



THE SYDNEY FRINGE

VENUE REGISTRATION TERMS AND CONDITIONS

Last updated: November 2019

FESTIVAL PRESENTER DETAILS:

The Sydney Fringe Incorporated (ABN: 16 393 987 277)
5 Eliza Street, Newtown NSW 2042
Phone: 02 9550 6087
Email: hq@sydneyfringe.com

Venue Participation in the Sydney Fringe Festival is subject to the following terms and conditions

These terms and conditions must be agreed by a person with the appropriate authority to act on behalf of the Venue.

Registered Venues agree to and acknowledge:

1. The Standard Terms (Annexure A) form part of this Agreement (Principal Agreement), and in the event of any inconsistency between this document and the Standard Terms, the terms and conditions in this document prevail.
2. The Sydney Fringe may amend the Standard Terms from time to time. If this occurs, the Sydney Fringe will notify you of the amendments.
3. The Venue will keep their registered information up-to-date and provide requested copy, artwork and data by the agreed deadlines.
4. The Venue will permit the Sydney Fringe to contact their performing companies directly (if not a Sydney Fringe registered Artist), so that the Sydney Fringe can provide information to all participants
5. The Venue agrees it has the appropriate licences and/or permissions to run and operate performances in the Venue.
6. The Venue will comply with applicable licencing, employment, and health and safety legislation, as required by law.
7. The Venue will effect and maintain applicable insurances, including Public Liability for the value of \$20,000,000, and to extend required by law, Workers Compensation.
8. That Sydney Fringe will have an Agreement directly with the Venue and another with the Event Presenter. The Venue should enter into a (Venue Hire/Other) Agreement directly with the Event Presenter.
9. The Venue Hire/other Agreement entered into with the Sydney Fringe Event Presenter will be in plain language, fair and reasonable, clearly outlining financial obligations, payment schedules, and any penalties that may apply.
10. The Sydney Fringe will not be responsible for any costs associated with the Performances at the Venue.
11. The Venue will provide the Event Producer/s with floor plans, technical information, Venue information, and specifications of venues and spaces which are as detailed and up-to-date as

practicable.

12. The Venue will assist the Event Producer with equipment, technical and facility services according to the agreement reached between the Venue and the Event Producer.
13. The Venue agrees that any fees and charges for equipment, technical and facility services are to be agreed directly with the Event Producer, and to set out such charges in detail in a separate agreement with the Event Producer.
14. The Venue will provide appropriate technical and front of house staff for each Performance presented at the Venue as agreed and set out in a separate agreement with the Event Producer;
15. The Venue will keep the Sydney Fringe informed of any major issues with landlords or participants which may impact on the Festival as a whole, and of any major issues which may prevent performing companies from presenting their work or receiving their settlements.
16. The Venue will meet any required deadlines for advertising or other payments.
17. The Venue will ensure best practice in venue operation and the provision of training, requiring venue staff to conduct themselves in a professional manner avoiding all rude, aggressive or threatening behaviour, discriminatory or unwelcome behaviour of a sexual nature.
18. The Venue will seek to work amicably, with other venues and the Sydney Fringe, for the future development of the Sydney Fringe with a view to supporting and maintaining the stability of the Sydney Fringe Festival and its greater reputation.
19. The Venue agrees to acknowledge Sydney Fringe when promoting the Venue or other activities associated with the Performance/s held at the Venue as part of the Event and only use approved logos as provided by Sydney Fringe, and include the Sydney Fringe website and booking phone number on all print and online collateral relating the Performances at the Venue.
20. The Venue agrees that Sydney Fringe may promote the Venue and will make available to the Venue various displays, posters and other marketing collateral for the Venue to use to promote the Event and the Venue's inclusion as a participating Event venue.
21. The Venue will strive towards providing the highest level of accessibility at their venues.
22. The Venue agrees that Sydney Fringe is entitled to an allocation of house seats for the overall run of each Performance for use by Sydney Fringe for staff, sponsors and media as required, unless the Performance is subject to extremely limited capacity.
23. The Venue agrees to allow registered Sydney Fringe artists to attend the Sydney Fringe performance/s at the Venue at no charge when the Artist presents their 'Sydney Fringe Artist Pass' at the Performance once ticket sales are closed and if seats are available.
24. The Venue agrees to provide Sydney Fringe with reports detailing:
 - All tickets sold by the Venue (eg Door sales);
 - Bar sales (if applicable) relating to Performances (for reporting purposes only (anonymous of venue name));
 - Postcode data of patrons attending Performances at the Venue (if collected);
25. Sydney Fringe will provide online ticketing services for all performances (unless a separate Partnership Agreement exists with the Sydney Fringe). The Agreement between the Venue and the Event Presenter should include details of how door/other sales will be managed and documented, and settlement of door/other sales.
26. Settlement of online ticket sales will be directly between the Sydney Fringe and the Event Presenter. Sydney Fringe will not enter into any split settlements with the Venue.
27. Sydney Fringe takes no responsibility for any Agreements entered into by Venue with any Sydney Fringe Event Presenters or Sydney Fringe Partners.
28. The Venue agrees that the Event Presenter may cancel their event at any time, and the Sydney Fringe will not be responsible for any losses, damages, financial or otherwise as a result of this cancellation
29. The Venue agrees to ensure that for any presentations within the Venue that sits in the Sydney Fringe program and are marketed to audiences under 18 years of age, the Event Promoter and the Venue obtain a copy of and adhere to Sydney Fringe Policies for Kids' Events.

