

GENERAL CONDITIONS OF HIRE

1. INTERPRETATION

- 1.1. In these Conditions:-
 - 1.1.1. clause headings are for convenience only and are not to be used in its interpretation;
 - 1.1.2. an expression which denotes -
 - 1.1.2.1. any gender includes the other genders;
 - 1.1.2.2. a natural person includes a juristic person and *vice versa*; and
 - 1.1.2.3. the singular includes the plural and *vice versa*;
 - 1.2. In these Conditions, unless the context indicates a contrary intention, the following words and expressions bear the meanings assigned to them and cognate expressions bear corresponding meanings:-
 - 1.2.1. "Downings" means Downings Marquee Rentals (Pty) Ltd, Reg. No. 2016/147753/07; abbreviated as "DMR"
 - 1.2.2. the "Client" means the person/entity identified as such in **item 1** upon the Contract Schedule;
 - 1.2.3. the "Parties" means Downings and the Client and shall include the User, where applicable or appropriate, or a reference to any of them;
 - 1.2.4. the "Site" means the site for the erection of the Equipment identified in item 4 upon the Contract Schedule;
 - 1.2.5. the "Equipment" means the goods identified in **item 10** upon the Contract Schedule and shall include, where applicable or appropriate, a reference to any components thereof;
 - 1.2.6. the "Services" means the services identified in **item 11** upon the Contract Schedule;
 - 1.2.7. "Quotation" means any applicable quotation for the hire of Equipment and the rendering of the Services or any portion thereof, for the conduct of the Event, given by Downings to the Client;
 - 1.2.8. the "Contract Schedule" means the contract schedule overleaf or otherwise linked to these Conditions;
 - 1.2.9. "Statutory Approvals" means any approval required in terms of any statute, regulation, ordinance and/or rule applicable in relation to the Site, the Equipment, the Services and/or the erection and use of the Equipment at or near the Site and any engineers certificate relating to the erection of the Equipment;
 - 1.2.10. "Manual" means any manual and other document issued by Downings dealing with matters relating to the erection, use and/or maintenance of the Equipment or any aspect thereof;
 - 1.2.11. "Agreement" means any agreement between the Parties relating to the hire of Equipment and/or the provision of Services envisaged in the Contract Schedule;
 - 1.2.12. the "Event" means the Function/s envisaged at the Site on the Applicable Days described in item 8 of the Contract Schedule;
 - 1.2.13. the "Applicable Day/s" means the day/s identified in **item 9** of the Contract Schedule and which refers to the contracted number of days, months, years the equipment is either on the Client's site and/or remains unavailable to Downings.
 - 1.2.14. the "Access Date" means the date described in **item 5** of the Contract Schedule, being the date upon and from which Downings shall be given access to the Venue;
 - 1.2.15. the "Removal Date" means the date identified in **item 6** of the Contract Schedule;
 - 1.2.16. the "Incidental Services" means the facilities and services described in **item 12** of the Contract Schedule and shall include, unless specifically excluded, the services and facilities described in sub-clauses 4.1.6 – 4.1.12, 4.1.15, 4.1.17, 4.1.18, 4.1.20 – 4.1.25;
 - 1.2.17. the "User" means the intended user of the Equipment at the Venue.
 - 1.2.18. the "Signatory" means the person who is duly authorised to sign the Contract and the General Conditions of Hire
 - 1.3. Any substantive provision, conferring rights or imposing obligations on a Party and appearing in any of the definitions in this clause 1 or elsewhere in these Conditions, shall be given effect to as if it were a substantive provision in the body of these Conditions.
 - 1.4. Words and expressions defined in any clause shall, unless the application of any such word or expression is specifically limited to that clause, bear the meaning assigned to such word or expression throughout these Conditions.
 - 1.5. Subject to clauses 1.7 and 1.14, defined terms appearing in these Conditions in title case shall be given their meaning as defined, while the same terms appearing in lower case shall be interpreted in accordance with their plain English meaning.
