

BYLOE PTY LTD AS TRUSTEE FOR THE EDWARDS FAMILY

TRUST TRADING AS AUSTRALIAN CATERING SERVICES

Trading Terms and Conditions

1. DEFINITIONS

- 1.1. The Supplier is Bylo Pty Ltd (ACN 098 936 022) as Trustee for the Edwards Family Trust Trading as Australian Catering Services of 6/104 Newmarket Road Windsor 4030, in the State of Queensland, together with the Supplier's employees servants and agents.
- 1.2. Any reference to "the Customer" includes any person engaging the Supplier on behalf of and with the authority of the person or entity that the Order is provided for.
- 1.3. The Order shall be defined as any request for the provision of Hire Equipment, Goods and/or Services by the Customer to the Supplier which has been accepted by the Supplier.
- 1.4. The Goods are the food and beverage items together with all other associated goods, used up by the Supplier in performing the Services.
- 1.5. The Services are the set-up, preparation and delivery of the goods as agreed to within the Confirmation/Order.
- 1.6. The Hire Equipment is any service equipment, machinery and/or goods used in providing the services.
- 1.7. The Premises are the land and/or land and buildings where the Services are to be carried out, or which are the subject of the Services to be performed.
- 1.8. Any reference to Hire Equipment, Goods and/or Services hereafter includes Hire Equipment and/or Goods and/or Services unless the context requires otherwise.
- 1.9. Reference to loss and damage includes indirect, reliance, special or consequential loss and/or damage including i) any loss of income profit or business; ii) any loss of good will or reputation; iii) any loss of value of intellectual property.
- 1.10. Major failure is as defined under the Competition and Consumer Act 2010 (Cth).
- 1.11. GST refers to goods and services tax under the A New Tax System (Goods and Services Tax) Act 1999 (Cth).
- 1.12. The terms "security agreement", "security interest", "PPS lease", "purchase money security interest", "collateral", "financing statement", "financing change statement" are as defined in the Personal Property Securities Act 2009 (Cth).

2. GENERAL

- 2.1. These terms and conditions together with the Supplier's quotation, fee hire schedule, credit application form, the Customer's work or purchase order document (if any) constitutes the agreement between the Supplier and the Customer ("the agreement").
- 2.2. Any Order is deemed to incorporate these terms and conditions, which may not be varied unless expressly agreed to by the parties in writing. In the event that an inconsistency exists and/or arises between these terms and the Order it is acknowledged between the parties that these terms and conditions will prevail.
- 2.3. The terms and conditions are binding on the Customer, and the Customer's heirs, assignees, executors, trustees and where applicable, any liquidator, receiver or administrator.
- 2.4. In these terms and conditions, the singular shall include the plural, the neuter gender shall include the masculine and feminine and words importing persons shall apply to corporations and vice versa.
- 2.5. Where more than one Customer completes this agreement each shall be liable jointly and severally.
- 2.6. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired and the offending provision shall be deemed as severed from these terms and conditions.
- 2.7. The Supplier may license or sub-contract all or any part of its rights and obligations without the Customer's consent but the Supplier acknowledges that it remains at all times liable to the Customer in accordance with the terms herein.
- 2.8. The failure by a party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision.
- 2.9. The Customer acknowledges that the Supplier may detail these terms and conditions on its website. In this event, the terms and conditions on the Supplier's website shall apply to any future dealings as between the parties and the Customer is deemed to have notice of any such terms and conditions and/or amendments.

3. QUOTATIONS AND PLACEMENT OF ORDERS

- 3.1. Any quotation given by the Supplier will expire after thirty (30) days.
- 3.2. A written quotation from the Supplier may include the specific Services, Hire Equipment and Goods to be provided by the Supplier.
- 3.3. The Supplier does not represent that it will provide any Services, Hire Equipment and Goods unless it is included in the Order.
- 3.4. A request for Services, Hire Equipment and Goods may be placed by the Customer with the Supplier either verbally or in writing however the Supplier may require the Customer to provide a work or purchase order document prior to providing any Services, Hire Equipment and Goods.
- 3.5. As a condition of acceptance the Supplier will require the payment of a deposit in respect of the Price and/or payment of the Price by interim or progress payments made at specified intervals or stages in the completion of the Services. If a deposit is required the Supplier may not be deemed to have accepted the Customer's request for Services, Hire Equipment and Goods unless or until such deposit has been paid.
- 3.6. The Supplier may agree to provide, on request from the Customer, additional Services, Hire Equipment and Goods not included or specifically excluded in the quotation given or in the Customer's Order. In this event, the Supplier shall be entitled to make an additional charge. Additional Services include, but are not limited to additions alterations or amendments to the quote ("a variation").
- 3.7. All Orders require minimum numbers. Should original or final numbers not reach the minimum requirement, the customer agrees to pay the full account as if the minimum were reached. Minimum numbers is listed on the Suppliers website or in individual catering agreements.
- 3.8. The final confirmation and menu selections, guaranteed number of guests, venue address and serving times must be provided to the Supplier by the Customer or their authorized agent(s) no later than five (5) working days prior to the function. The Customer agrees to indemnify the Supplier against all liabilities including (but not limited to) any costs incurred by the Supplier as a result of a breach of this clause.
- 3.9. All prices quoted are based on taxes and statutory charges current at the time of the quotation. Should these vary during the period from the date of the quotation to the date of the invoice, the difference will become the responsibility of the Customer and the Customer will be invoiced for the extra charge by the Supplier.

