



ABN:
74533979125

Clearlight Shows Pty Ltd

TERMS AND CONDITIONS

YOU SHOULD READ THIS DOCUMENT CAREFULLY BEFORE ENTERING INTO AN AGREEMENT WITH CLEARLIGHT SHOWS PTY LTD (ACN 005 453 181) AS IT LIMITS LIABILITY

The following are the terms and conditions of the provision of Goods by Clearlight Shows Pty Ltd (ACN 005 453 181) of 5 Horscroft Place, Moorabbin in the State of Victoria ("Clearlight") for and at the request of the person, firm or company placing any order with Clearlight ("the Customer").

1. Interpretation

- (a) **"Delivery address"** means the address to which the Goods are to be delivered as advised to Clearlight in writing by the Customer.
- (b) **"Goods"** means the goods ordered by the Customer and include packaging.
- (c) **"Price"** means the price (which Clearlight may amend from time to time) for the Goods plus any applicable GST as invoiced by Clearlight to the Customer.
- (d) **"We"** or any adaptation thereof means Clearlight
- (e) **"You"** or any adaptation thereof means the Customer
- (f) **"GST"** means any Goods and Services Tax within the meaning of the *GST Act*.
- (g) **"GST Act"** means *A New Tax System (Goods & Services Tax) Act 1999* (as amended).
- (h) **"PPS Act"** means the *Personal Property Securities Act 2009* (as amended).

2. The Contract

- (a) When the Customer accepts these Terms & Conditions a contract is created.
- (b) Acceptance of these terms and conditions shall constitute an agreement for Clearlight to provide the Goods as specified to the Customer on and subject to these terms and conditions without alteration unless otherwise expressly agreed by Clearlight in writing.
- (c) Acceptance of these Terms & Conditions by the Customer will be by the placement of an order, whether verbally or in writing and if in writing, whether it is signed or unsigned and if signed, whether on the front or rear of the Order form, or as expressed or implied by virtue of acts done or not done or otherwise.
- (d) Clearlight reserves the right at any time and from time to time to amend, vary or change these terms and conditions and such amendment, variation or addition shall have effect from the date of notification by Clearlight to the Customer.
- (e) Acceptance of an order by Clearlight shall be conditional on and subject to Clearlight being satisfied as to the Customer's creditworthiness. If Clearlight considers that the Customer's creditworthiness is unsatisfactory then Clearlight shall be entitled to cancel any order without in any way being liable to the Customer for any claims, losses or expenses whatsoever resulting from the cancellation.
- (f) Customers requesting credit must complete Clearlight's credit application form and must provide three (3) written references and a current business name and/or company search of the Customer.
- (g) Clearlight reserves the right in its absolute discretion to grant or decline to grant credit to any Customer and to suspend or cancel

any credit entitlement with effect from the date of notification to the Customer.

Price and Payment

- (a) The Price of the Goods shall be the price charged by Clearlight prevailing at the date of acceptance of the Customer's order for the Goods plus any applicable GST (except to the extent it is expressly excluded).
- (b) Prices are subject to change at the absolute discretion of Clearlight and shall be notified by Clearlight to the Customer.
- (c) The Customer shall pay all and any delivery charges applicable to each order placed by the Customer.
- (d) Payment can be made by the Customer to Clearlight by cash, cheque or direct transfer. For Customers tendering payment by cheque then payment shall not have been made until the cheque is honoured on presentment and the monies payable under it are received in Clearlight's bank account in cleared funds and until such time receipt of the cheque shall not prejudice or affect Clearlight's right or remedies against the Customer or the Goods.
- (e) Time is of the essence in respect of the payment obligations of the Customer. If payment is overdue that shall constitute a breach of these Terms & Conditions and the Customer will upon demand pay to Clearlight interest of 1.5% per month or part thereof on any overdue amount from the date that payment was due until payment in full is received by Clearlight.
- (f) If payment is overdue Clearlight may in addition to its other remedies cancel or suspend the Customer's entitlement to credit and require payment in cash on or before delivery of any Goods ordered by the Customer under any contract, or withhold supply of any such goods until the Customer has paid or discharged all sums owing to Clearlight.
- (g) Clearlight may in its absolute discretion apply any payments it receives from the Customer in and towards the satisfaction of any indebtedness of the Customer and it shall not be bound by any conditions or qualifications that the Customer may make in relation to payments made under this or any other agreement with Clearlight.
- (h) The Customer must pay all costs and expenses incurred by Clearlight in connection with any order including legal expenses (on a solicitor-client basis) stamp duty and costs incurred in the recovery of monies owing by the Customer to Clearlight or in otherwise enforcing Clearlight's rights against the Customer under an order.