 - 1.6. A reference to any statutory enactment shall be construed as a reference to that enactment as at the Signature Date and as amended or substituted from time to time.
 - 1.7. Reference to "days" shall be construed as calendar days unless qualified by the word "business", in which instance a "business day" will be any day other than a Saturday, Sunday or public holiday as gazetted by the government of the Republic of South Africa from time to time. Any reference to "business hours" shall be construed as being the hours between 08h00 and 17h00 on any business day. Any reference to time shall be based upon South African Standard Time.
 - 1.8. Unless specifically otherwise provided, any number of days prescribed shall be determined by excluding the first and including the last day or, where the last day falls on a day that is not a business day, the next succeeding business day.
 - 1.9. Where figures are referred to in numerals and in words, and there is any conflict between the two, the words shall prevail, unless the context indicates a contrary intention.
 - 1.10. No provision herein shall be construed against or interpreted to the disadvantage of a Party by reason of such Party having or being deemed to have structured, drafted or introduced such provision.
 - 1.11. The expiration or termination of these Conditions shall not affect such of the provisions of these Conditions as expressly provide that they will operate after such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.
 - 1.12. The words "include" and "including" mean "include without limitation" and "including without limitation". The use of the words "include" and "including" followed by a specific example or examples shall not be construed as limiting the meaning of the general wording preceding it.
 - 1.13. Any reference in these Conditions to "these Conditions" or any other agreement or document shall be construed as a reference to these Conditions or, as the case may be, such other agreement or document, as amended, varied, novated or supplemented from time to time.
 - 1.14. These Conditions incorporate the Contract Schedule and any annexures thereto, which Contract Schedule and annexures shall have the same force and effect as if set out in the body of these Conditions. In these Conditions the words "clause" or "clauses" and "annexure" or "annexures" refer to clauses of and annexures to these Conditions and/or the Contract Schedule.
 - 1.15. In the event that no Contract Schedule has been executed the details concerning the Client, Equipment, Services, Site and/or any other matter relevant to the Agreement will be extracted from other relevant written communications exchanged between the Parties.
- ### 2. APPLICATION
- 2.1. These Conditions shall apply to any agreement in terms whereof Downings hires out Equipment for a limited period of time for a specific event or series of events or use at a specific site and renders Services in connection therewith, to the exclusion of all other terms and/or conditions save for those contained in a written document duly signed on behalf of Downings, in which event such additional terms and/or conditions shall only be applicable to the specific agreement to which they relate.
 - 2.2. These Conditions may only be waived in a written document signed by the managing member of Downings or any person authorised by him in writing to do so.
 - 2.3. It is specifically recorded that Downings has separate conditions relating to the sale of Equipment;
- ### 3. QUOTATIONS, BOOKING MANDATE, ORDERS AND CANCELLATION
- A quotation issued on behalf of Downings shall not constitute a contractual offer by it, however, the Client **mandates** Downings on quoting, to book the supply of Equipment, Services and Incidental Services for the Event as being quoted for, for a period not exceeding 30 days from date of Quotation and the Client agrees, during this period, not to withdraw the mandate without either offering Downings a 1st Refusal to negotiate a Contract or informing Downings of the cancellation of the event. Where the Client acts as an intermediary between themselves and their client, the Client undertakes to obtain a mandate from their client with the same terms of the clause being applicable.
- 3.1. Downings shall be entitled to withdraw, alter, amend and/or add to any quotation given by it or on its behalf.
 - 3.2. An acceptance by the Client of a quotation, whether conditionally or unconditionally, shall be an offer by the Client to hire the Equipment and/or have the Services rendered, as the case may be.
 - 3.3. No binding contract shall come into existence until Downings issues a written acceptance of the offer/order to the Client or (if earlier) Downings delivers or tenders delivery of the Equipment and/or performs the Services forming the subject matter of the offer/order, or a material aspect thereof.