4. PRICE

- 4.1. GST will be charged on the Services, Hire Equipment and Goods provided by the Supplier that attract GST at the applicable rate.
- 4.2. The Supplier reserves the right to change the Price in the event of a variation to the Order. Notice will be provided in writing by the Supplier within a reasonable time.
- 4.3. The Supplier reserves the right to apply a surcharge percentage fee on credit card payments made by Customers which may be revised by the Supplier at any time and at its discretion.
- 4.4. At the Supplier's sole discretion the Price shall be either:
 - 4.4.1. The Supplier's quoted Price for the Order (subject to clause 4.2); or
 - 4.4.2. As detailed on invoices provided by the Supplier to the Customer in respect of Services, Hire Equipment and Goods supplied.

5. PROVISION OF THE SERVICES, HIRE EQUIPMENT AND SUPPLY OF GOODS

- 5.1.1. The Supplier reserves its right to:
 - 5.1.2. Decline requests for any Services, Hire Equipment and Goods requested by the Customer. Cancel or postpone the supply of the Services, Hire Equipment and Goods at their discretion.
- 5.2. Delivery of the Hire Equipment and/or Goods shall be deemed to be complete when the Hire Equipment and/or Goods are collected by the Customer or are delivered to the Customer, the Customer's agent or to the carrier as nominated by the Supplier and/or Customer.
- 5.3. If the Customer fails to make all arrangements necessary to take delivery of the Hire Equipment and/or Goods the Customer shall, at the discretion of the Supplier, be liable for a \$33.00 non-delivery fee and the Supplier shall be entitled, also at its discretion, to charge a reasonable fee for redelivery and storage of the Hire Equipment and/or Goods.
- 5.4. Unless specified by the Supplier to the contrary in the Order or quotation, the Supplier does not warrant that it will be capable of providing the Services, Hire Equipment and Goods at specific times requested by the Customer.
- 5.5. The Customer must ensure the return of the Hire Equipment to the Supplier within the agreed and/or stipulated hire period in an undamaged condition and, as far as practicable in the same condition in which the Hire Equipment was received by the Customer subject only to fair wear and tear.
- 5.6. The Customer acknowledges that the Supplier is the owner of the Hire Equipment which remains the property of the Supplier at all times.
- 5.7. The Hire Equipment may not be subject to any further lease agreement, license agreement or as security in any agreement between the Customer and any third party unless the Supplier expressly consents in writing. The Supplier may at its discretion refuse to consent to any proposed sub-lease license or loan, or impose whatever conditions to its consent on the Customer that it deems fit to protect its interest in the Hire Equipment.

- 5.8. The Customer will not make any alterations or repairs to the Hire Equipment without obtaining the written consent of the Supplier. Ownership of any parts, components or materials used in altering or repairing the Hire Equipment shall immediately vest in the Supplier and be subject to this agreement.
- 5.9. The Customer shall not remove, obscure or deface any identifying mark, label or device on the Hire Equipment or any part thereof.
- 5.10. The Customer shall use the Hire Equipment only for the purpose for which it is intended and in accordance with the manufacturer's manual or any instructions for use provided by the Supplier.
- 5.11. Subject to otherwise complying with its obligations under the agreement, the Supplier shall exercise its independent discretion as to its most appropriate and effective manner of providing the Services and of satisfying the Customer's expectations of those Services.
- 5.12. The Customer grants full access to the Supplier and its servants and agents to the Premises and shall ensure a supply of water and/or electricity (at no cost) to enable the Supplier to carry out the Services.
- 5.13. The Customer warrants that it is either the owner of the Premises or is acting with the express authority of the Owner and the Customer indemnifies and will continue to indemnify the Supplier in respect of this warranty, including any claim for loss and damage by the owner of the Premises against the Supplier.

