

## TERMS AND CONDITIONS OF HIRE

### ("Hire Terms")

#### 1. Definitions

- 1.1 **"Collection Fee"** means the total amount specified on the Website, and / or by email, for the collection of the Instrument from the Hiree.
- 1.2 **"Commencement Date"** means the date on which the Hiree receives delivery of the Instrument from the Hirer (or its agent).
- 1.3 **"End Date"** means the date on which these Hire Terms end if terminated by either party in accordance with clauses 3.2, 8.4 and 11.
- 1.4 **"Hire Charge(s)"** means the total hire amounts charged by the Hirer to the Hiree for the hire of the Instrument including the Initial Payment, the Ongoing Hire Charges, the Collection Fee and any other charges owing by the Hiree to the Hirer under these Hire Terms.
- 1.5 **"Hire Order"** means (as applicable):
- 1.5.1 an order submitted electronically by the Hiree to the Hirer, either by email or by the Website, to hire the Instrument; or
- 1.5.2 a hard copy application form provided by the Hiree to the Hirer to hire the Instrument.
- 1.6 **"Hire Period"** means a period of:
- 1.6.1 if the Hiree is a School, an academic school term; and
- 1.6.2 if the Hiree is not a School, three months.
- For the avoidance of doubt, if a School hires an Instrument for consecutive school terms, the Hire Period will include the holiday period between the school terms unless otherwise agreed with the Hirer.
- 1.7 **"Hiree"** means the person specified in a Hire Order who hires an Instrument from the Hirer.
- 1.8 **"Hirer"** means Musikko Pty Ltd ACN 655 910 562 as trustee for the Musikko Trust ABN 51 987 389 563 trading as Nick Parnell Percussion Academy and Musikko (as applicable).
- 1.9 **"Initial Payment"** means the total amount specified in the Hire Order for the:
- 1.9.1 hire charges for the first Hire Period starting on the Commencement Date; and
- 1.9.2 delivery of the Instrument to the Hiree.
- 1.10 **"Instrument"** means the Instrument to be hired by the Hiree as selected by the Hiree in the Hire Order.
- 1.11 **"Ongoing Hire Charges"** means the hire amounts charged by the Hirer to the Hiree for the hire of the Instrument for each Hire Period following the first Hire Period as set out in the Hire Order and excluding the Collection Fee.
- 1.12 **"Ongoing Hire Payment Dates"** means:
- 1.12.1 if the Hiree is a School, the date(s) specified in the relevant invoice issued by the Hirer; and
- 1.12.2 if the Hiree is not a School, every three month anniversary of the Commencement Date up to the End Date.
- 1.13 **"Payment Platform"** means Web Active Corporation Pty Ltd trading as eWAY ABN 32 086 209 403 or such other payment platform engaged by the Hirer.
- 1.14 **"PPSA"** means the *Personal Property Securities Act 2009* (Cth) as amended.
- 1.15 **"Premises"** means the premises listed in the Hire Order as the location to which the Hirer will deliver and collect the Instrument and where, unless otherwise agreed with the Hirer, the Hiree will store the Instrument.
- 1.16 **"School"** means a school or other learning institution (as applicable).
- 1.17 **"Term"** means the period of hire of the Instrument starting on the Commencement Date and ending on the End Date.
- 1.18 **"Website"** means the website available at [www.nickparnell.com](http://www.nickparnell.com).

#### 2. Hire, delivery and collection

- 2.1 The Hirer agrees to hire to the Hiree the Instrument on these Hire Terms and the Hiree agrees to hire the Instrument from the Hirer on these Hire Terms.
- 2.2 The Hiree must be over 18 years of age and possess a valid credit card to hire the Instrument from the Hirer (unless otherwise agreed in writing by the Hirer).
- 2.3 These Hire Terms will apply to the hire of the Instrument despite any conflicting terms proposed by the Hiree, unless waived in writing by the Hirer.