 - 3.4. **Cancellation of Contract:** In the event of the Client cancelling the hire after confirming an order/contract, Downings reserves the right to charge cancellation fees as follows:
 - Cancellation less than 60 calendar days prior to Access date – 25% of total hire charge as contracted;
 - Cancellation less than 30 calendar days prior to Access Date – 40% of total hire charge as contracted.
 - 3.5. **Cancellation of Quotation Mandate:**
 - 3.6. Notwithstanding the cancellation fees in clause 3.4, unless the event has been cancelled, you should not enter into any other contract with any 3rd party which will rely upon the hire and use of the equipment during the applicable

days for a period of 30 calendar days after the date of the contract.

4. PRICES

- 4.1. Unless otherwise expressly stipulated in writing the prices quoted for the hire of the Equipment and/or the rendering of the Services do not include:-
 - 4.1.1. Value Added Tax;
 - 4.1.2. insurance;
 - 4.1.3. loading, unloading and carriage;
 - 4.1.4. special packaging;
 - 4.1.5. the levelling of and/or any earthworks on the Site;
 - 4.1.6. access and/or delivery to the Site (in the event that direct access cannot be obtained by heavy duty vehicles and machinery);
 - 4.1.7. the provision of services to the Site which shall include lighting, water, electricity, stormwater drainage, sewage and toilets and/or the connection with any such services;
 - 4.1.8. compacting the Site;
 - 4.1.9. soil conditions on the Site (any adverse soil conditions may require additional or non-standard stabilisation);
 - 4.1.10. services (the Client shall be required to furnish Downings with an accurate Site map indicating the position and depth of all services which shall include water, electricity, pipes, stormwater, drainage, cables, irrigation, gas and/or any other services which may be impacted by the Equipment and/or the Services or may cause any risk to the use of the Equipment and/or the rendering of the Services). Downings shall be entitled to adjust the positioning of the Equipment to accommodate services so identified and/or to require that such services be relocated;
 - 4.1.11. compliance with any statutory and/or regulatory requirements linked to the Site, the erection of the Equipment and/or the use of the Equipment upon the Site including all statutory approvals, which the Client shall obtain;
 - 4.1.12. fire safety;
 - 4.1.13. inclement weather conditions;
 - 4.1.14. limitations in respect of working hours to deliver the Equipment and/or to render Services;
 - 4.1.15. clearing of the Site and/or any obstacles on, at or near the Site which cannot and/or may not be removed;
 - 4.1.16. any foundations or similar support/stabilising structures that may be required;
 - 4.1.17. removing/relocating and/or restoring items upon the Site;
 - 4.1.18. any additional facts and/or circumstances identified on the quote or in any written communications from Downings linked thereto;
 - 4.1.19. delays and/or interruption caused by the Client or any other service provider or contractor of the Client, the owner of the land upon which the Site is situated and/or any entity in control of the Site;
 - 4.1.20. the repair or reinstatement of the Site;
 - 4.1.21. any variations to the Equipment and/or Services;
 - 4.1.22. relocating the Equipment or any part thereof;
 - 4.1.23. security at the Site;
 - 4.1.24. secure weather tight storage for the Equipment and tools and machinery of Downings and/or any of its contractors and/or sub-contractors on the Site;
 - 4.1.25. any additional costs linked to any force majeure event described in clause 11 below;
 - 4.1.26. any variation/s sought by the Client;
 - 4.1.27. any transportation of the Equipment and/or any machinery required to perform any of the services described in this clause.
 - 4.2. In the event that any of the facts and circumstances reflected in sub-clause 4.1 of this clause result in any increase to Downings' costs of performing its obligations in terms of any Agreement, Downings shall be entitled, in addition to the price agreed to between the Parties, to charge and recover from the Client upon demand the direct and indirect costs or a reasonable charge in respect thereof, whichever shall be the greater.