Delivery

- (a) Clearlight will arrange for the freight of the Goods by a carrier, the cost of which is to be borne by the Customer.



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- (b) Clearlight shall not be liable for any loss or damage of any kind to the Goods howsoever arising.
- (c) Any period or date for delivery of Goods specified is intended as an estimate only and is not a contractual commitment.
- (d) Clearlight will make all reasonable efforts to arrange for the delivery of the Goods within any period stated but if, for any reason, including negligence by Clearlight, its servants, employees or agents, delivery of the Goods shall be delayed, Clearlight shall not be responsible for any loss sustained by the Customer or any other person firm or corporation by reason of such delay.
- (e) If the cause of the delay was under the control of the Customer (or anyone employed by or acting on behalf of the Customer) then Clearlight shall at its sole discretion, be entitled to either increase the Price of the Goods or demand payment of the Goods ordered and if payment is not received by Clearlight the Customer will upon demand pay to Clearlight interest of 1.5% per month or part thereof as set out in Clause 3 above.
- (f) The Goods may be delivered in instalments in any quantities and each delivery shall be regarded as a separate contract independent from the other deliveries and the Goods delivered shall be paid for accordingly. The failure to make delivery of any instalment shall not vitiate an order as to delivery of other instalments.
- (g) Notwithstanding the above, the Customer is still required to pay Clearlight for Goods already delivered and for Goods ordered to specification and not yet delivered.
- (h) Clearlight reserves the right to withhold delivery of all Goods if the Customer is in default of any of its obligations with Clearlight.
- 5. Retention of Title**
- Until full payment in cleared funds is received by Clearlight for all Goods supplied by it to the Customer, as well as all other amounts owing to Clearlight by the Customer:
- (a) legal and equitable title and property in the Goods remain vested in Clearlight and do not pass to the Customer;
- (b) the Customer holds the Goods as bailee and agent for Clearlight and the Customer acknowledges that a fiduciary relationship exists between the Customer and Clearlight;
- (c) the Customer shall keep the Goods separate and in good condition as a fiduciary of Clearlight, clearly showing Clearlight's ownership of the Goods and shall keep books recording Clearlight's ownership of the Goods and the Customer's sale or otherwise of them in accordance with this clause;
- (d) the Customer may sell the Goods as fiduciary agent for Clearlight to a third party in the normal course of the Customer's business provided that where the Customer is paid by that third party, the Customer holds the proceeds of sale to the extent of the amount owing by the Customer to Clearlight at the time of receipt of such proceeds on trust for Clearlight;
- (e) the Customer is required to hold the proceeds of any sale of the goods on trust for Clearlight in a separate account and not mix those proceeds with any other monies;
- (f) if the Customer uses the Goods in some process or activity of its own or with some third party, then the Customer shall hold such part of the proceeds of such process or activity as relates to the Goods on trust for Clearlight. Such part shall be deemed to equal in dollar terms the amount owing by the Customer to Clearlight at the time of the receipt of such proceeds. The Customer must keep that part of the proceeds separate on trust for Clearlight and not mix those proceeds with any other monies;
- (g) the Customer if required, shall deliver the Goods up to Clearlight;
- (h) if the Customer defaults, in addition to clauses 3 and 4, Clearlight may take possession of the Goods wherever the Goods are located and the Customer agrees that representatives of Clearlight may without notice, enter upon the Customer's premises or any premises where it suspects the Goods may be and remove them and for that purpose the Customer irrevocably licenses Clearlight to enter such premises and indemnifies Clearlight from and against all costs, claims, demands or actions by any party arising from such action.
- Risk and Insurance**
- Notwithstanding that property and title in the Goods may not have passed, the risk of loss or damage to the Goods and/or insurance responsibility for theft, damage or otherwise in respect to the Goods will pass to the Customer once the Goods have been dispatched to the Customer.
- 7. Personal Property Security Interests**
- (a) You acknowledge that under this agreement the effect of clause 5 is to grant to us a Security Interest, being a Purchase Money Interest Security, in any Goods supplied, and in any proceeds of Goods sold, under these Trading Terms.
- (b) You acknowledge that this agreement constitutes a Security Agreement as defined in the PPS Act.
- (c) Should we elect to perfect Our Security Interest, You hereby consent to us perfecting our Security Interest, without further notice to you, in any Goods provided, by registration under the PPS Act.
- (d) You agree to do anything, within three (3) business days of receiving written request from us, to enable us to register the Security Interest.
- (e) We may allocate any amounts received from you in any manner We determine, including in any manner to preserve any Security Interest we have in any goods, but in default will apply same firstly to payment of any unsecured amount owed to us, next as to any reasonable enforcement expenses and then as to any secured balance owing.
- 8. Exclusion of Liability and Loss or Damage**
- (a) Except as expressly provided to the contrary in this Agreement, all representations, warranties, undertakings, inducements, representations, terms and conditions in relation to the Goods or to these Terms & Conditions (whether express, implied, statutory or otherwise) are hereby excluded to the maximum extent permitted by law.
- (b) Without limiting the generality of the preceding clause, Clearlight shall not be under any liability to the Customer in respect of any loss or damage (including consequential loss or damage) howsoever caused, which may be suffered or incurred or which may arise, directly or indirectly, in respect of the Goods. The total