Where a major breach of this Agreement by a Venue occurs, the Sydney Fringe reserves the right to:

- Contact the artists performing at the venue to inform them of potential problems and outline the support the Sydney Fringe can offer;
- Inform authorities such as the Council or Police about issues which fall within their remit;
- Refuse the venue permission to register in subsequent years, and advise artists not to use them should they operate without registering.

The Sydney Fringe will give the registered venue reasonable notice before carrying out of the above actions, to provide an opportunity for the issues to be resolved.

Relationship between Event Presenters (Artist) and Venue

The Sydney Fringe assists Artists and Venues to meet one another so that they can find an artist/venue that suits their requirements. The relationship between an independent venue and an independent artist is directly between each other, and not with the Sydney Fringe. That is, negotiations should take place directly between the Venue and the Artist. It is the responsibility of the Artist (or venue) to register the Event with the Sydney Fringe, and ensure they have appropriate Agreements in place. Artists must ensure they have contact with the Venue to confirm details.

Definitions and Interpretation

In this Agreement, unless the contrary intention appears:

- **Event** means the Sydney Fringe Festival
- **Agreement** means this agreement, including any schedule, attachment or appendix to it;
- **Artist Pass** means an official artist pass awarded by the Sydney Fringe to registered artists;
- **Event Presenter** means the person or person's responsible for the Performance/s at the Venue
- **Performance** means a performance which forms part of the Event; and
- **Standard Terms** means the terms and conditions of the Event which have been included as Annexure A.

Annexure A – Standard Terms

1 Introduction

- 1.1 These are the terms and conditions referred to in the Principal Agreement.
- 1.2 These standard terms and conditions apply to any contract entered into by the Sydney Fringe, including under the Principal Agreement.

2 Intellectual Property Rights

- 2.1 The Party acknowledges that it will not acquire any rights in a Sydney Fringe Mark or Intellectual Property by virtue of entering into or performing its obligations under the Agreement.
- 2.2 The Party must notify the Sydney Fringe immediately upon becoming aware of:
 - (1) any actual or suspected infringement of a Sydney Fringe Mark or Sydney Fringe's Intellectual Property; or
 - (2) any third party claim of infringement of their Intellectual Property from the use of a Sydney Fringe Mark or Sydney Fringe's Intellectual Property.
- 2.3 If requested, the Party must co-operate fully with and provide all reasonable assistance to the Sydney Fringe in stopping any infringement or defending a claim.

3 Insurance

- 3.1 The Party will, for so long as any obligations remain in connection with this contract, effect and maintain:
 - (1) public liability insurance for the value of \$20,000,000; and
 - (2) to the extent required by Law, workers' compensation insurance.
- 3.2 The Party is responsible for the cost and implementation of public liability insurance and workers' compensation insurance described above in clause 3.1.
- 3.3 The Sydney Fringe is not responsible for the provision of public liability insurance or workers' compensation insurance in respect of the Event or any Party.

