



## **TERMS AND CONDITIONS**

When used in these Conditions the following words shall have the following meanings respectively assigned to each of them:

- a. **“Conditions”** means these Terms and Conditions.
- b. **“Contract”** means the contract referred to in **Clause 2.1**.
- c. **“Customer”** means a Person acquiring or offering to acquire Services of **GEL** and, where the Customer comprises more than one Person, the covenants and obligations of each Person are joint and several.
- d. **“Damage”** includes either partial or total damage of any nature whatsoever to the Goods or any part thereof howsoever arising and includes without limiting the foregoing damage arising from any non-delivery, mis- delivery, late delivery or early delivery and any concealed damage, deterioration, contamination, evaporation and any consequential damage arising therefrom and further without limiting the foregoing includes partial or total damage of any nature whatsoever (including but not limited to such damage to any property, person or thing) howsoever arising that is suffered or incurred during or as a result of or which is in any way related to the provision of the Services.
- e. **“Dangerous Goods”** means Goods that are or may become explosive, inflammable, radioactive or which otherwise are or may become capable of damaging any property of any nature and in any manner, whatsoever and include without limiting the foregoing Hazardous Goods.
- f. **“Electronic Communication”** means a communication of information in the form of data, text or images by guided or unguided electromagnetic energy and includes a scanned image or any other form of digital storage.
- g. **“Event”** means any event, exhibition, fair or other function or thing at or in relation to which **GEL** supplies Services for or on behalf of the Customer.
- h. **“GEL”** means **gelevents Pty Ltd (ACN 600 044 620)** and all related corporations, successors and assigns.
- i. **“Goods”** means the goods accepted by **GEL** from or on behalf of either the Customer or any other Person including but not limited to any Person who exhibits or is to exhibit Goods at any Event and includes without limitation all plant, machinery, chattels and goods and any container or other unit load device used to consolidate goods not supplied by or on behalf of **GEL** and includes where the context permits Dangerous Goods.
- j. **“Guarantor”** means that person, or entity who agrees to be liable for the Customer’s debts whether on a principal debtor basis or who is otherwise a surety for the Customer.
- k. **“Hazardous Goods”** means Goods, which are hazardous goods as defined from time to time by the Insurance Council of Australia Limited.
- l. **“Insolvency Event”** means:

An administrator is appointed to the Customer or any Guarantor, Except for the purpose of a solvent reconstruction or amalgamation previously approved by **GEL**;

- a. an application or an order is made, proceedings are commenced, a resolution is passed or proposed in a notice of meeting, an application to a court or other steps are taken for;
- b. the Customer's winding up, dissolution or administration or of any Guarantor;
- c. the Customer or any Guarantor entering an arrangement, compromise or composition with or assignment for the benefit of creditors or a class of them;
- d. the Customer ceases, suspends or threatens to cease or suspend the conduct of all or a material part of its business or dispose of or threaten to dispose of a material part its assets.
- e. the Customer or any Guarantor is, or under legislation is presumed or taken to be, insolvent or cease to carry on our business.
- f. A receiver, receiver and manager, administrator, liquidator or similar officer is appointed in respect of the Customer or any Guarantor.
- g. Any distress, attachment, execution or other legal process is levied, enforced or sued out on or against all or any material part of the Customer's assets or of any Guarantor and is not discharged or stayed within 14 business days.
- h. A security interest becomes enforceable or is enforced.
- m. **"Loss"** includes any damage, injury, loss and/or any consequential loss of any nature whatsoever suffered by any Person arising from Damage, the Contract, the Conditions, the subject matter of the Contract and/or Conditions and/or the breach of any warranties and/or acknowledgements contained within the Conditions howsoever arising and includes damage, injury or loss arising from any nondelivery, misdelivery, late delivery or early delivery and includes without limiting the foregoing loss to any property or injury to any person.
- n. **"Owner"** means the Owner of any Goods that are not owned by the Customer.
- o. **"Person"** includes any individual, partnership, firm, company, corporation, government and semi-governmental bodies and instrumentalities.
- p. **"Services"** means all services of any nature whatsoever provided or to be provided or required to be provided by **GEL** to the Customer or at the Customer's request and includes without limiting the foregoing the carriage, transport, erection, dismantling, storage, packing, unpacking and moving of Goods and further without limiting the foregoing includes all logistics management and other services of any nature whatsoever provided or to be provided by **GEL** to the Customer and to any other Person including but not limited to any Person who exhibits or is

to exhibit Goods at any Event.