- ### 5. TERMS OF PAYMENT
- 5.1. Unless otherwise stipulated in **item 7** on the Contract Schedule the consideration for the hire of the Equipment and the consideration for the rendering of the Services shall become payable as follows:
 - 5.1.1. 50% (Fifty percent) forthwith upon acceptance of an offer/order;
 - 5.1.2. 25% (twenty five percent) 7 (seven) business days prior to the Access Date;
 - 5.1.3. 25% (twenty five percent) 48hrs (2 working days) prior to the event date or access date.
 - 5.1.4. Any outstanding balance forthwith upon delivery of the Equipment to the Site or the tender of the delivery of the Equipment to the Site if delivery is frustrated, refused and/or delayed for any reason whatsoever other than solely breach or default by Downings.
 - 5.2. All payments to be made in terms hereof shall be made by way of electronic transfer into the account of Downings specified on the Contract Schedule and, failing a Contract Schedule, nominated by Downings in writing.
 - 5.3. The Client shall not withhold, defer or make any deduction from any payment due to Downings, whether or not Downings is indebted to the Client or in breach of any obligation under any agreement.
 - 5.4. The Client shall be liable for interest on all overdue amounts payable in terms hereof at a rate 2% (two percent) higher than the prime overdraft rate per annum of First National Bank, a division of FirstRand Bank Limited, reckoned from the due date of such amount until it is paid.
 - 5.5. Time for payment shall be of the essence and the failure to timeously pay will entitle Downings, without prejudice to any of its other rights and remedies and in particular without prejudice to the rights and remedies referred to in clause 13 below, to:
 - 5.5.1. claim damages;
 - 5.5.2. accelerate payment of any other amount which may become due and payable under and by virtue of the Agreement;
 - 5.5.3. suspend the performance of any further obligations under and by virtue of the Agreement until such time as the applicable payment/s (including any accelerated payment) has/have been made;
 - 5.5.4. withdraw any performance already made (if the breach is remedied Downings shall be entitled to claim all costs, damages and expenses linked and/or relating to the exercise of any remedy in terms of this clause, which amount shall be payable upon demand and in any event before Downings shall be obliged to further perform its obligations); and/or
 - 5.5.5. prevent any use of the Equipment.
- ### 6. DELIVERY AND RENDERING OF SERVICES
- 6.1. The Client shall:
 - 6.1.1. procure that Downings shall have full access to the Site and the Incidental Services from 07h00 on the Access Date or such earlier time as may be required by Downings by written notice to the Client;
 - 6.1.2. procure that all Incidental Services that require to be performed prior to the erection of the Equipment and/or the rendering of the Services shall have been rendered and completed prior to 07h00 on the Access Date.
 - 6.2. In the event that the Client is unable or unwilling to accept delivery of the Equipment (when it is ready for delivery) or Downings is unable to deliver the Equipment and/or render the Services because the Client has not provided appropriate instructions, access, authorities/Statutory Approvals and/or Incidental Services Downings shall:
 - 6.2.1. not be liable for any failure by it to comply with time periods imposed upon it in terms hereof;
 - 6.2.2. be entitled to store the Equipment until actual delivery, in which case the Client will be liable for all costs (whether direct or indirect) relating to transport, loading, offloading, handling, storage and insurance, which shall become payable prior to any further performance by Downings. Downings shall be entitled to charge a reasonable fee determined by it in respect of the storage of the Equipment if it stores the same at its premises; and
 - 6.2.3. be entitled to exercise any other remedy for breach of contract available to it in terms hereof.
 - 6.3. The Client shall procure that Downings and/or its contractors shall have free and undisturbed access to and control upon the Site during the process of delivery and/or erecting the Equipment and/or rendering the Services.
 - 6.4. The Client shall ensure that it shall obtain all Statutory Approvals for the erection and use of the Equipment upon the Site prior to the delivery thereof and shall provide Downings with proof thereof, should it so require. The Client undertakes not to utilise the Equipment or any part thereof until all Statutory Approvals have been obtained.