- 2.4 The Hirer will attempt to deliver the Instrument to the Premises via the Hirer, its agent or courier (as appropriate) within 14 days. However, if the Instrument is unavailable delivery may be delayed. Any guarantees or representations made as to delivery times are subject to any delays resulting from postal delays or circumstances outside the control of the Hirer for which the Hirer will not be responsible. If you wish to query a delivery, please contact the Hirer via the contact information provided on the Website.
- 2.5 In order for the instrument to be collected from the Premises the following applies:
- 2.5.1 prior to the End Date the Hirer will provide instructions to the Hiree that state how the Instrument must be packed for collection;
- 2.5.2 the Hiree will pack the Instrument in accordance with the instructions and will notify the Hirer once this has taken place;
- 2.5.3 the Hirer will liaise with the Hiree to arrange a period for collecting the Instrument at the Premises via the Hirer, the Hirer's agent or courier; and
- 2.5.4 any guarantees or representations made as to collection times are subject to any delays resulting from circumstances outside the control of the Hirer for which the Hirer will not be responsible. The Hiree will be liable for any additional costs incurred if the Hiree does not comply with the instructions provided by the Hirer. If you wish to query a collection please contact the Hirer via the contact information provided on the Website..
- 2.6 If the Hiree is a School, the following provisions will apply:
- 2.6.1 The School may sub-hire an Instrument to its students, who may then, subject to clause 4.3.1, take the Instrument off the Premises, provided that:
- 2.6.1.1 the School will ensure that the student complies with all applicable obligations under these Hire Terms in relation to the Instrument, including without limitation all obligations regarding the care of the Instrument; and
- 2.6.1.2 the School will remain fully responsible for the Instrument and liable for any loss or damage to the Instrument and will not be relieved of any of its obligations under these Hire Terms.
- 2.6.2 If a School sub-hires an Instrument to a student and requests that the Instrument is delivered directly to the student's residence:
- 2.6.2.1 the School will provide the Hirer with the student's address and the student's guardian's contact details; and
- 2.6.2.2 the School warrants that it has consent to provide the student's address and its guardian's contact details to the Hirer.

### 3. Hire charges and payment

- 3.1 The Hiree must pay the Hire Charges for the hire of the Instrument for the Term. Unless otherwise agreed in writing by the Hirer,
- 3.1.1 if the Hiree is a School, the Hiree will pay the Hire Charges in accordance with the invoice(s) rendered by the Hirer; and
- 3.1.2 If the Hiree is not a School, the Hiree:
- 3.1.2.1 will pay the Hire Charges to the Hirer by credit card using its credit card details and the Payment Platform; and
- 3.1.2.2 must pay the Initial Payment to the Hirer upon submitting a Hire Order.
- 3.2 The Hiree acknowledges that the Hirer may increase the Ongoing Hire Charges by giving notice in writing to the Hiree. Any change in the Ongoing Hire Charges will be effective from the Hire Period following that in which the Hirer provides written notice to the Hiree. If the Hiree does not accept the change in Ongoing Hire Charges, the Hiree may terminate these Hire Terms immediately by providing written notice to the Hirer. These Hire Terms will end on the last day of the Hire Period in which the Hiree provides its written notice to the Hirer.
- 3.3 The Hiree will pay the Ongoing Hire Charges to the Hirer on the Ongoing Hire Payment Dates. The Hiree authorises the Hirer and the Payment Platform to debit the Ongoing Hire Charges from the Hiree's credit card on the Ongoing Hire Payment Dates unless otherwise advised in writing by the Hiree to the Hirer. If the credit card payment is declined, the Hirer will issue a notice to the Hiree at the details provided in the Hire Order ("**Final Notice**"). If the Final Notice is not paid within seven days of the date of the Final Notice, the Hirer will render a further invoice to the Hiree for the total amount outstanding. If this invoice is not paid in total to the Hirer within seven days of the date of the invoice, the Hirer may engage a debt collection agency to recover the invoiced amount from the Hiree as a debt due and payable upon demand in writing.

