

# SMASH!

## SMASH! 2021 ARTIST MARKET TERMS AND CONDITIONS

### 1. ABOUT

- (1) Thank you for exhibiting at SMASH!. SMASH! and the website at [www.smash.org.au](http://www.smash.org.au) ('**Site**') are owned and operated by SMASH Incorporated (ABN 46 310 471 217) ('**SMASH**').
- (2) SMASH! Sydney Manga and Anime Show is a Japanese pop culture convention that is devoted to artists, creators and fans alike. SMASH! is run by SMASH Inc, a government-registered non-profit organisation created by fans for fans. SMASH Inc aims to create an open and affordable avenue that serves as a meeting point for fans of Japanese pop culture with an emphasis on art, creativity and community.

### 2. ACCEPTANCE OF TERMS

- (1) This document forms a binding contract between SMASH ('**SMASH**', '**We**' or '**Us**') and you ('**Exhibitor**' or '**You**' or '**Your**'). It is a condition of Your attendance as an Exhibitor at the 2021 SMASH! Sydney Manga and Anima Show ('**Convention**') that You agree to, and abide by these terms and conditions ('**Terms**'). These Terms are subject to change as updated on our Site from time to time. As an Exhibitor you may set up a stall ('**Exhibition Space**'), promote your Exhibition Space and sell your products at the Convention as part of the services that SMASH supplies as an organiser of the Convention ('**Convention Services**').
- (2) If you are entering these Terms on behalf of a legal entity, you represent that you have the authority to bind the entity to these Terms. If you are a minor, your parent or legal guardian who has legal authority must agree to these Terms on your behalf. If you do not have such authority, you must not accept these Terms and may not attend the Convention as an Exhibitor.
- (3) To exhibit at the Convention, you will be required to accept these Terms by submitting the full or partial payment of the amount requested on the invoice. The Acceptance Date is the date we receive the full payment ('**Acceptance Date**').
- (4) As part of the registration process to become an Exhibitor at the Convention, Exhibitor must provide current, complete and accurate identification, and other information required during the registration process including but not limited to:
  - (a) Table Name;
  - (b) Contact Name;
  - (c) Contact Phone;
  - (d) Contact Email;
  - (e) Address;
  - (f) Total number of passes;
  - (g) Site Description;
  - (h) Site Link;
  - (i) Social Media Links and;
  - (j) other information we request as applicable to become an Exhibitor at the Convention.

("Exhibitor Data").

Exhibitor warrants that Exhibitor Data is accurate, truthful, complete and lawful.

- (5) Exhibitor grants to SMASH, or to any third parties engaged by us a license to use Exhibitor Data in order for SMASH to perform its obligations under these Terms.
- (6) If Exhibitor Data changes, Exhibitor must promptly contact SMASH to update those changes.
- (7) Exhibitor warrants that it is legally capable of entering into contracts and that Exhibitor is authorised to register as an Exhibitor and that all relevant consents have been obtained for this purpose.



- (8) Exhibitor agrees that SMASH may send direct communications including short message service (SMS) to the email addresses and mobile devices that Exhibitor makes available.
- (9) SMASH reserve the right to deny anyone access as an Exhibitor at any time for breach or suspected breach of these Terms.

### 3. TERM

This Agreement starts on the Acceptance Date and will continue until the earlier of the conclusion of the Convention or termination of this agreement in accordance with its Terms.

### 4. EXHIBITOR'S OBLIGATIONS

- (1) Exhibitor will:
  - (a) exercise reasonable care, skill and diligence in using the Convention Services;
  - (b) use the Convention Services in a responsible manner and only in accordance with its intended use and the SMASH manual, rules, policies and guidelines (collectively '**Guidelines**');
  - (c) be liable for giving any unauthorised third-party access to the Convention Services;
  - (d) ensure that the Exhibition Space is protected at all times from misuse, damage, destruction or any form of unauthorised use;
  - (e) make good if requested by SMASH any damage caused to the Exhibition Space;
  - (f) advise SMASH of any issues with the Convention Services as and when they occur
- (2) All products on sale must comply with applicable NSW laws, regulations and Australian Consumer Law (ACL) protections which guarantee consumer rights when consumers buy goods and services in Australia. Under the ACL, consumers are entitled to a replacement or a refund for a major failure of a product. Consumers are also entitled to have products repaired or replaced if the products fail to be of acceptable quality and failure does not amount to a major failure.
- (3) Exhibitor agrees to comply with all relevant legislation, regulations, ordinances, codes of practice including national standards relating to work health and safety, Covid Safe Plan and those that apply to the premises of the exhibiting venue when using those premises.
- (4) By the Exhibitor's payment and/or attendance, the Exhibitor also agrees to any additional terms set out in other Guidelines provided by SMASH which will be made available to the Exhibitor prior to the Convention, the terms of applicable official suppliers and the rules and regulations of the exhibiting venue.
- (5) Exhibitor must not:
  - (a) violate the proprietary rights of third parties in connection with participation in the Convention;
  - (b) use the Exhibition Space for any purpose other than as permitted under these Terms;
  - (c) invite other persons or organisations to share the Exhibition Space without the approval of SMASH;
  - (d) exhibit any works, objects or items that are inappropriate, offensive or of a pornographic nature which SMASH reserves the right to withdraw from the Convention at any time in its sole discretion;
  - (e) not do or allow any of its employees, agents or contractors to do anything at or in connection with the Convention that SMASH reasonably considers is dangerous, annoying, offensive, immoral or illegal.