 - 6.5. Downings shall be entitled to inspect the Equipment at any time during the period of this Agreement and prevent any act or omission which in its reasonable view may place the Equipment or any user of the Equipment at risk.
- ### 7. SIZE, SPECIFICATIONS AND SAMPLES
- 7.1. Downings will make reasonable endeavours to procure that:
 - 7.1.1. the Equipment is of the size/s specified (slight variations in size may occur); consistency is maintained in colour, if it has been specified in **item 13** of the Contract Schedule (variations from colour samples may occur); and Downings will not be liable to the Client for any variations and inconsistencies provided that the same are within a reasonable margin.
 - 7.2. Unless specifically specified on the Contract Schedule the span of the marquee/s may vary provided that the square meterage remains within reason in the extent specified in **item 10** of the Contract Schedule.
- ### 8. ACCEPTANCE OF EQUIPMENT AND SERVICES
- 8.1. Forthwith upon delivery of the Equipment the Client shall notify Downings and the contractor making delivery, in writing, of:
 - 8.1.1. any visible defect in the Equipment or any part thereof;
 - 8.1.2. any short delivery or wrongful delivery of the Equipment or any component thereof.
 - 8.2. In the event that Downings has agreed to render any Services in relation to the Equipment the Client shall:
 - 8.2.1. immediately and in writing notify Downings of any shortcoming in the Services rendered;

- 8.2.2. furnish Downings with a written snag list, on Downings's prescribed form, reflecting in detail any defect, deficiency and/or claim in respect of the Equipment and/or Services prior to the signing off of the Equipment and the Services and any Ancillary Services. In the event that the Client does not furnish Downings with a snag list as envisaged herein within 2 (two) hours after being called upon to do so, the Client shall be deemed to have accepted that;
- 8.2.2.1. all the Equipment has been supplied in good order and condition in accordance with the Agreement; and
- 8.2.2.2. the Services and/or Ancillary Services have been rendered to the satisfaction of the Client
- 8.2.3. sign off the Equipment, Services and/or Incidental Services before taking possession of and/or using the Equipment and/or the Services and/or the Ancillary Services or any portion or aspect thereof.
- 8.3. Thereafter the Client shall be deemed to have accepted that:
- 8.3.1. all the Equipment has been supplied in good order and condition in accordance with the Agreement; and
- 8.3.2. the Services have been rendered to the satisfaction of the Client and the Client shall have no claims in respect thereof save for latent defects.
- 8.4. If a latent defect is detected the Client shall immediately notify Downings thereof in writing.
- 8.5. In the event that valid notice in terms of clause 8.2, 8.3 or 8.4 has been given, and subject to the further terms hereof, Downings shall at its election repair or replace any part of the Equipment or re-perform the Services or any aspect thereof or give an appropriate rebate, determined by it, in respect of the applicable shortcoming.
- 8.6. Downings shall not be liable to the Client under any circumstances in the event that the Client:
- 8.6.1. does not utilise, care for and maintain the Equipment in the manner suggested in the Manual; **INITIALS**
- 8.6.2. utilises the defective Equipment/Services;
- 8.6.3. alters, repairs or makes any change to the Equipment without the prior written consent of Downings;
- 8.6.4. does not follow Downings' written instructions relating to the storage, installation, commissioning, maintenance, care for and/or use of the Equipment, or, if there are none or if they are incomplete, good trade practices;
- 8.6.5. fails to obtain the relevant Statutory Approvals;
- 8.6.6. takes possession of or uses the Equipment and/or any aspect of the Services before signing the same off.
- 8.7. The Client and/or the User shall not interfere with the Equipment or any part thereof and/or affix any item to the Equipment without the specific prior written consent of Downings.
- 8.8. The Client and the User shall not do or omit to do anything which may adversely impact on any insurance taken out by Downings in respect of the Equipment and/or the use thereof.