- 3.4 The Hiree authorises the Hirer and the Payment Platform to debit the Collection Fee from the Hiree's credit card prior to the End Date and before the collection of the Instrument.
- 3.5 For the avoidance of doubt but subject to clauses 3.3, 3.4, 4.7 and 11.5, the Hirer and the Payment Platform will not debit any Ongoing Hire Charges from the Hiree's credit card after either party has provided notice to the other that these Hire Terms will terminate at the end of the then current Hire Period.
- 3.6 The Hirer uses the Payment Platform for its credit card transactions. All credit card transactions performed using the Payment Platform are secured payments. Further information about the Payment Platform and online credit card payments is available at the Payment Platform's website.
- 3.7 The Hiree must pay:
- 3.7.1 all taxes, insurances and other charges in connection with these Hire Terms;
- 3.7.2 a sum equal to the amount of any goods and services tax (GST) payable by the Hirer on any supplies made by the Hirer under or in connection with these Hire Terms, calculated by multiplying the GST exclusive consideration payable for the relevant supply or supplies by the prevailing GST rate; and
- 3.7.3 any costs or expenses reasonably incurred by the Hirer in enforcing these Hire Terms as a result of the Hiree's breach of these Hire Terms or in order to return the Instrument to the same condition as at the Commencement Date (excluding fair wear and tear).
- 3.8 In the event of non-payment of the Hire Charges in accordance with these Hire Terms:
- 3.8.1 the Hiree will pay all reasonable collection expenses, legal costs and any other expenses incurred by the Hirer in connection with the non-payment by the Hiree; and
- 3.8.2 the Hiree acknowledges and agrees that the Hirer has the right (without prejudice to any other rights and remedies it may have) to recover, remove and/or re-hire the Instrument. For that purpose, the Hirer's employees, agents or workers may without notice enter any place the Hirer believes the Instrument to be without committing a trespass.
- 3.9 The Hirer will have no obligation to make good any damage caused by the recovery or removal of the Instrument pursuant to clause 3.8.2 and the Hirer will not be liable for and the Hiree will indemnify the Hirer against any costs, claims, damages or losses suffered by the Hiree as a result of such removal.

#### 4. Hiree obligations

- 4.1 The Hiree must comply with:
- 4.1.1 the Instrument's care instructions available on the Website; and
- 4.1.2 all applicable statutory laws and regulations.
- 4.2 The Hiree must ensure that the Instrument is:
- 4.2.1 returned to the Hirer in accordance with the Hirer's instructions, in the same packaging as it is delivered to the Hiree, and in the same condition as at the Commencement Date (except for fair wear and tear);
- 4.2.2 used for the purpose for which the Instrument was designed and in a manner which has regard to the capabilities and limitations of the Instrument; and
- 4.2.3 at all times safely protected from theft, loss or damage.
- 4.3 The Hiree may only remove the Instrument from the Premises provided that:
- 4.3.1 if the Instrument is a larger instrument, including without limitation a double bass, marimba or vibraphone, the Instrument cannot be removed from the Premises without the Hirer's prior written consent; and
- 4.3.2 the Hiree ensures that all care is taken to prevent any damage to the Instrument.
- 4.4 If the Instrument becomes unsafe to use, the Hiree will immediately stop using the Instrument to prevent the Instrument causing injury, loss or damage to any person or property.
- 4.5 The Hiree must immediately notify and provide full details to the Hirer if the Instrument is involved in injury to any person or damage to property. The Hiree is liable to the Hirer for any and all loss or damage to, or caused by, the Instrument or its operation for the duration of the Term.
- 4.6 Risk in the Instrument passes to the Hiree on delivery of the Instrument to the Hiree and remains with the Hiree until the Instrument is collected by or returned to the Hirer.