4 Event cancellation

- 4.1 The Sydney Fringe reserves the right to cancel the Event for any reason. The Sydney Fringe shall notify the Party of the cancellation as soon as possible.
 - (1) The Sydney Fringe shall not be in breach of the Agreement by virtue of that cancellation or abandonment;
 - (2) on the Sydney Fringe notifying the Party of such cancellation the Agreement shall automatically terminate and the provisions of clause 10 shall apply.

5 Confidentiality

5.1 This clause 5 does not impose obligations on a party concerning information which the party proves is generally available to the public, is required to be disclosed by any law or the Parties agree in writing is not confidential or may be disclosed.

5.2 The Parties agree:

- (1) to treat as confidential and not to disclose, duplicate, use or permit the use at any time in any way, other than in performance of its obligations under the Agreement, any and all Confidential Information; and
- (2) to limit the disclosure of the Confidential Information to those of its employees to whom such disclosure is strictly necessary for the purpose of performing its obligations under the Agreement and to ensure that they keep the Confidential Information confidential.

6 Announcements

6.1 Subject to clause 6.2, the Party shall not make, or permit any person to make, any public announcement, communication or circular (announcement) concerning the existence, subject matter or terms of the Agreement, the wider transactions contemplated by it, or the relationship between the parties, without the prior written consent of the Sydney Fringe (such consent not to be unreasonably withheld or delayed).

6.2 Where an announcement is required by law or any governmental or regulatory authority, or by any court or other authority of competent jurisdiction, the party required to make the announcement shall promptly notify the other party. The Party concerned shall make all reasonable attempts to agree the contents of the announcement before making it.

7 Warranties

7.1 The Parties mutually agree, represent and warrant in favour of each other that:

- (1) they are the beneficial owner of their Mark and Intellectual Property and that their Mark and Intellectual Property does not infringe any third party's Intellectual Property; and
- (2) any use by a Party of the other Party's Mark in accordance with the Agreement will not constitute an infringement or misappropriation of the rights of the any person.

8 Indemnity

8.1 The Party indemnifies and will keep indemnified the Sydney Fringe (including all of its servants, agents, officers and employees) from and against any and all claims, actions, proceedings, demands, costs or expenses arising directly or indirectly from:

- (1) a breach or non-performance of any of its obligations or warranties under the Agreement;
- (2) the use of the Sydney Fringe Mark or the Sydney Fringe's Intellectual Property other than in accordance with the Agreement;
- (3) the Party's negligence, or wilful act or omission.

8.2 A Party's liability to indemnify the Sydney Fringe under clause 8 will be reduced proportionately to the extent that such claims, actions, proceedings, demands, costs or expenses arise directly as a consequence of the Sydney Fringe's negligence, or wilful act or omission.

9 Termination

9.1 Either Party may terminate the Agreement at any time during the Term by written notice to the other Party if the other Party (Defaulting Party):

- (1) fails to comply with any provision of the Agreement and that the Defaulting Party does not remedy that failure within 10 Business Days after written notice to the Defaulting Party requiring it to be remedied;

- (2) fails to comply with any provision of the Agreement and the failure is not capable of remedy;
- (3) becomes bankrupt, insolvent or subject to any form of insolvency, administration or is wound up; or
- (4) ceases to carry on business in the normal course.

9.2 The Sydney Fringe may immediately terminate the Agreement at any time by written notice to the Party where:

- (1) the Party is subject to a change in control without obtaining the prior written consent of the Sydney Fringe; or
- (2) in the opinion of the Sydney Fringe the name, goodwill, reputation or interest of the Sydney Fringe or the Event is at risk.

10 Consequences of Termination

10.1 On expiration or termination of the Agreement:

- (1) each Party will cease to have any rights to use the other Party's Mark or Intellectual Property;
- (2) each Party must immediately cease to use, publish or distribute the other Party's Mark and Intellectual Property, hold itself out as being entitled to use or reproduce the other Party's Mark or Intellectual Property, or suggest, in any way, a relationship between the Sydney Fringe and the Party;
- (3) each Party must in the manner and within the timeframe required by the other Party destroy all material on which the other Party's Mark appear or which in any way may suggest a relationship between the Sydney Fringe and the Party; and
- (4) unless agreed otherwise by the Parties, the Parties continue to be bound by the obligations under clauses 2 (Intellectual property rights), 4 (Event cancellation), 5 (Confidentiality), 7 (Warranties), 8 (Indemnity), 9 (Termination), 10 (Consequences of Termination), 11 (Limitations on liability), 12 (Disputes), 13 to 23 (Miscellaneous) (to the extent that these obligations are applicable to them) and 24 (Definitions and interpretation), and any other obligations which by their nature are intended to survive the Agreement.