## 1. APPLICATION OF CONDITIONS

**1.1** Unless otherwise agreed in writing by **GEL**, these Conditions will apply to all quotations, orders and offers in relation to the Services, unless there is a reference on the quotation, orders and offers to our website in which case the amended Conditions currently on the company's website will apply. In the event that **GEL** and the Customer wish to exclude, modify, vary, abrogate or suspend in whole or in part the operation of these Conditions, then such exclusion, modification, variation, abrogation or suspension shall only be valid and effectual in the event that the parties agree in writing to that effect and that such agreement specifically refers to these Conditions and to the fact that such agreement is intended to so exclude, modify, vary, abrogate or suspend these Conditions.

**1.2** Save as otherwise agreed in writing between the **GEL** and the Customer and subject always to the clause above, these Conditions contain the entire understanding and agreement between the parties with respect to the Contract and otherwise with respect to the Services and the Customer acknowledges and agrees as follows:

**1.2.1** That, other than expressly set out in these Conditions, neither **GEL** nor any person acting on **GEL** behalf has made any representations or given any promise or undertaking upon which the Customer has relied.

**1.2.2** That the Conditions apply to the Contract and any other contract between **GEL** and the Customer and shall not be excluded, modified, varied, abrogated or suspended by reference to any alleged prior, subsequent or other agreement, representation or stipulation whether oral, written or implied.

## 2. ORDERS AND CONTRACT

**2.1** Each order by the Customer or request for Services is deemed to be an offer to **GEL** under these Conditions and is not binding on **GEL** prior to **GEL** acceptance of it but once accepted by **GEL** a contract will thereby be formed for the provision of Services on the terms and conditions set out in these Conditions (the "**Contract**").

**2.2** Subject to the Customer's approval, **GEL** may arrange or sub-contract for the Services or any part thereof to be performed by or with any other Person and such other Person shall be entitled to the benefits of these Conditions to the same extent as **GEL** and these Conditions shall apply for the benefit of any such other person.

## 3. QUOTATIONS AND PRICES

**3.1** Prices quoted by **GEL** are firm unless otherwise agreed by **GEL** in writing.

**3.2** Should the Customer not agree with the increases made by **GEL**, this clause will allow the Customer to terminate the contract within seven days.

**3.3** Unless otherwise agreed in writing by **GEL**, the quoted price is exclusive

of all taxes and duties, Insurance and transportation costs and charges of any kind, for which the Customer will also be liable.

#### 4. CREDIT

- 4.1 **GEL** reserves the right to withdraw credit at any time and substitute cash with order or cash on delivery or any other terms.
- 4.2 **GEL** may refuse to proceed with any Contract at any time if the Customer's credit is/or becomes unsatisfactory to **GEL**.

#### 5. DESCRIPTION

- 5.1 **GEL** catalogues, price lists and quotations do not constitute offers.
- 5.2 Any description of products or Services given by **GEL** is for identification purposes only and do not constitute a contract of sale by description.

#### 6. PAYMENT

- 6.1 Payment must be made to **GEL** by the Customer by the due date as stipulated in **GEL** invoice in Cash, Cheque, Electronic funds transfer or any other form acceptable to **GEL**, without any deductions or withholding and without any or any right to set-off or counterclaim.
- 6.2 Unless otherwise stated by the Customer, payments shall be deemed to discharge the Customer's oldest debt and shall first reduce any costs or interest outstanding before reducing the principal debt.
- 6.3 If payment is not made by due date, **GEL** may, in addition to any other available remedy, charge interest calculated on a daily basis until paid in full at the rate prescribed by the *Penalty Interest Rates Act 1983* (Vic).
- 6.4 Any expenses, costs or disbursements incurred by **GEL** in recovering any outstanding monies and all legal costs and expenses (on a standard basis) shall be paid by the Customer and shall be recoverable from the Customer by **GEL** as a liquidated debt.