- 4.7 If the Instrument is lost, stolen or damaged during the Term (excluding fair wear and tear), the Hirer will render an invoice to the Hiree for the total costs to repair or replace the Instrument as reasonably determined by the Hirer. If the Hiree fails to pay the total amount specified in the invoice to the Hirer within seven days of the date of the invoice, the Hiree authorises the Hirer and the Payment Platform to debit such amount from the Hiree's credit card. If the credit card payment is declined, the Hirer will issue a Final Notice to the Hiree. If the Final Notice is not paid within seven days of the date of the Final Notice, the Hirer will render a further invoice to the Hiree for the total amount to replace or repair the Instrument as reasonably determined by the Hirer. If this invoice is not paid in total to the Hirer within seven days of the date of the invoice, the Hirer may engage a debt collection agency to recover the invoiced amount from the Hiree as a debt due and payable upon demand in writing.
5. **Access and inspection**
- 5.1 The Hirer and its representatives have the right to enter the Premises at any time upon giving prior reasonable notice to the Hiree to inspect, maintain and/or repair the Instrument or to repossess the Instrument. The Hiree must assist the Hirer and its representatives in exercising its rights under this clause 5.
6. **Liability and indemnity**
- 6.1 To the maximum extent permitted by law, the Hirer's total liability to the Hiree for loss or damage incurred by the Hiree in respect of the Instrument and under these Hire Terms is limited to (at the Hirer's election):
- 6.1.1 the repair or replacement of the Instrument; or
- 6.1.2 the refund of the Hire Charges paid by the Hiree to the Hirer.
- 6.2 The Hiree will indemnify and will continue to indemnify the Hirer against any liability, loss, damage, claim, action, demand, costs or expenses incurred or suffered by the Hirer howsoever arising out of the Hiree's hire, use or possession of the Instrument, including, but not limited to:
- 6.2.1 any breach of these Hire Terms;
- 6.2.2 any breach of any laws by the Hiree;
- 6.2.3 any act or omission (negligent or otherwise) by the Hiree; or
- 6.2.4 any action or trespass resulting from the Hirer entering the Premises in accordance with clause 5.
- 6.3 Under no circumstances will either party be liable, whether in contract or tort or otherwise at law or equity, for any indirect or consequential loss or damage whatsoever. For the purposes of these Hire Terms, consequential loss includes loss of profit, loss of production, loss of any plant or facility, business interruption, loss of business opportunity or any other indirect, consequential, special, contingent or penal damage or loss.
7. **Insurance**
- 7.1 The Hiree must at its cost effect and maintain during the Term insurance policies for the Instrument as requested in writing by the Hirer.
- 7.2 The Hirer may require the Hiree to provide copies of the insurance policies contemplated in clause 7.1 and, where such a request is made, the Hiree will provide a copy of the insurance policy within 24 hours of such a request.
- 7.3 Where the Hirer has effected an insurance policy and is required to pay an additional premium because of an act or omission of the Hiree, the Hirer may recover the cost from the Hiree as a debt due and payable upon demand in writing.
8. **Ownership of Instrument**
- 8.1 The Hiree acknowledges that it has not acquired any right in the Instrument and will not hold itself out or permit itself to be held out as having the Instrument in its apparent ownership or disposition.
- 8.2 The Hiree must not dispose or purport to dispose of, or create or permit to be created any security interest in the Instrument other than with the written consent of the Hirer.
- 8.3 Subject to clause 2.6.1, the Hiree must not lease, hire, bail or otherwise part with possession of the Instrument to anyone else without the written consent of the Hirer.
- 8.4 A breach of this clause 8 will entitle the Hirer to terminate these Hire Terms by notice to the Hiree and demand return of the Instrument immediately.
9. **PPSA**
- 9.1 If these Hire Terms are considered to be a PPS Lease, the Hiree acknowledges and agrees that:
- 9.1.1 these Hire Terms grant the Hirer a purchase money security interest ("**PMSI**") in the Instrument and their proceeds to secure all amounts owed by the Hiree to the Hirer;
- 9.1.2 the Hirer may register its PMSI over the Instrument on the Personal Properties Securities Register ("**PPSR**");