10.2 Termination of the Agreement does not prejudice any cause of action or claim of any Party arising out of a breach of the Agreement by the other Party.

11 Limitation of liability

11.1 Nothing in the Agreement shall limit or exclude a Party's liability:

- (1) for death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors; or
- (2) for fraud or fraudulent misrepresentation.

11.2 Subject to clause 11.1, under no circumstances shall a party be liable to the other for any of the following, whether in contract, tort (including negligence) or otherwise:

- (1) loss of revenue or anticipated revenue;
- (2) loss of savings or anticipated savings;
- (3) loss of business opportunity;
- (4) loss of profits or anticipated profits;
- (5) wasted expenditure; or

(6) any indirect or consequential losses.

11.3 Subject to clauses 11.1 and 11.2, the Sydney Fringe's maximum aggregate liability in contract, tort (including negligence) or otherwise, however arising, under or in connection with the Agreement shall be limited to the amount of fees paid under or pursuant to the Agreement.

12 Disputes

12.1 Any dispute arising in connection with the Agreement which cannot be settled by negotiation between the Parties or their representatives must be formally referred to the respective chief executive or equivalent of each Party.

12.2 Subject to clause 11, before resorting to litigation, the Parties must in good faith explore alternative dispute resolution including the prospect of mediation, expert determination or arbitration.

12.3 Nothing in this clause prevents a Party from seeking urgent equitable relief before an appropriate court.

13 GST

13.1 In this clause 13:

- (1) "GST" means GST as defined in A New Tax System (Goods and Services Tax) Act 1999 as amended ("GST Act") or any replacement or other relevant legislation and regulations;
- (2) words or expressions used in this clause which have a particular meaning in the "GST law" (as defined in the GST Act, and also including any applicable legislative determinations and Australian Taxation Office public rulings) have the same meaning, unless the context otherwise requires;
- (3) any reference to GST payable by a party includes any corresponding GST payable by the representative member of any GST group of which that party is a member;
- (4) any reference to an input tax credit entitlement by a party includes any corresponding input tax credit entitlement by the representative member of any GST group of which that party is a member; and
- (5) if the GST law treats part of a supply as a separate supply for the purpose of determining whether GST is payable on that part of the supply or for the purpose of determining the tax period to which that part of the supply is attributable, such part of the supply is to be treated as a separate supply.

13.2 Unless GST is expressly included, the consideration to be paid or provided under any other clause of the Agreement for any supply made under or in connection with the Agreement does not include GST.

13.3 To the extent that any supply made under or in connection with the Agreement is a taxable supply, the GST exclusive consideration to be paid or provided for that taxable supply is increased by the amount of any GST payable in respect of that taxable supply and that amount must be paid at the same time and in the same manner as the GST exclusive consideration is to be paid or provided.

13.4 A party's right to payment under clause 13.3 is subject to a valid tax invoice being delivered to the party who is the recipient of the taxable supply.

13.5 To the extent that a party is required to reimburse or indemnify another party for a loss, cost or expense incurred by that other party, that loss, cost or expense does not include any amount in respect of GST for which that other party is entitled to claim an input tax credit.

14 Entire understanding

The Agreement is the entire agreement and understanding between the Parties on everything connected with the subject matter of the Agreement and supersedes any prior agreement or understanding on anything connected with that subject matter.

15 Relationship of the Parties

15.1 The Agreement does not create a partnership, joint venture, employment or agency relationship between the Parties.

15.2 Each Party must not incur any expenditure on behalf of any other Party, pledge its credit; or bind it to any contractual obligation whatsoever without prior written approval signed by the other Party.

16 Severability

If any provision in the Agreement is unenforceable, illegal or void or makes the Agreement or any part of it unenforceable, illegal or void, then that provision is severed and the rest of the Agreement remains in force.

17 Assignment

The Party may not assign or otherwise deal with any of its rights or duties under the Agreement without the prior written consent of the Sydney Fringe.