#### 7. INSURANCE

- 7.1 Unless otherwise agreed in writing, **GEL** is not and will not be deemed to be an insurer of the Goods.
- 7.2 **GEL** will not arrange insurance on behalf of the Customer or any Person over any Goods or other property or in any way related to the provision of the Services except upon express instructions in writing and then only at the expense of the Person so instructing and on lodgment of a declaration as to value where applicable.

#### 8. GOODS

- 8.1 If the Goods are or include any Dangerous Goods or any Goods that are damaged then the Customer shall present a full description of such goods in writing to **GEL** prior to tendering such goods for the provision of the Services and in any event the Customer shall be liable for any Damage and/or

Loss arising in any way whatsoever out of the provision of the Services with respect to such goods howsoever arising and whether or not the Customer was aware of the nature of the goods and the Customer further warrants that except where the Goods are marked "Hazardous" the Goods are not and do not include any Hazardous Goods.

## 9. EXCLUSION OF IMPLIED TERMS

- 9.1** To the extent permitted by law, **GEL** excludes all conditions, warranties, terms and consumer guarantees implied by law (including the *Australian Consumer Law*) arising in connection with a supply of Services. To the extent permitted by law, **GEL** limits its liability by supplying the Services again.

## 10. LIMITATION OF LIABILITY

- 10.1** To the extent permitted by law, **GEL** excludes any liability in contract, tort (including negligence) or otherwise, in connection with the supply of Services for any Loss or Damage whether direct or indirect and any special, punitive or exemplary damages. This includes any liability for a claim that the Services provided were not rendered with due care and skill and not fit for purpose, except where the Services are subject to the *Australian Consumer Law*, in which case **GEL**' liability is limited as set out in the Clause above.

## 11. CONSENT

- 11.1** The Customer agrees **GEL** may, subject to the Privacy Act, disclose commercial credit-related information of the Customer, to credit reporting bodies for the purposes of assessing credit worthiness and providing the service to the Customer. The Customer consents to the collection of commercial credit-related information about the Customer, from credit reporting bodies and other sources in accordance with **GEL** Policy.
- 11.2** The Customer also agrees that **GEL** may use personal information other than commercial-credit related information for direct marketing accordance with **GEL** Privacy Policy.

## 12. SUBCONTRACTING

- 12.1** If the Customer is not the Owner of any or all of the Goods the Customer shall for all purposes including and without limiting the foregoing for the purpose of entering into this Contract be deemed to be the agent of the Owner and any other Person interested in the Goods and the Customer warrants that the Customer has authority to so act as agent of the Owner and/or any such other Person.
- 12.2** Where the Owner enters into a contract arrangement or understanding with the Customer or any other Person for the Customer or that other Person to provide Services with respect to the Goods (the "Head Contract") and the Customer enters into this Contract with **GEL** for **GEL** to provide Services with respect to the Goods or any part thereof or the subject matter or any part thereof of the Head Contract the Customer shall accept liability for and will indemnify and keep indemnified **GEL** against any liability, claim, proceedings, losses, damages, costs and expenses which **GEL** may suffer or incur or which maybe brought or claimed by the Owner or any other Person against **GEL** in respect of Loss and/or Damage.

**12.3** The Loss and Damage referred to in the Clause above shall include but not be limited to any Damage and/or Loss which may occur at any time whether due or alleged to be due to misconduct, negligence, breach of contract, wilful act or default on the part of **GEL** its servants agents or contractors or otherwise and whether founded in tort, contract or otherwise.

### 13. FRUSTRATED CONTRACT

**13.1** **GEL** is not liable for any delay or the failure to perform any obligation in the Customer's favour arising as a result of any event that is beyond **GEL**' control.

### 14. TERMINATION

**14.1** Without affecting any other right or remedy available to it, either party (Non-Defaulting Party) may terminate or suspend this contract with immediate effect by giving writing notice to the other party if:

14.1.1 The other party commits a material breach of any term in this contract and either;

- a) the breach is irremediable; or
- b) the breach is remediable and the other party fails to remedy that breach within seven (7) days after the other party has, or is deemed to have, received written notice requesting it to do so;

14.1.2 The other party repeatedly breaches any of the terms of this contract in such manner as to reasonable justify the opinion that its conduct is inconsistent with it having or ability to give effect to the terms of this contract;

14.1.3 An Insolvency Event occurs in relation to the other party and the Corporations Act does not prevent the non-defaulting party from terminating this contract because of that Insolvency Event;

14.1.4 Being an individual, the individual dies, becomes permanently incapacitated, has a trustee appointed, receives orders made against him, or is incapable of managing their own affairs.