- 9. EXCLUSION AND LIMITATION OF LIABILITY AND INDEMNITY**
- 9.1. The Client and the User shall have no claim in damages against Downings and may not withhold or delay any payment due to Downings by reason, directly or indirectly, of:
- 9.1.1. a breach by Downings of any of its obligations under any Agreement or these Conditions;
- 9.1.2. any act or omission of Downings or any agent, servant, contractor, sub-contractor or representative of Downings, whether or not negligent (excluding gross negligence) or otherwise actionable at law;
- 9.1.3. any characteristics of, the condition, state of repair and/or performance of the Equipment;
- 9.1.4. the manner in which the Services were/are rendered including, without limiting the generality of the aforesaid, any failure and/or defective Services;
- 9.1.5. any failure of the Equipment or any part thereof;
- 9.1.6. any breakdown of the Equipment or any part thereof;
- 9.1.7. any interruption of or interference with the enjoyment or beneficial use of the Equipment or any part thereof; and/or
- 9.1.8. any other event or circumstances whatsoever occurring, or failing to occur, upon, in or about the Equipment, the Site or the property upon which the Site is situated, whether or not Downings could otherwise have been held liable for such occurrence or failure;
- and the Client and the User, jointly and severally, indemnify Downings against all liability as to any directors, members, shareholders, agents, customers, servants, guests, patrons or other invitees of the Client and/or any person utilising the Equipment and/or the Services and/or Ancillary Services, and all other persons who own, use and/or may enter upon the Site or any other site upon which the Equipment is situated or any part/s thereof may be situated from time to time, in consequence of any matter as is referred to in sub-clause 9.1.1 – 9.1.8 above.
- 9.2. Downings shall not, however, be excused from specific performance of its obligations under these Conditions and/or the Agreement and in particular its obligation to supply the Equipment and render the Services.
- 9.3. Downings does not warrant that the Equipment will be suited for the purposes of the Client or the User or that the Client or the User and/or any person or entity associated with it will be granted any statutory approval, licence or consent which may be necessary to utilise the Equipment.
- 9.4. Subject to the provisions of this clause and without extending the liability of Downings in terms hereof, its maximum liability under and by virtue of any claim in damages and/or otherwise shall be an amount equivalent to the charge for the hire of the Equipment and the rendering of the Services forming the subject matter of the applicable Agreement and/or the claim under consideration, whichever is the lower.
- 9.5. The Client and the User each represent and warrant that they have taken out and will maintain for the duration of the agreement with Downings adequate insurance to cater for any injury to person or property arising from the implementation of the agreement envisaged herein and undertake to procure that Downings and its employees and/or representatives will also be indemnified in terms of such policy/policies.
- 10. WARRANTY**
- All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from any agreement concluded between the Parties.
- 11. FORCE MAJEURE**
- 11.1. Downings shall not be liable for any delay or failure to perform in the event that the supply, delivery and/or erection of the Equipment and the rendering of the Services or any component or aspect thereof is prevented or delayed by any act or circumstances beyond Downings' reasonable control including but not limited to acts of God, wind, adverse weather, legislation, war, fire, drought, failure of power supply, lock-out, strike or other action taken by employees, trade embargoes, sanctions, delay or default by suppliers or service providers, accident, inability to procure materials or components required for the performance of any particular agreement, theft or any other criminal act or omission.
- 11.2. Downings shall notify the Client of any circumstances arising under sub-clause 11.1 of this clause and if those circumstances prevail for a period that will render the utilisation of the Equipment of the day/s of the Event, or any of them, impossible, the Downings shall have the option to cancel this contract in which event the *status quo ante* shall be restored as near as possible in the circumstances unless the Client and/or User is/are responsible; in which event Downings shall be entitled to recover its damages from the Client.