6. PAYMENT AND CREDIT POLICY

- 6.1. Non-Account Customers must make full payment to the Supplier forty-eight (48) hours prior to completion of the Order unless otherwise specified or agreed between the parties in writing.
- 6.2. Credit will only be granted at the sole discretion of the Supplier and upon submission of a completed credit application form.
- 6.3. On the acceptance by the Supplier of a completed credit application form, Account Customers must make full payment to the Supplier within fourteen (14) days from the date of issue of the Supplier's invoice for the Services, Hire Equipment and Goods unless otherwise specified in the credit application form or agreed between the parties in writing.
- 6.4. Any credit, or credit limit granted by the Supplier may be revised by the Supplier at any time and at its discretion.
- 6.5. The Supplier reserves the right to withdraw any credit facility upon any breach by the Customer of these terms and conditions or upon the Customer ceasing to trade and/or being subject to any legal proceedings and/or the Customer committing an act of insolvency.
- 6.6. The Customer agrees that upon such withdrawal, any and all monies owing on the account shall become immediately due and payable.
- 6.7. Account Customer's Privacy
 - 6.7.1. For the Supplier to obtain from a credit reporting agency a credit report containing personal credit information about the Customer in relation to credit provided by the Supplier.
 - 6.7.2. That the Supplier may exchange information about the Customer with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency.
 - 6.7.3. The Customer consents to the Supplier being given a consumer credit report to collect overdue payment on commercial credit (pursuant to the Privacy Act 1988).

7. DEFAULT

- 7.1. In this clause the "default date" is:
 - 7.1.1. The day after the date of completion of the Services to the Non-Account Customer; or
 - 7.1.2. The day after the date the hire period in the Order of the Non-Account Customer ended; or
 - 7.1.3. The day after the date of delivery of the Goods to the Non-Account Customer; or
 - 7.1.4. The day after the date by which payment of the Supplier's invoice(s) was due to be made by the Account Customer to the Supplier.
- 7.2. In this clause the "outstanding balance" is:
 - 7.2.1. The Price of the Order, less any payments made by the Non-Account Customer prior to the default date; or
 - 7.2.2. The sum of the Supplier's invoice(s) to the Account Customer less any payments made by the Account Customer prior to the default date.
- 7.3. The Customer will be liable for a dishonoured cheque fee of \$40.00 for each cheque issued by the Customer and rejected by the Supplier's bank.
- 7.4. If the Supplier does not receive the outstanding balance by the default date the Customer will be liable for:
 - 7.4.1. Interest on the outstanding balance from the default date at the rate of twelve per centum (12%) per annum calculated on a daily basis.
 - 7.4.2. An account keeping fee of \$15.00 to be charged at the end of each calendar month after the default date until the outstanding balance has been paid.
- 7.4.3. Any charges reasonably made or claimed by the Supplier's or the agency's lawyer for legal costs on the indemnity basis.

8. RISK AND LIABILITY

- 8.1. The Customer will ensure when placing Orders that there is sufficient and accurate information to enable the Supplier to execute the Order, including, but not limited to any special requirements pertaining to the Services, Hire Equipment and Goods.
- 8.2. The Supplier takes no responsibility and will not be liable for any loss and damage or costs as a consequence of insufficient or inaccurate information provided by the Customer.
- 8.3. The Customer accepts all risk in relation to the Hire Equipment and shall take all reasonable and proper care of the Hire Equipment whilst in its possession, care, control or at the Premises and will indemnify and continue to indemnify the Supplier against any loss of and damage to the Hire Equipment; including for loss of use of the Hire Equipment at the Supplier's prevailing rate.
- 8.4. The Customer accepts all risk in relation to the Goods (including all risks associated with unloading or unpacking) when the Goods pass into the Customer's care or control; or that of its nominated carrier or agent.
- 8.5. The Supplier takes no responsibility for any delay in the delivery of the Goods by a third party carrier nominated by the Customer.
- 8.6. The Supplier shall not be liable for and the Customer releases the Supplier from any loss and damage incurred as a result of delay, or failure to provide the Goods and/or Services or to observe any of these conditions due to an event of force majeure, being any cause or circumstance beyond the Supplier's reasonable control.
- 8.7. The Customer is responsible for ensuring that the Hire Equipment of the Supplier are secured at the Premises and warrants to be responsible for any loss and damage to or theft of the Hire Equipment at the Premises.
- 8.8. The Customer warrants that the Premises is in a safe condition for the Supplier's servants and agents to perform the Services, and the Customer indemnifies and agrees to keep the Supplier indemnified against any and all claims for personal injury and loss and damage arising from or in connection with failing to keep the Premises safe to work in, including but not limited to injury caused by any feature or condition of the Premises, whether or not any such feature or condition is reasonably obvious and whether or not the feature or condition is known to the Customer.
- 8.9. The Supplier is not liable to provide any insurance cover in relation to the provision of the Services. The Customer is responsible to effect whatever insurance cover required at his or her own expense.
- 8.10. Subject to the Supplier's warranty for defective Services Hire Equipment and Goods, the Supplier's liability for any loss and damage associated with, arising from or in connection with the supply of the Services, Hire Equipment and Goods may not exceed the Price of the Order, including but not limited to personal injury and damage to property.