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liability of Clearlight for loss or damage of every kind arising out of the purchase of the Goods, whether in tort, contract or any other cause of action, is limited to the repair or replacement of the Goods not exceeding the purchase price of the Goods.

- (c) Where any Act of Parliament implies in this Agreement any term, condition or warranty and such Act avoids or prohibits provisions in a contract excluding or modifying the application of, or exercise of, or liability under, such term, condition or warranty, such term, condition or warranty shall be deemed to be included in this Agreement. However, the liability of Clearlight for any breach of such term, condition or warranty shall be limited at the option of Clearlight to any one or more of the following:-

If the breach relates to the Goods:

- i. the replacement of the Goods as soon as reasonably practicable, or
- ii. the repair of the defective Goods; or
- iii. the repair of the defective Goods or the repayment (or allowance) of the invoice Price of the defective Goods

at the option of Clearlight.

If the breach relates to services supplied:

- i. the provision of the services again; or
- ii. payment of the costs of having the relevant services provided

again at the option of Clearlight.

- (d) Any claim by the Customer in respect of defective Goods and/or damaged Goods must be made by telephone and confirmed by facsimile or email to Clearlight within 48 hours of the date of delivery of the Goods to the Customer.
- (e) The Customer indemnifies and holds harmless Clearlight against any and all actions, claims, proceedings, costs, losses, expenses, liabilities, including legal fees, whatsoever and howsoever caused or arising out of, in connection with or resulting from the Goods or the use of the Goods including the manufacture, delivery, use, operation and/or erection of the Goods and all damages or injuries caused thereby to anyone whatsoever.

9. Warranties

- (a) The Customer acknowledges that the Goods are not manufactured by Clearlight and accepts that the guarantee of the manufacturer of the Goods is the only guarantee given to the Customer in respect of the Goods.
- (b) Clearlight will furnish the Customer with an Engineer's Certificate obtained from the manufacturer of the Goods. The Customer acknowledges that Clearlight is not liable for, and hereby releases Clearlight from, all claims in respect of faulty or defective design of the Goods.
- (c) To the extent that the benefit of any warranty granted to Clearlight by the manufacturer of the Goods is permitted to be assigned to the Customer, at the Customer's request Clearlight shall assign the benefit of such warranty to the Customer.

10. Privacy

- (a) Clearlight only use and collect personal information about the Customer where the information is necessary for us to perform one or more necessary functions or activities.

- (b) Clearlight uses and collects personal information about the Customer primarily in connection with the sale and/or supply of the Goods and for the secondary purposes of billing and account management, in accordance with the Information Privacy Principles contained in the Privacy Act 1988.

- (c) If the Customer does not provide the personal information requested, Clearlight may be restricted in, or prevented from performing any one or more of its functions in connection with the sale and/or supply of the Goods.

- (d) Clearlight may disclose personal information about you for the purposes set out in Clause 10(b) hereof to suppliers, agents and/or contractors who may need the information in order to provide us with supplies, thereby enabling us to perform our functions and activities in connection with the sale and/or supply of the Goods to you.

- (e) The Customer may request access to personal information we hold about you and Clearlight shall grant you access to the same. In the event that any information we hold about you, is inaccurate, you may also contact us to request that the relevant information be corrected as soon as is practically possible.

- (f) For the purposes of the ongoing credit management of the Customer's account, it may be necessary to disclose to a Credit Reporting Agency, information about the Customer or your account held with us, including but not limited to the following:

- personal details for the purposes of identification, such as, your name, current and/or previous addresses, occupation, Driver's Licence number, and date of birth;
- details of the Application submitted to us by you, including particulars of any credit limit on your account;
- details of any amounts overdue for at least ninety (90) days, after reasonable steps have been taken by us to recover any such overdue amounts;
- where such amounts have previously been reported but no longer remain outstanding, confirmation that payment of such outstanding amounts has been made;
- details of cheques, credit card or direct debit payments which have been dishonoured;
- particulars of any Court judgments or bankruptcy orders made against you;
- confirmation that you have breached the terms of your Agreement with us;
- the date upon which we cease sell or supply the Goods to you, as a result of your breach;

- (g) The Customer authorises Clearlight to disclose the information set out in Sub Clauses 10(f) to a Credit Reporting Agency, that we as a credit provider, are permitted to give under the Privacy Act 1988.