- 12. GENERAL OBLIGATIONS OF THE CLIENT**
- Subject to the provisions hereof and any specific terms of the Agreement, the Client shall provide Downings and/or its contractors with:
- 12.1. Access to the Site (such access shall include access for heavy duty vehicles and equipment utilised by Downings and/or its contractors) in –
- 12.1.1. the preparation of the Site (unless excluded); and
- 12.1.2. the erection of the Equipment;
- 12.2. Lighting, toilets, ablution, electricity and suitable connections to drainage, stormwater systems, sewage and access to waste disposal facilities;
- 12.3. Safe, secure and weather tight storage for the Equipment and the tools and machinery of Downings and/or its contractor/s;
- 12.4. Timeous and adequate details and information of the soil conditions on the Site;
- 12.5. Proof of compliance with all statutory and/or regulatory requirements linked to the Site;
- 12.6. Fire safety;
- 12.7. A detailed plan identifying all services identified in sub-clause 4.1.10 above and the removal and/or relocation of any such services to the extent that the same may be reasonably required for the erection of the Equipment and the rendering of the Services;
- 12.8. All Statutory Approvals;
- 12.9. Security on the Site during the period the Services are rendered and the Equipment is on the Site.
- 13. BREACH**
- In the event that the Client:
- 13.1. Fails to pay any amount due in terms hereof in full on the due date thereof; or
- 13.2. Breaches any other term or condition of this agreement and remains in default for a period of 2 (two) days (or such shorter period as may be appropriate in the circumstances) after receipt of written demand requiring such breach to be remedied
- Downings shall be entitled, at its election and without prejudice to any claim in damages and/or otherwise it may have to:
- (i) Not accept responsibility for any delay in supplying and/or erecting the Equipment and rendering the Services and/or Ancillary Services;
- (ii) Withdraw any Equipment already delivered or any portion thereof; and
- (iii) Suspend all further performance in terms of the Agreement; and
- (iv) Claim all additional costs and expenses incurred by it (which shall become due and payable immediately);
- (v) Claim specific performance of the Client's obligations in terms of the Agreement (in the event that the Client is in default, all amounts that will become payable under and by virtue of the Agreement shall become due and payable forthwith including any damages all of which shall be paid before Downings shall be obliged to further perform any further obligations); or
- (vi) Prevent the use of the Equipment or any part thereof;
- (vii) Cancel any agreement concluded between Downings and the Client and at its election, claim forfeiture of all amounts paid alternatively retain the said amounts until all damages claimed by Downings have been determined and paid.
- 14. CESSION/ASSIGNMENT**
- 14.1. Subject to the provisions hereof the Client shall not be entitled to cede, assign and/or make over any of its rights and/or obligations under and by virtue of the Agreement without the prior written consent of Downings, which may be withheld or given at its discretion.
- 14.2. Downings shall be entitled, at any stage, to cede and/or assign any of its rights and/or obligations under and by virtue of any agreement concluded, whether in whole or in part, to a third party.
- 14.3. The Client records that it is acting as principal and not as agent. In the event that the Client will be paid for the use of the Equipment at the Venue, the Client hereby cedes, transfers and makes over to Downings his/her/its right, title and interest in and to any claim against the person or entity obligated to pay the Client for the use of the Equipment and any related goods and/or services, which cession Downings, by its signature to the Contract Schedule, accepts.
- 15. JURISDICTION AND COSTS**
- 15.1. The Client and the surety hereby consent to the jurisdiction (at the election of Downings) of any Magistrate's Court or Regional Court in the Republic of South Africa having jurisdiction over its/his/their person in respect of all matters relating to any agreement concluded between the Client and Downings notwithstanding that the claim or the value of the matter in dispute might otherwise exceed the jurisdiction of the Magistrate's Court or the Regional Court, or both.
- 15.2. Notwithstanding the above Downings shall have the right to institute any legal proceedings arising from these conditions and/or any Agreement in the High Court.
- 15.3. In the event that Downings contracts any attorney to enforce any of its rights in terms of these Conditions and/or any Agreement and/or to defend legal proceedings instituted against it by the Client, Downings shall be entitled to recover costs on the scale as between an attorney and its own client including collection commission.