### 5. ARRANGEMENT OF EXHIBITION SPACE

- (1) The placement of the Exhibitor's Exhibition Space during the Convention is at the discretion of SMASH.
- (2) Exhibitor displays must stay within the confines of the allocated Exhibition Space and must not impede or interfere with aisles, walkways, exits or surrounding stalls.
- (3) Any electrical work undertaken must be at the consent of SMASH and the exhibiting venue. If the Exhibitor wishes to make use of a microphone or any sound amplification, Exhibitor must obtain the prior approval of SMASH.
- (4) The Exhibitor will be allowed pre-Convention access to the main exhibitor area on Friday, 29th October 2021, and the mornings of Saturday, 30th October 2021 and Sunday, 31st October 2021. Specific times of access will be provided by SMASH at a later date. However, Exhibitors must be ready to service the attendees by earliest door opening time of the days open to the public for the Convention.



- (5) At the end of the Convention, the Exhibitor must completely empty the Exhibition Space and ensure it is neat and tidy. This includes, but is not limited to, the removal of all displays, products and rubbish. The Exhibitor will be financially responsible for any costs incurred as a result of their failure to empty and tidy their Exhibition Space in good time.
- (6) The Exhibitor will nominate a designated person(s) as their contact. Information provided by SMASH to the designated person(s) is deemed to have been provided to the Exhibitor. The Exhibitor must notify SMASH if there is any change in the designated person(s) details.
- (7) Exhibitor must be present at their respective Exhibition Space during trading hours on both days. Specific trading hours will be provided by SMASH to Exhibitor at a later date.
- (8) The Exhibitor is responsible for the movement of all equipment to and from the Convention or in the Exhibition Space. SMASH is not liable for any breakages that may occur.
- (9) Staff, stock and equipment must be removed from the premises by 7:00pm AEST on Sunday, 31st October 2021. Failure to do so may result in additional charges for extension of hire of venue calculated per hour until all stallholder staff, stock and equipment has been removed from the premises.

## **6. REGISTRATION DEADLINE**

The registration deadline is 5:00pm AEST on 8th June 2021.

## **7. PAYMENT AND REFUNDS**

- (1) The Exhibitor agrees to pay to SMASH the total payment as advertised on our Site to exhibit at the Convention. In the event of non-payment of any monies due, or in the event of breach of any term or condition on the part of the Exhibitor, the Exhibitor will forfeit the right to occupy their allocated Exhibition Space.
- (2) Placement in the Convention is not confirmed until SMASH has received full payment for any issued invoice (s) from SMASH.
- (3) If the Exhibitor cannot attend the Convention and gives notice of their cancellation by 5:00pm AEST on Friday, 1st October 2021, Exhibitor's payment will be refunded in full.
- (4) If the Exhibitor cannot attend the Convention and provides notice after 5:00pm AEST on Friday, 1st October 2021 but before 5:00pm AEST on Friday, 15th October 2021, a partial refund of 50% may be provided at the discretion of SMASH, to reflect expenses already incurred.
- (5) If the Exhibitor cannot attend the Convention and provides notice after 5:00pm AEST on Friday 15th October 2021, the Exhibitor will forfeit all hire fees and will not be put on notice for future events at the Convention.

## **8. UNAUTHORISED MATERIAL (BOOTLEGS)**

- (1) For the purposes of these Terms, a product is referred to as a 'bootleg' when sale of such product is unauthorised by the relevant intellectual property rights holder(s) for that product. In the event of a disagreement between SMASH and the Exhibitor as to whether a product is unauthorised, the final decision will be determined by SMASH. No correspondence will be entered into and the decision of SMASH is final and binding. If the Exhibitor is unsure of whether a product complies with this section, they are encouraged to ask SMASH for clarification.
- (2) The trading and/or selling of bootleg and/or illegal or infringing merchandise at the Convention is prohibited and counterfeit consumer goods will not be tolerated for any reason. If the Exhibitor participates in the sale of bootlegs, the Exhibitor will be given an official warning from SMASH and asked to remove the relevant items from display and sale for the duration of the Convention. If the Exhibitor continues to sell bootlegs, the Exhibitor will be given a second official warning and will be asked to remove the relevant items from display. If the Exhibitor continues to sell bootlegs, the Exhibitor will forfeit their Exhibition Space and their hire fee and be



asked to leave the Convention immediately. No correspondence will be entered into and SMASH's decision is final and binding.

