

# Terms and Conditions

## 1. Definitions

- (a) "Agreement" means the agreement between Bike n' Blend and the Customer for the hire of the Bike n' Blend Package which includes:
  - (i) the Booking Form;
  - (ii) the Invoice;
  - (iii) the terms and conditions of this Agreement; and
  - (iv) any applicable Special Conditions.
- (b) "Bike n' Blend" means Bike n' Blend Pty Ltd (ABN 97 165 969 282) or any of its Related Bodies Corporate (as defined in the Corporations Act 2001 (Cth)). These include: Future Spark and Roll Up packages.
- (c) "Bike n' Blend Equipment" means the blender bikes, jugs, menu boards, utensils, marquees, tables, eskies, grass and other tools and equipment required to deliver the Bike n' Blend Packages as specified on the Invoice.
- (d) "Bike n' Blend Package" means the pedal-powered smoothie bikes together with accompanying Bike n' Blend Equipment hired by the Customer as specified on the Invoice and which may include Bike n' Blend staffed services (Staffed Package) or exclude Bike n' Blend staffed services (Unstaffed Package).
- (e) "Customer" refers to the person, firm, organisation, partnership, corporation, trust or other entity hiring Bike n' Blend Package from Bike n' Blend, as named in the Booking Form.
- (f) "Hire Period" means the period defined as such in clause 5.
- (g) "Hiring Fee" means the fees charged for the hiring of a Bike n' Blend Package to the Customer as specified in the Invoice.
- (h) "Invoice" means an invoice issued by Bike n' Blend Package to a Customer.
- (i) "Late Hire Fee" means a fee equal to 150% of the Hiring Fee applicable to each day of delay in the return of Bike n' Blend Equipment to Bike n' Blend (including if that equipment has not

been returned by the Customer or Bike n' Blend has been unable to collect the Bike n' Blend Equipment from the Customer, as applicable).

- (j) "Cleaning and Damage Fee" means
  - (a) Cleaning Fees in the amount of \$50 per bike;
  - (b) Damage Fees which shall be in the amount incurred by Bike n' Blend for repairing or replacing damaged bikes and other equipment that was made available by Bike n' Blend such as wheel branding, menu boards and utensils that were damaged during the Hire Period.

## **2. Terms of Hire**

- (a) Bike n' Blend agrees to provide the Bike n' Blend Package and hire the Bike n' Blend Equipment to the Customer for the duration of the Hire Period and at the Hiring Fee specified in the Invoice.
- (b) Bike n' Blend provides the Bike n' Blend Packages and hires the Bike n' Blend Equipment to the Customer at its absolute discretion and may refuse to hire to the Customer for operational, safety or any other reason.
- (c) The Customer agrees and acknowledges that by completing and submitting to Bike n' Blend the Booking Form, the Customer agrees to hire the Bike n' Blend Package in accordance with the terms and conditions of this Agreement.
- (d) Without derogating from paragraph (b) above, Bike n' Blend is entitled to request from the Customer of Unstaffed Packages credit card details and authorisation to charge that credit card for the purpose of covering any Cleaning and Damage Fees, replacement or repair costs resulting from the use of Bike n' Blend equipment during the Hire Period.

### 3. Payment

- (a) Unless other payment terms have been agreed in writing prior to the confirmation of the booking, full payment is required at least two (2) weeks before the delivery of the Bike n' Blend Package.
- (b) In addition to the Hiring Fee, the Customer agrees to pay Bike n' Blend:
  - (i) all taxes and government charges, levies or fines in relation to the hire of the Bike n' Blend Package;
  - (ii) any costs incurred by Bike n' Blend for compliance registration or staff training costs required for the Customer's hire;
  - (iii) Goods and Services Tax ("GST") (as defined under the A New Tax System (Goods and Services Tax) Act 1999). All amounts payable in the Invoice are exclusive of GST unless otherwise specified;
  - (iv) charges for payments made by credit card;
  - (v) for unstaffed hires, any cleaning, repair or replacement costs for Bike n' Blend Equipment damaged, lost, or returned uncleaned at the end of the Customer's hire period;
  - (vi) charges for the delivery and collection and installation of unstaffed Bike n' Blend Packages;
  - (vii) for any variation to the Bike n' Blend Packages that are required to meet safety or operational requirements or requested by the Customer;
  - (viii) any parking costs associated with any staffed event or delivery of the Bike n Blend Package;
  - (ix) the cost of any food or beverage permit or stall licence required by law to gain access to a Customer's location or to serve food or beverages at a Customer's location; and
  - (x) any costs related to venue specific safety training (ie venue inductions) or compliance registrations
  - (xi) if applicable, Late Hire Fees.
- (c) If the Customer fails to pay the full Hiring Fee by the time specified in clause 3(a), Bike n' Blend may, at its sole discretion, either:
  - (i) charge interest on all outstanding invoices, charged at an interest rate of 1.25% per month (15% per annum) ("Late Payment Charge") or
  - (ii) cancel the delivery of the Bike n' Blend Package ("Cancellation").

