary Business Assets without the prior written consent of the Service Provider, and to return and no longer use any of the Service Provider's Proprietary Business Assets after the term of this Contract.
- (c) The Customer agrees that the trademarks, logos, brands or any other intellectual property which is used on or in connection with the Equipment or this Contract may not be reproduced or used in any manner whatsoever without the prior written consent of Service Provider.
- (d) For purposes of this Contract, the term "Proprietary Business Assets" is defined to mean any renderings, conceptual designs or drawings, the manner in which the Service Provider has built and grown its business model by training its personnel; creating contracts, data and documentation (such as this Contract); developing drawings; improving methods and work-flow processes; producing various manuals; preserving and protecting its know-how, trade secrets and confidential information; cultivating relationships; establishing contacts and contracts with sources for procuring services, materials, equipment, property and structures and other items used in connection with its business; generating client and pricing lists; licensing and using certain programs and services; performing services with specially-trained personnel; conducting and planning its operations with computer-aided design programs and software; preserving and protecting its intellectual property (which includes, among other things, common law and statutory copyrights, trademarks, service marks, the visual appeal, trade dress, distinctive elements and designs for its structures and tents, methods for engineering, constructing, de-constructing and using its equipment structures and tents, discovering new and useful processes, and making improvements on patented or patentable inventions), whether or not such intellectual property rights are registered or capable of being registered; preparing various forms of commercially valuable information and data; safeguarding competitively sensitive information and data which is not publicly available; building information modeling tools to help plan, manage, schedule, budget, integrate and optimize people, processes and technology across the lifecycle of projects similar to the Work covered by this Contract; and utilizing all of the above in ways that help the Service Provider shape and sustain a collaborative platform that provides it with certain types of operational efficiencies, economies of scale, sales, commercial opportunities and competitive advantages.

## 16) GENERAL PROVISIONS

- (a) Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its address as stated in the Contract Details.
- (b) No waiver by the Service Provider of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision
- (c) If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.
- (d) The Customer may not assign the Contract, and/or any of its rights and obligations without the prior written consent of the Service Provider. The Service Provider may assign the Contract, and/or any of its rights and obligations without the prior written consent of the Customer.
- (e) The Contract sets out the entire agreement and understanding between the parties with respect to the subject matter of it. This Contract supersedes all prior discussions and correspondence with respect to the subject matter of it, which will not have any further force or effect. Further, notwithstanding anything to the contrary in this Contract or any document referred to therein, in the event of any conflict between the provisions of these Conditions and any other document comprising or referred to in the Contract, the following shall be the order in which such provisions prevail:
  - (i) The Special Terms and Conditions;
  - (ii) The Contract Details;
  - (iii) The Conditions.

## 17) APPLICABLE LAW

The Contract and any non-contractual obligations arising out of or in connection with it or its subject matter, shall be governed by, and construed in accordance with, the law of Malaysia and each party irrevocably submits to the exclusive jurisdiction of the courts of Malaysia to settle any dispute or claim that arises out of or in connection with this Contract or its subject matter.

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Notwithstanding the foregoing or anything else in the Contract, the Service Provider shall have the right to bring any claim against the Customer in a competent court in any jurisdiction where the Client or its assets reside or are located.

**18) LAWFUL PURPOSE**

- (a) The Customer represents, warrants, and covenants that it has all necessary registrations, licenses and authorizations (corporate, governmental or otherwise) to enter into and perform the Contract.
- (b) The Customer agrees and acknowledges that it will comply with and be responsible for compliance with all applicable laws and regulations.
- (c) The Customer represents, warrants, and covenants that it (i) is in compliance with and will continue to be in compliance with all applicable laws, and (ii) has received, is in compliance with, and will ensure the validity of and continuous compliance with all permits, licenses, or other approvals required under all applicable laws for the purposes of the Contract.
- (d) The Customer agrees and acknowledges that it will abide by all reasonable instructions of the Service Provider in relation to the handling, storage, and use of the Equipment, which may be provided by the Service Provider from time to time.

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