11. General

- (a) These terms and conditions shall be governed by the laws of the State of Victoria.
- (b) In the event that any of the provisions herein contained shall be held to be unenforceable or invalid all other provisions shall continue in full force and effect to the extent that they can be severed from the part which has been held to be unenforceable or invalid.



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- (c) You may not assign or transfer any of its rights under these terms and conditions without Clearlight's consent.

.....
Name:

.....
Signed by/for and on behalf of [the Customer]

.....
Position:

.....
Date:



Clearlight Shows Pty Ltd

APPLICATION AND ACKNOWLEDGEMENT

1. The Customer named on the first page of this document applies to Clearlight Shows Pty Ltd for credit, and acknowledges receipt of, accepts and agrees to be bound by Clearlight Shows Pty Ltd Terms and Conditions of Sale, which it has read and understood.
2. The Customer and each of the Directors of the Customer authorise Clearlight Shows Pty Ltd to:-
 - (a) obtain a credit report from a credit reporting agency that contains personal information about the Customer and its Directors.
 - (b) obtain a report from a credit reporting agency and other information pertaining to the Customer, and any Directors' commercial credit activities; and
 - (c) give to and obtain from any credit provider named in the Credit Application, or in any credit report issued by a Credit Reporting Agency, information about the Customer's credit arrangements, including any information about their creditworthiness, credit standing, credit history or credit capacity (in accordance with Section 18N(1)(b) of the Privacy Act). The Customer and each of the Directors acknowledges that Clearlight Shows Pty Ltd can use the information for the purposes of assessing this Application (Section 18L(4) of the Privacy Act), assisting the Customer to avoid defaulting on its credit obligations, notifying other credit providers of a default by the Customer, and assessing its creditworthiness.

Signed: _____ Signed: _____

Name: _____ Name: _____

Dated: _____ Dated: _____

GUARANTEE AND INDEMNITY

I/We confirm that the Terms and Conditions of Sale of Clearlight Shows Pty Ltd have been provided to us by Clearlight Shows Pty Ltd and that I/we have read and understand them. In consideration of Clearlight Shows Pty Ltd agreeing to supply, and to continue to supply goods and services on credit to the Customer referred to above I/we jointly and severally agree:

1. To immediately pay to Clearlight Shows Pty Ltd all money due and payable by the Customer to Clearlight Shows Pty Ltd, if the Customer fails to pay any money due to Clearlight Shows Pty Ltd or fails to perform or observe any of the Terms and Conditions. No demand by Clearlight Shows Pty Ltd for payment shall be necessary.
2. To indemnify Clearlight Shows Pty Ltd and keep Clearlight Shows Pty Ltd indemnified against any loss by Clearlight Shows Pty Ltd arising out of or relating to any sale or credit granted by Clearlight Shows Pty Ltd to the Customer, including any legal costs (on a solicitor/own client basis) and all Mercantile Agent's fees (including commission payable on the payment of the debt incurred by the Company as a result of non-payment of the debt) associated with the collection of outstanding monies and any loss suffered by Clearlight Shows Pty Ltd as a result of the Customer's failure to perform or observe any of the Terms and Conditions.
3. That this Guarantee and Indemnity is a continuing Guarantee and Indemnity and will not be invalidated, released or discharged by any event that which would or might invalidate, release or discharge this Guarantee and Indemnity, including (but not limited to) the giving of time, the alteration of the composition of the Customer or the release of the Customer or any co-guarantor.
4. If the Customer is a trustee under any trust, I/we give each of the warranties set out in Clause 12 of Clearlight Shows Pty Ltd Terms and Conditions of Sale as if they were repeated at length in this document.

Signed: _____ Name: _____

Dated: _____

Signed: _____ Name: _____

Dated: _____

Signed: _____ Name: _____

Dated: _____



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Clearlight Shows Pty Ltd

OFFICE USE ONLY

| | |
|-------------------------------|--|
| Date received: | |
| Sales Contact | |
| Credit Limit: | |
| Trade References checked by: | |
| Approved by Accounts Manager: | |
| Letter to customer issued: | |
| Account Number: | |