## 4. Cancellation Policy

- (a) Any request to cancel or postpone the delivery of a Bike n' Blend Package must be made by the Customer in writing or via email.
- (b) If the Customer cancels or postpones any Bike n' Blend Package for whatever reason, including cancellation due to inclement weather, then Bike n' Blend shall be entitled to charge the Customer and the Customer must pay to Bike n' Blend:
  - i. two hundred dollars (\$200) if Bike n' Blend receives notice of cancellation within 2 weeks before the scheduled commencement of the Bike n' Blend Package; and
  - ii. the entire agreed amount for the Bike n' Blend Package if Bike n' Blend receives notice of cancellation within seven (7) days before the scheduled commencement of the Bike n' Blend Package.
- (c) In the event Bike n' Blend cancels any Bike n' Blend Package within forty eight (48) hours prior to the delivery of the Bike n' Blend Package, Bike n' Blend will issue the Customer with the Customer's choice of a credit note or a refund.

## 5. Hire Period

- (a) Delivery:
  - i. If Bike n' Blend is delivering the Bike n' Blend Package, the Hire Period commences when Bike n' Blend loads the Bike n' Blend Equipment onto any vehicle for delivery to the Customer's nominated location and ends when Bike n' Blend collects and receives the Bike n' Blend Equipment into its possession or control.
- (b) Collection:
  - i. If the Customer is collecting the Bike n' Blend Equipment, the Hire Period commences when the Customer collects the Bike n' Blend Equipment from Bike n' Blend's premises and ends when the Customer returns the Bike n' Blend Equipment to Bike n' Blend's premises.
- (c) Estimates Only: Delivery times are estimates only. Bike n' Blend is not responsible for the failure or delays in delivery or installation of the Bike n' Blend Package due to:
  - i. unforeseeable circumstances or omissions outside the control of Bike n' Blend; or
  - ii. the inability to access the Customer's nominated location.
- (d) Bike n' Blend will use reasonable endeavours to promptly notify of any delays in delivering, collecting, installing or performing the Bike n' Blend Package.
- (e) Return of Bike n' Blend Equipment:

- i. The Customer must return the Bike n' Blend Equipment to the place, on the date and by the time specified with the Bike n' Blend event coordinator.
- ii. If the Customer does not return the Bike n' Blend Equipment or Bike n' Blend is unable to collect the Bike n' Blend Equipment from Customer (as applicable), by the return date, then Bike n' Blend will be entitled to charge the Customer a Late Hire Fee.

## 6. Customer Obligations

- (a) **Suitability:** The Customer agrees that before accepting the Bike n' Blend Package it satisfied itself as to the suitability, condition and fitness for purpose of the Bike n' Blend Package including the Bike n' Blend Equipment, without relying upon the skills or judgment of Bike n' Blend or any person purporting to act on its behalf. Unless the Customer reports any defects or unsuitability of the Bike n' Blend Equipment at the time Bike n' Blend delivers the Bike n' Blend Equipment or at the time the Customer collects the Bike n' Blend Equipment (as applicable), Bike n' Blend is entitled to assume and it shall be deemed hereunder that the Bike n' Blend Package received by the Customer was in good working order and condition and free from defects.
- (b) Bike n' Blend will inspect the Bike n' Blend Equipment upon its return to Bike n' Blend's premises and notify the Customer of any defects or damage to the Bike n' Blend Equipment. In addition to the Hiring Fee, the Customer agrees to pay the Cleaning and Damage Fee for cleaning and/or repair and/or replacement of the Bike n' Blend Equipment if it is not returned in clean and in good working order and condition.
- (c) The Customer must not allow or authorise any other person or entity to sell, borrow, re-hire, or have possession of the Bike n' Blend Equipment at any time without the written approval of Bike n' Blend.
- (d) **Responsibility:** For Unstaffed Packages, risk and responsibility for the Bike n' Blend Equipment passes to the Customer when the Bike n' Blend Equipment is loaded onto any vehicle for transport at Bike n' Blend's premises (regardless of whether the Customer collects the Bike n' Blend Equipment from Bike n' Blend's premises or Bike n' Blend delivers the Bike n' Blend Equipment to the Customer's nominated location). Risk and responsibility for the Bike n' Blend Equipment passes back to Bike n' Blend when the Bike n' Blend Equipment is returned to the possession of Bike n' Blend at its premises.
- (e) **Operation:** The Customer warrants that at all times it will:
  - (i) operate the Bike n' Blend Equipment;
    - a. safely,
    - b. strictly in accordance with all laws,