- 9.1.3 it will do all things necessary and provide the Hirer on request all information that the Hirer requires to register a financing statement or financing charge statement on the PPSR;
- 9.1.4 it will not change its name in any form or other details on the PPSR without first notifying the Hirer; and
- 9.1.5 it will, if requested by the Hirer, pay to the Hirer the cost of registering and maintaining registration of the Hirer's security interest on the PPSR, within 14 days of the request.
- 9.2 Without affecting any other indemnity or rights under these Hire Terms, if the Hiree is in breach of any of its obligations under clause 9.1, the Hiree must indemnify the Hirer against all loss or expense suffered by the Hirer as a consequence of that breach.
- 9.3 The Hirer need not give any notice under the PPSA (including a verification statement or a financing charge statement) unless the notice is required by the PPSA and cannot be excluded.
- 9.4 No party may disclose information of the kind referred to in section 275(1) of the PPSA (except where the parties may do so where required due to the operation of section 275(7) of the PPSA) and the Hiree must not authorise the disclosure of such information.
- 9.5 The Hiree appoints the Hirer as its attorney to sign in the Hiree's name all documents which the Hirer considers necessary to enforce or protect its rights and powers under these Hire Terms and to perfect, preserve, maintain, protect or otherwise give full effect, under the PPSA and related regulations, to these Hire Terms and the PMSI created by these Hire Terms.
- 9.6 If Chapter 4 of the PPSA would otherwise apply to the enforcement of the PMSI under these Hire Terms, the parties agree that the following provisions of the PPSA will not apply, or are waived, as the context requires:
  - 9.6.1 section 95 (notice of removal of accession);
  - 9.6.2 section 118 (enforcement of security interest in accordance with land law decisions);
  - 9.6.3 section 123 (secured party may seize collateral);
  - 9.6.4 section 125 (obligation to dispose or retain collateral);
  - 9.6.5 section 128 (secured party may dispose of collateral);
  - 9.6.6 section 129 (notice of purchase);
  - 9.6.7 section 130 (notice of disposal);
  - 9.6.8 sections 132(1) and (4) (right to receive a statement of account);
  - 9.6.9 section 135 (notice of retention);
  - 9.6.10 section 142 (redemption of collateral); and
  - 9.6.11 section 143 (reinstatement of security agreement).
- 9.7 The Hiree agrees that, in addition to the above rights of the Hirer under the PPSA, the Hirer shall, if there is a default by the Hiree, have the right to seize, purchase, take possession, retain, deal with or dispose of any Instrument, not only under the PPSA but independently, pursuant to these Hire Terms.
- 9.8 Unless otherwise defined in these Hire Terms, the terms and expressions used in this clause 9 have the meanings given to them in, or by virtue of, the PPSA.

## 10. **Privacy**

The Hirer will collect, hold and use the Hiree's personal information in accordance with his Privacy Policy available on the Website. The Hirer's Privacy Policy sets out:

- 10.1 the purposes for which personal information is collected;
- 10.2 the consequences if personal information is not provided to the Hirer;
- 10.3 the third parties to which the Hirer discloses personal information;
- 10.4 how the Hiree may seek access or correction of its personal information;
- 10.5 whether personal information is likely to be disclosed to overseas entities and in which countries; and
- 10.6 how the Hiree can complain about a breach of the Hirer's obligations in respect of its personal information and how such a complaint will be dealt with.

## 11. **Termination**

- 11.1 The Hiree may terminate these Hire Terms by providing at least 14 days' written notice to the Hirer before the end of a Hire Period. These Hire Terms will end on the last day of that Hire Period. For the avoidance of doubt, a School must notify the Hirer at least 14 days prior to the end of an academic school term if the School no longer wishes to hire the Instrument for any following academic school term.
- 11.2 The Hirer may terminate these Hire Terms by providing at least 14 days' written notice to the Hiree (via the e-mail address provided by the Hiree in the Hire Order) before the end of a Hire Period. These Hire Terms will end on the last day of that Hire Period.
- 11.3 The Hirer may immediately terminate these Hire Terms if:
  - 11.3.1 the Hiree is in breach of these Hire Terms and fails to remedy the breach within 7 days of being given written notice of the breach by the the Hirer; or