**14.2** For the purposes of Clause 14.1.1, material breach means:

14.2.1 a breach (including anticipatory breach) that is serious in the widest sense of having serious effect on the benefit that the terminating party would otherwise be derived from

- a) a substantial portion of this contract; or
- b) any of the obligations enforced by this contract.

**14.3** The suspension or termination of this contract will not release either party from any obligation or liability to the other party, including any payment and delivery obligation that:

14.3.1 Has accrued under this contract before suspension or termination; or

14.3.2 Comes into effect because of the suspension or termination of this contract.



**14.4** In the event of suspension or termination under Clause 14.1 hereof **GEL**:

14.4.1 Will be entitled by notice in writing to the Customer to declare immediately due and payable any amount outstanding from the Customer to **GEL** under these Conditions, this Contract or any other Contract(s) (such sum thereby becoming forthwith due and payable);

**14.5** In the event of suspension or termination under Clause 14.1 here of the non-defaulting party may claim damages from the defaulting party.

## 15. GENERAL PROVISIONS

**15.1** Any failure by **GEL** to insist on strict compliance with these Conditions or any delay by **GEL** in exercising its remedies under these Conditions or otherwise will not constitute a variation or waiver of any provision of these Conditions or of any remedy available to **GEL**.

**15.2** These Conditions will be governed by and construed in accordance with the laws of the State of Victoria, Australia, and the Customer hereby irrevocably and unconditionally submits to the non-exclusive jurisdiction of the Courts of Victoria including all Courts of Appeal.

**15.3** Notwithstanding anything to the contrary contained in these Conditions, **GEL** is and continues to be subject to any conditions and warranties implied by virtue of the Competition and Consumer Act 2010 – Schedule 2 The *Australian Consumer Law*) to the extent that such conditions and warranties apply to these Conditions and to the Contract and then only to the extent that they cannot lawfully be excluded and is and continues to be subject to all legislation, regulations, rules and requirements of law to the extent that they apply and then only to the extent that they cannot lawfully be excluded.

**15.4** The parties acknowledge and agree that all provisions of these Conditions are reasonable in the circumstances and that if any provision be held unenforceable or in conflict with the laws of a relevant jurisdiction it shall be read down to the minimum extent necessary to render it enforceable and valid and, if incapable of being read down, it will be severed from the remainder of these Conditions which shall not be affected by such severance.

## 16. INTERPRETATION

In the interpretation of this Agreement: a) words importing the singular shall (where appropriate) mean and include the plural and vice versa; b) words importing any one gender shall (where appropriate) mean and include the other gender and vice versa; c) words importing a natural person shall (where appropriate) mean and include corporations and vice versa; d) where a word or phrase is defined, its other grammatical forms have a corresponding meaning; e) headings are for convenience or reference only and shall not be construed as affecting the meaning or interpretation of this Agreement; f) this Agreement shall not be interpreted to the disadvantage of **GEL** merely because it was prepared by **GEL** or by its legal advisors; and, f) notwithstanding anything to the contrary that may be contained in this Agreement **GEL** is and continues to be subject to any conditions and warranties implied by virtue of the (*Australian Consumer Law*) to the extent that such conditions and warranties apply to these Conditions and to the Contract and then only to the extent that



they cannot lawfully be excluded and is and continues to be subject to all legislation, regulations, rules and requirements of law to the extent that they apply and then only to the extent that they cannot lawfully be excluded.

## 17. ELECTRONIC COMMUNICATION

**17.1** The Customer agrees that:

17.1.1 If a Customer signature or execution is required, the requirement is taken to have been met by an electronic communication; and

17.1.2 If **GEL** is required to produce a document that is in the form of paper, the requirement is taken to have been met by an electronic communication.

## 18. PERSONAL GUARANTEE

**18.1** The Customers agrees and acknowledges that prior to obtaining any credit they are to complete and sign the Guarantee and Indemnity provided by **GEL**.

Terms & Conditions Accepted By	
Print Name:	
Signature:	

By signing I agree to Gel Events Pty Ltd Standard Conditions of Sale