- 16. GENERAL**
- 16.1. These Conditions, the Contract Schedule and the Agreement constitute the whole and entire agreement between the Parties; any previous agreements in conflict with the provisions thereof are hereby cancelled to the extent thereof and there are not any agreements, representations or warranties between them other than those specifically set forth therein.
- 16.2. No indulgence on the part of any such party in exercising any right conferred upon such Party in terms of these Conditions and/or the Agreement shall constitute a waiver of such right nor shall any single or partial exercise of any right preclude any other or future exercise thereof or the exercise of any other right under these Conditions and/or the Agreement.
- 16.3. No variation or modification of these Conditions and/or the Agreement including cancellation by agreement shall be of any force or effect unless the same shall be confirmed in writing and signed by the Parties, and then such variation or modification shall be effective only in the specific instance, and for the purpose and to the extent for which it was made or given.
- 16.4. If any term or provision or portion of these Conditions and/or the Agreement is found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable or be struck out or declared a prohibited practice or the like in terms of the Competition Act, the Consumer Protection Act, the National Credit Act or other legislation, the effect of which is to adversely affect the rights of Downings to receive any payment or enforce its rights, the Parties will favour an interpretation placing them substantially in the same position as they were before or as similar to that as possible and the same shall not affect the other terms or provisions hereof or the whole of these Conditions and/or the Agreement, but such term or provision shall be deemed modified to the extent necessary in the court's opinion to render such term or provision enforceable, and the rights and obligations of the Parties shall be construed and enforced accordingly, preserving the fullest permissible extent and intent and agreements of the Parties herein set forth. If the clause is incapable of modification, any invalid or unenforceable provision shall be deemed severed from these Conditions and/or the Agreement to the extent of its invalidity or unenforceability, and these Conditions and/or the Agreement shall be construed and enforced as if these Conditions and/or the Agreement did not contain that particular provision to the extent of its invalidity or unenforceability.
- 16.5. The Client and the User agree that Downings shall be entitled to utilise any photographic images of the Equipment at the Venue, including images of any activity conducted at or near the Equipment (once erected), as part of its promotional material and that the use and/or dissemination of such material shall not constitute a violation of any of the provisions of the Protection of Personal Information Act No. 4 of 2013 (as amended) and agree and undertake to obtain a similar concession from any person/institution involved in the venue and/or use of the Equipment envisaged herein.
- 17. DOMICILIUM CITANDI ET EXECUTANDI**
- 17.1. The Parties select as their respective *domicilia citandi et executandi* for the purpose of legal proceedings and for the purposes of giving or sending any notice provided for or necessary in terms of these Conditions, the following addresses:
- 17.1.1. Downings : The physical address and email address reflected on the Contract Schedule
- The Client and Surety : The physical address and email address identified in item 1 of the Contract Schedule
- or such other address, telefax number or e-mail address as may be substituted by notice given as required. Each of the Parties will be entitled from time to time to vary its *domicilium* by written notice to the other to any other address which is not a post office box or *poste restante*.
- 17.2. Any notice addressed to a Party at its physical or postal address will be sent by prepaid registered post, or delivered by hand.
- 17.3. A notice will be presumed, unless the contrary is proved, to have been given –
- 17.3.1. if posted by prepaid registered post, 7 (seven) days after the date of posting thereof;
- 17.3.2. if hand delivered during business hours on a business day, on the day of delivery;
- 17.3.3. if sent by telefax or e-mail, on the first business day following the date of sending of such telefax or e-mail.
- 18. SURETY**
- The person/s signing the Contract Schedule for and/or behalf of the Client binds himself/herself in his/her personal capacity (as surety and co-principal debtor) for the fulfilment of all duties, obligations and/or claims arising from these Conditions and/or any agreement concluded between Downings and the Client and warrants that he/she is duly authorised to bind the Client to the agreement/s envisaged in the Contract Schedule
- INITIALS**