18 Variation

18.1 Variation of the Agreement is not effective unless it is in writing and signed by both Parties.

18.2 Subject to clause 18.1, the Sydney Fringe reserves the right to alter the terms of the Agreement, in consultation with the Party, in the instance of any material operational changes to the Event.

19 Waiver

19.1 A Party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.

19.2 The exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right.

19.3 A waiver is not effective unless it is in writing.

19.4 Waiver of a power or right is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.

20 Notices

20.1 The primary means of communication in relation to the Event or the Agreement must take place by using the contact details specified by the Parties in the Agreement.

20.2 A notice or other communication connected with the Agreement (Notice) has no legal effect unless it is in writing.

20.3 All notices under the Agreement must be hand delivered, sent by certified mail, facsimile or email to the Party to which the notice is addressed.

20.4 If the Notice is sent or delivered in a manner provided by clause 20.3, it must be treated as given to and received by the Party to which it is addressed:

- (1) if hand delivered, on delivery;
- (2) if sent by post on the 2nd Business Day after posting;
- (3) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the total number of pages of the notice; or
- (4) if sent by email, on receipt by the sender of a transmission send confirmation showing the relevant number of pages, the correct destination computer email address and confirmation of receipt.

20.5 The Parties' details for delivery of notices are as specified in the Agreement. A Party may provide or change its address for service, facsimile number or email address by giving Notice of that change to each other Party.

21 Force majeure

Neither Party is liable for any failure to perform or delay in performing its obligations under the Agreement if that failure or delay is due to anything beyond that Party's reasonable control. If that failure or delay exceeds 30 days, the other Party may terminate the Agreement by giving 14 days' notice to the other Party.

22 Execution of counterparts

The Agreement may be executed in any number of counterparts. Each counterpart is an original but the counterparts together are one and the same agreement.

23 Governing law

The law governing the Agreement is the law of New South Wales. The Parties submit to the non exclusive jurisdiction of the courts of New South Wales and of the Commonwealth of Australia.

24 Definitions and interpretation

24.1 In these Terms and Conditions, unless the contrary intention appears:

- (1) Agreement means the Principal Agreement, including any schedule, attachment or appendix to it and these Terms and Conditions;
- (2) Business Day means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act is to be performed or a payment is to be made;
- (3) Confidential Information means all confidential information (however recorded or preserved) disclosed by the Sydney Fringe or its representative to the Party whether before or after the date of the Agreement, including the Agreement;
- (4) Event means the 2018 the Sydney Fringe Festival;
- (5) Intellectual Property includes any:
 - (a) copyright;
 - (b) design, patent, trademark, semiconductor, circuit layout or plant breeder rights (whether registered, unregistered or applied for);
 - (c) trade, business, company or domain name; and
 - (d) know how, inventions, processes, confidential information (whether in writing or recorded in any form);

and any other proprietary, licence or personal rights arising from intellectual activity in the business, industrial, scientific or artistic fields;

- (6) Law includes any requirement of any statute, rule, regulation, proclamation, order in council, ordinance or by law whether commonwealth, state, territorial or local, and prudential standards, requirements and approvals (including conditions) of any relevant jurisdiction or a governmental agency that have the force of law;
- (7) Mark means any the Sydney Fringe Mark or Party's Mark, as may be applicable;
- (8) Parties means the Sydney Fringe and the Party;
- (9) Party means the counterparty to the Sydney Fringe under the Principal Agreement;

- (10) Party's Mark means the logo or mark of the Party and its related bodies corporate;
- (11) the Sydney Fringe means the Newtown Entertainment Precinct Incorporated ABN 16 393 987 277;
- (12) the Sydney Fringe Mark means any logo or mark of the Sydney Fringe as amended by the Sydney Fringe from time to time;
- (13) Term means the term of the Agreement as specified in the Agreement; and
- (14) Terms and Conditions means the terms and conditions set out in this document.

24.2 Reference to:

- (1) one gender includes the others;
- (2) the singular includes the plural and the plural includes the singular;
- (3) a person includes a body corporate; and
- (4) dollars means Australian dollars unless otherwise stated.

24.3 A provision of the Agreement must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Agreement or the inclusion of the provision in the Agreement.

24.4 If an act must be done on a specified day which is not a Business Day, it must be done instead on the next Business Day.