9. WARRANTY

- 9.1. The Supplier warrants that the Customer's rights and remedies in the agreement arising from a warranty against defects are in addition to other rights and remedies under any applicable law in relation to the goods and services to which the warranty relates.
- 9.2. The Supplier does not purport to restrict, modify or exclude any liability that cannot be excluded under the Australian Consumer Law contained in Schedule 2 of the Competition and Consumer Act 2010 (Cth) as may be amended from time to time.
- 9.3. Warranty for Services, Hire Equipment and Goods
 - 9.3.1. Provided that the Customer reports any defect in any Service, Hire Equipment and Goods supplied, preferably within two (2) days from the date that the defect became apparent, the Supplier will rectify any defect in the Services, Hire Equipment and Goods within a reasonable period of time.
 - 9.3.2. The Supplier provides the following warranty to Customers in respect of Goods supplied: "Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the Goods repaired or replaced if the Goods fail to be of acceptable quality and the failure does not amount to a major failure."
 - 9.3.3. In respect of all claims under warranty, the Supplier reserves its right to inspect the Services, Hire Equipment and Goods alleged to be defective.
 - 9.3.4. To the extent permitted by law the Supplier's liability in respect of defective Services, Hire Equipment and Goods that does not constitute a major failure will be limited to:
 - 9.3.4.1. Replacing, resupplying or rectification by the Supplier of the defective Service, Hire Equipment and Goods or
 - 9.3.4.2. The payment of the reasonable costs of having the Services, Hire Equipment and Goods rectified or supplied again; or
 - 9.3.4.3. The refund of the Price paid by the Customer in respect of the defective Service, Hire

- 9.7. The Supplier shall not be liable to compensate the Customer for any reasonable delay in remedying any defective Services, Hire Equipment and Goods or in assessing the Customer's claim.
- 9.8. The Customer warrants that it will use its best endeavours to assist the Supplier with identifying the nature of the defective Services, Hire Equipment and Goods claim.
- 9.9. Claims made under Warranty
 - 9.9.1. Without prejudice to the Supplier's other remedies at law, the Supplier shall be entitled to cancel all or any part of any Order of the Customer which remains unfulfilled and all amounts owing to the Supplier shall, whether or not due for payment, become immediately payable in the event that:
 - 9.9.2. The Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - 9.9.3. A receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

10. TERMINATION AND CANCELLATION

- 10.1. Termination by Supplier
 - 10.1.1. The Supplier may cancel any Order to which these terms and conditions apply at any time before payment of the Price in full is made by the Customer by giving written notice to the Customer. On giving such notice the Supplier shall repay to the Customer any deposit or sum advanced in respect of the Price. The Supplier shall not be liable for any loss and damage whatsoever arising from such cancellation.
 - 10.1.2. Without prejudice to the Supplier's other remedies at law, the Supplier shall be entitled to cancel all or any part of any Order of the Customer which remains unfulfilled and all amounts owing to the Supplier shall, whether or not due for payment, become immediately payable in the event that:
 - 10.1.2.1. The Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - 10.1.2.2. A receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.
- 10.2. Cancellation and Postponement by Customer
 - 10.2.1. In the regrettable circumstances that a Customer cancels or postpones an order notification must be made in writing and the following conditions apply:
 - 10.2.1.1. The Customer cancels or postpones any Order by providing five (5) business days or less notice to the Supplier before the Services, Hire Equipment and Goods were due to be supplied to the Customer - 100% of Order charges will be payable.
 - 10.2.1.2. The Customer cancels or postpones any order by providing between six (6) and twelve (12) business days notice to the Supplier before the Services, Hire Equipment and Goods were due to be supplied to the Customer - 50% of Order charges will be payable.
 - 10.2.1.3. The Customer cancels or postpones any order by providing between thirteen (13) and thirty (30) business days notice to the Supplier before the Services, Hire Equipment and Goods were due to be supplied to the Customer - full deposit payment will be retained.
 - 10.2.1.4. The Customer cancels or postpones any order by providing thirty-one (31) or more business days notice to the Supplier before the Services, Hire Equipment and Goods were due to be supplied to the Customer - full deposit payment will be refunded.
 - 10.2.2. In the event that the Customer cancels the Order, the Customer shall be liable for loss and damage suffered by the Supplier, but limited to:
 - 10.2.2.1. The Price of the full Order as outlined in timeframes 10.4 to 10.7 above
 - 10.2.2.2. Any costs or expenses incurred by the Supplier, including the cost of purchasing the Goods and Hire Equipment from a third party to meet the Customer's Order.