- 11.3.2 the Hiree becomes insolvent or otherwise unable to pay its debts as and when they fall due.
- 11.4 Upon termination of these Hire Terms, the Hiree must package (in the original packaging as the Instrument is delivered to the Hiree) and prepare the Instrument for collection by the Hirer or its agent in accordance with the Hirer's reasonable directions. If the Hiree fails to maintain the original packaging, the Hiree will pay all costs to re-package and return the Instrument in accordance with the Hirer's reasonable directions. The Hiree irrevocably authorises the Hirer or its agent to enter the Premises (or such other location that the Instrument may be located) and retrieve the Instrument upon termination of these Hire Terms.
- 11.5 If the Hiree fails package and prepare the Instrument to the Hirer in accordance with clause 11.4, the Hirer will render an invoice to the Hiree for the total costs to replace or repair the Instrument as reasonably determined by the Hirer. If the Hiree fails to pay the total amount specified in the invoice to the Hirer within seven days of the date of the invoice, the Hiree authorises the Hirer and the Payment Platform to debit such amount from the Hiree's credit card. If the credit card payment is declined, The Hirer will issue a Final Notice to the Hiree. If the Final Notice is not paid within seven days of the date of the Final Notice, the Hirer will render a further invoice to the Hiree for the total amount to replace or repair the Instrument as reasonably determined by the Hirer. If this invoice is not paid in total to the Hirer within seven days of the date of the invoice, the Hirer may engage a debt collection agency to recover the invoiced amount from the Hiree as a debt due and payable upon demand in writing.
- 11.6 The termination of these Hire Terms does not affect the parties' rights which have accrued before termination or any rights and obligations of the parties which survive termination.
12. **Force majeure**
- 12.1 Subject to clause 12.2, neither party will be responsible for any delays in delivery or collection due to causes beyond their control, including but not limited to acts of God, war, terrorism, civil commotion, riots, embargoes, orders or regulations of government or any other relevant jurisdiction, fires, floods, strikes or lockouts.
- 12.2 Nothing in clause 12.1 will limit or exclude the Hiree's responsibility and liability under these Hire Terms for an Instrument that is lost, stolen or damaged beyond fair wear and tear during the Term or has become unsafe to use as a result of the Hiree's acts or omissions.
13. **Time is of the essence**
- Time is of the essence in relation to all obligations of the Hiree under these Hire Terms.
14. **Assignment**
- The Hirer may assign or sub-contract any or all of its rights under these Hire Terms. The Hiree must not assign or sub-contract any or all of its rights under these Hire Terms without the prior written consent of the Hirer.
15. **Entire agreement**
- These Hire Terms will constitute the whole of the agreement between the Hirer and the Hiree and supersedes previous agreements and arrangements whether written, oral or implied between the Hirer and the Hiree relating to the hire of Instrument by the Hiree.
16. **Disputes**
- 16.1 In the event of any dispute that may arise between the Hirer and Hiree in relation to these Hire Terms ("**Dispute**"), the party seeking to have the Dispute resolved must issue to the other party a notice setting out all details relevant to the Dispute ("**Dispute Notice**").
- 16.2 Within 14 days of receipt of a Dispute Notice, the parties must meet in Adelaide, South Australia (or such other place agreed by the parties) to negotiate resolution of the Dispute unless the parties agree to hold such discussions by teleconference or via other electronic means. The parties agree that those negotiations must be conducted in good faith.
- 16.3 In the event that the Dispute is not resolved in accordance with clause 16.2, either party will be entitled to take the matter to litigation in the courts of South Australia.
- 16.4 Nothing contained in this clause 16 will prevent a party from seeking urgent interlocutory relief.
17. **Governing law**
- These Hire Terms are to be governed and interpreted in accordance with the laws of the State of South Australia. The parties agree to submit themselves to the non-exclusive jurisdiction of the courts of South Australia and any competent appellate courts.
18. **Severability**
- Every provision of these Hire Terms will be deemed severable as far as possible from the other provisions of these Hire Terms. If any provision is found to be void, illegal or unenforceable for any reason, it will be deemed to be severed and omitted from these Hire Terms. These Hire Terms with the offending provision severed and omitted and with any consequential amendment if necessary, will otherwise remain in full force
19. **Amendments**
- The Hirer may amend these Hire Terms from time to time. If the Hire Terms are amended, the Hirer will notify all current customers by email with the new Hire Terms.