- c. only for its intended use and;
  - d. in accordance with Bike n' Blend's instructions;
- (ii) ensure all persons operating the Bike n' Blend Equipment wear suitable clothing so as to avoid injury;
  - (iii) ensure that no persons operating the Bike n' Blend Equipment are under the influence of drugs or alcohol;
  - (iv) ensure that no persons of adult age or size ride the kids' blender bikes;
  - (v) not in any way alter, modify, tamper with, deface or remove any identifying markers, damage or repair the Bike n' Blend Equipment without Bike n' Blend's written consent; and
  - (vi) return the Bike n' Blend Equipment in the same good and clean condition it was in when the Customer received it, ordinary wear and tear excepted.
- (f) Equipment Breakdown: In the event that the Bike n' Blend Equipment breaks down or becomes unsafe to use during the Hire Period:
- (i) the Customer must immediately
    - a. stop using the Bike n' Blend Equipment and notify Bike n' Blend;
    - b. take all steps necessary to prevent injury occurring to persons damage as a result of the condition of the Bike n' Blend Equipment; and
    - c. prevent further damage to the Bike n' Blend Equipment.
  - (ii) Subject to clause 5(g), Bike n' Blend will repair the Bike n' Blend Equipment or provide a suitable substitute Bike n' Blend Equipment when reasonably possible after being notified by the Customer. Bike n' Blend will provide a refund for that portion of the Hire Period the Bike n' Blend Equipment could not be used and will not charge the Customer for the costs associated with any repair or replacement of the Bike n' Blend Equipment.
- (g) If the Bike n' Blend Equipment is damaged, lost or stolen during the Hire Period or becomes unsafe to use due to any reckless or negligent act or omission of the Customer, the Customer is liable to pay Bike n' Blend for:
- (i) the full cost of either repairing or replacing the Bike n' Blend Equipment as determined by Bike n' Blend at its absolute discretion; and
  - (ii) any other costs arising from or in connection with the loss, theft or damage to Bike n' Blend Equipment; and
  - (iii) any lost revenue to Bike n' Blend arising from or in connection with the loss, theft or damage to Bike n' Blend Equipment.
- (h) Title to Hire Equipment: The Customer acknowledges that in all circumstances Bike n' Blend retains title to the Bike n' Blend Equipment (even if the Customer goes into Liquidation, external administration of any kind or becomes bankrupt during the Hire Period) and in no

circumstances will the Bike n' Blend Equipment be deemed to be a fixture. Except with the prior written consent of Bike n' Blend, the Customer will not be entitled to offer, transfer, sell, assign, sub-let, encumber, charge, mortgage, pledge or otherwise deal with any Bike n' Blend Equipment in any kind whatsoever.

## **7. Disclaimer**

- (a) Nothing in this Agreement is intended to exclude, restrict or modify any guarantee, term, condition or warranty implied or imposed by law (including The Competition and Consumer Act 2010 (Cth)) which cannot be lawfully excluded or limited.
- (b) To the extent permitted by law (unless otherwise expressly set out in this Agreement), all terms, conditions, warranties, undertakings, inducements or representations whether express or implied, statutory or otherwise, relating to Bike n' Blend's obligations under this Agreement are excluded.