11. RETENTION OF TITLE

- 11.1. Legal and equitable title in the Goods and Hire Equipment shall remain with the Supplier pending full payment of the Price of the Goods to the Supplier; and the Customer warrants that it:
 - 11.1.1. Holds the Goods and Hire Equipment as Bailee for the Supplier and shall return the Goods to the Supplier if so requested;
 - 11.1.2. Is responsible for the Goods and Hire Equipment and is liable to compensate the Supplier for all loss or damage sustained to the Goods whilst they are in the Customer's possession;
 - 11.1.3. Will maintain insurance in respect of the full replacement value of the Goods and Hire Equipment;
 - 11.1.4. Will store the Goods and Hire Equipment separately and in such a manner that the Goods and Hire Equipment are clearly identifiable as the property of the Supplier;
 - 11.1.5. Will not allow any person to have or acquire security interest in the Goods and Hire Equipment whilst the Goods and Hire Equipment are in the Customer's possession.
- 11.2. The Customer may sell and/or use the Goods in the ordinary course of business.
- 11.3. If the Goods are sold by the Customer before the Customer has paid the Price in full to the Supplier, the Supplier shall hold the proceeds of sale in a separate identifiable account on trust for the Supplier and promptly account the Supplier for any such proceeds.
- 11.4. Notwithstanding the provisions above, the Supplier shall be entitled to issue legal proceedings to recover the Price of the Goods.

12. PERSONAL PROPERTY SECURITIES ACT 2009 (Cth) ("PPSA")

- 12.1. This agreement is a security agreement for the purposes of the PPSA, which has the effect of creating a security interest in favour of the Supplier over the Hire Equipment.
- 12.2. If the hire term exceeds or could exceed (if renewed) one year then the security agreement is deemed to be a PPS lease, and the security interest acquired by the Supplier is a purchase money security interest ("PMSI") over the Hire Equipment.
- 12.3. The security interest will continue to apply as an interest in the collateral for the purposes of PPSA with priority over all subsequently registered or unregistered security interests.
- 12.4. The Supplier may register the security interest on the Personal Property Securities Register ("PPSR") under the PPSA without providing further notice to the Customer.
- 12.5. The Customer agrees the Supplier is not required to disclose information pertaining to the Supplier's security interest to an interested party unless required to do pursuant to PPSA or under the general law.
- 12.6. The Customer agrees and undertakes:
 - 12.6.1. To sign any documents and/or provide further information reasonably required by the Supplier to register a financing statement or a financing change statement on the PPSR;
 - 12.6.2. To indemnify the Supplier for all expenses and/or costs incurred by the Supplier in registering a financing statement or a financing change statement on the PPSR including the costs of amending, maintaining, releasing and enforcing any security interests in the Hire Equipment;
 - 12.6.3. Not to register and/or make a demand to alter a financing statement without prior written consent of the Supplier;
 - 12.6.4. To provide the Supplier with 7 days written notice of any change or proposed change to the Customer's business name, address, contact details or other charges in the Customer's details registered on the PPSR;
 - 12.6.5. To waive any rights of enforcement under section 115 of the PPSA for collateral not used predominantly for personal, domestic or household purposes;
 - 12.6.6. To waive any rights to receive verification statement in respect of any financial statement or financing change statement under section 157 of the PPSA.

13. ENTIRE AGREEMENT

- 13.1. The agreement as defined herein constitutes the whole agreement between the Customer and the Supplier.
- 13.2. The agreement is deemed to be made in the State of Queensland and all disputes hereunder shall be determined by the appropriate courts of Queensland.
- 13.3. All prior discussions and negotiations are merged within this document and the Supplier expressly waives all prior representations made by it or on its behalf that are in conflict with any clauses in this document in any way.
- 13.4. Nothing in these terms and conditions is intended to have the effect of contravening any applicable provisions of the Competition and Consumer Act 2010 (Cth) or the Fair Trading Acts in each of the States and Territories of Australia.



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