## **8. Indemnities and Exclusion of Liability**

- (a) The Customer hereby indemnifies Bike n' Blend against all actions, claims, proceedings, demands, liabilities, losses, damages, expenses and costs (including legal costs on a full indemnity basis) arising out of or in connection with the Customer's hire and/or use of the Bike n' Blend Equipment or any breach of this Agreement, including any property damage and personal injury that any person sustains as a result of the Customer's use or hire of the Bike n' Blend Equipment or use of the Bike n' Blend Equipment during the Hire Period.
- (b) To the fullest extent permitted by law, Bike n' Blend, excludes liability to the Customer for any:
  - (i) special, incidental, indirect or consequential loss or damages (including but not limited to, loss of profits, loss of data, downtime costs, loss of use, failure to realise anticipated savings, loss of business opportunity or economic loss of any kind) in contract, tort, under statute or otherwise; and
  - (ii) any claims (whether actual or contingent) for personal injury, illness or death to any person or damage to any property or any other loss or damage of any kind whatsoever, caused by or arising from or in relation to the delivery or use of the Bike n' Blend Equipment, Bike n' Blend Package or this Agreement.
- (c) Notwithstanding anything to the contrary, these terms and conditions and to the maximum lawful extent, Bike n' Blend's aggregate liability, whether based on warranty, contract, statute, tort (including negligence) or otherwise, shall not exceed the total Hiring Fee paid by the Customer to Bike n' Blend under this Agreement.

- (d) Each indemnity is a continuing obligation and survives termination or expiration of this Agreement. It is not necessary for Bike n' Blend to incur expenses or make any payment before enforcing a right of indemnity under these Terms and Conditions.

## 9. Termination

- (a) Bike n' Blend may terminate this Agreement and take immediate possession of the Bike n' Blend Equipment by serving written notice on the Customer if the Customer:
  - (i) fails to pay the Hiring Fee by the due date; or
  - (ii) commits a breach of the Agreement which it does not remedy (if capable of remedy) within five days of receiving notice of breach.
- (b) These rights of termination are in addition to any other rights either party has under this Agreement and does not exclude any right or remedy under law or equity.

## 10. Food Permits

- (a) If required by law, Bike n' Blend will arrange for a food permit from the local council or state government.
- (b) If Bike n' Blend is unable to obtain a food permit to deliver the Bike n' Blend Package, the Bike n' Blend Package will be cancelled and Bike n' Blend will issue the Customer with a credit note. The credit note can be used by the Customer to book a Bike n' Blend Package of equivalent value.
- (c) If the Customer purchases a Bike n' Blend Package which requires it to:
  - (i) arrange its own food permit; and/or
  - (ii) supply its own washing facilities and overhead and side covers for the food preparation areas,

Bike n' Blend may, at its absolute discretion, cancel the Bike n' Blend Package should the Customer fail to obtain a food permit and/or supply adequate washing facilities and overhead cover for the food preparation areas. The Customer will not be entitled to a refund of the Hiring Fee or credit note.

- (d) All food or beverage ingredients delivered by Bike n' Blend will comply with food safety and hygiene laws. Bike n' Blend will not be liable for food safety and hygiene following the delivery of the ingredients. The Customer will be responsible for operating the stall in a safe and hygienic manner.
- (e) The Customer is aware that the blender jugs and blender bikes may have been in contact with peanuts and other allergens as Bike n' Blend hires this equipment regularly and thus can not guarantee other Customers have not put these ingredients in the blender jugs.

## 11. General

- (a) This Agreement cannot be amended or varied except in writing signed by both parties. The Customer must not assign or otherwise deal with its rights or obligations under this Agreement without Bike n' Blend's prior written consent.
- (b) This Agreement is governed by and must be construed in accordance with the laws of the State of Victoria, Australia. The parties submit to the non-exclusive jurisdiction of the Courts of the State of Victoria, Australia.
- (c) Any provisions which are invalid in law will be ineffective but will not make the other provisions in this contract invalid.
- (d) This Agreement replaces all prior agreements between Bike n' Blend and the Customer, whether written or verbal, and all prior statements or promises made by Bike n' Blend staff. The parties agree that this Agreement embodies their entire understanding and agreement.
- (e) The Customer engages Bike n' Blend to provide the Bike n' Blend Packages as an independent contractor. Bike n' Blend is not the Customer's employees, partners, legal representatives, agents, joint venturer or franchisee.
- (f) Termination of this Agreement or an assignment will not affect any provision of this Agreement which is expressly or by implication intended to come into force or continue on or after the termination including clauses 3, 6, 7, 8, 9, 10, and 11.

## 12. Acknowledgement

By clicking Yes on the Booking Form you acknowledge and agree that you have read and understand these Terms and Conditions, and agree to be bound by them.

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