- (3) At the discretion of SMASH, the definition of 'bootleg' will not apply to Exhibitor in respect of artwork that they produce or manufacture provided that such production or manufacture does not infringe the intellectual property of others. Merchandise sold as artwork must be clearly indicated as such, distinguished from commercial products the Exhibitor may also be selling, and must not use items otherwise considered 'bootleg' or counterfeit whether whole or component parts. In the event of a disagreement between SMASH and the Exhibitor as to whether an item is an original non-infringing artwork, SMASH reserves the right to make a final decision. No correspondence will be entered into and the decision of SMASH is final and binding. If the Exhibitor is unsure of whether an item is artwork, they are encouraged to ask SMASH for clarification.
- (4) The Exhibitor agrees that all merchandise will be subject to inspection by SMASH for compliance with these Terms. SMASH may inspect the merchandise of Exhibitor at any time while the Exhibitor and/or their merchandise is at the premises of the Convention. If SMASH requests, Exhibitor must as soon as practicable present to SMASH any specified items for further inspection and supply documentation or other evidence that Exhibitor's merchandise complies with these Terms and does not infringe the intellectual property rights of third parties.

## 9. ORIGINAL ARTISTIC WORKS (COMMUNITY GROUP AND ARTIST STALLHOLDERS ONLY)

- (1) This section applies to the Exhibitor only if it has been designated as a 'Community Group' or 'Artist Stallholder' by SMASH. An Exhibitor is an Artist Stallholder if it is located in the Artist Circle, or a Community Group Stallholder if located in the Clubs and Community Groups area.
- (2) Exhibitors in this category are permitted to display and offer for sale original artistic works and are not permitted to sell commercial products.
- (3) For the purposes of this section, a product is a 'commercial product' if the item not produced, designed or manufactured by the Exhibitor or by persons with whom the Exhibitor has an agreement to sell items on their behalf.
- (4) If the Exhibitor is unsure of whether a product complies with this category as to "non-commercial", Exhibitor is encouraged to ask SMASH for clarification.
- (5) Products on public display at the Convention must not breach this section. In the event of a disagreement between SMASH and the Exhibitor as to whether this section has been breached, the decision will be made by SMASH. No correspondence will be entered into and the decision of SMASH is final and binding.
- (6) If the Exhibitor sells a product which breaches this section, the Exhibitor will be given an official warning by SMASH and asked to remove the relevant items from display and sale for the duration of the Convention. If the Exhibitor continues to sell a product which breaches this section, the Exhibitor will be asked to remove the relevant items from display and sale for the duration of the Convention and given a second official warning. If the Exhibitor continues to sell a product which breaches this section, the Exhibitor will forfeit their Exhibition Space and their hire fee and be asked to leave the Convention immediately. No correspondence will be entered into and the decision of SMASH is final and binding.
- (7) In the event of a disagreement between SMASH and the Exhibitor as to whether a product is a non-infringing original copyright work of the Exhibitor, the decision will be made by SMASH. No correspondence will be entered into and the decision of SMASH is final and binding. If the Exhibitor is unsure of whether an item is an original artistic artwork, Exhibitor is encouraged to ask SMASH for clarification.

## 10. CONTENT AND MERCHANDISE RESTRICTIONS

- (1) Content on public display at the Convention must not breach this section.
- (2) The display or advertisement of products with restricted content is not permitted. For the purposes of this section, restricted content includes:
  - (a) frontal and tasteless nudity, pornography, sexually orientated violence, explicit or suggestive material;



- (b) material that promotes or encourages behaviour that is threatening, embarrassing, hateful, libellous, racially or ethnically insulting, or otherwise inappropriate for persons under the age of 15;
- (c) extreme violence or gore; and
- (d) any other content as decided by the sole discretion of SMASH.

**('Restricted Content')**

- (3) The display or advertisement of Restricted Content is not permitted. Products that are deemed unacceptable by the SMASH! Code of Conduct Props Policy ('Unacceptable Props') are subject to restrictions. Unacceptable Props must be handled outside of the bounds of the Exhibitor's Exhibition Space. Unacceptable Props must be sold in appropriate packaging, and transferred and stored after sale, for collection by the attendee upon exit from the Convention. Transfer, storage and other activities related to compliance with this section is the responsibility of the Exhibitor. Products deemed to be Unacceptable Props, their display, storage, and collection will be subject to inspection by SMASH and exhibition venue security personnel. SMASH reserves the right in its sole discretion to remove Unacceptable Props from the Convention. If the Exhibitor is unsure of whether a product constitutes Unacceptable Props and how these are treated, Exhibitor is encouraged to ask SMASH for clarification.
- (4) If the Exhibitor displays a product which breaches this section, the Exhibitor will be given an official warning by SMASH and asked to remove the relevant products from display for the duration of the Convention. If the Exhibitor continues to display a product which breached this section, the Exhibitor will be asked to remove the relevant products from display for the duration of the Convention and given a second official warning. If the Exhibitor continues to display a product which breaches this section, the Exhibitor will forfeit their Exhibition Space and their hire fee and will be asked to leave the Convention immediately. No correspondence will be entered into and the decision of SMASH is final. If the Exhibitor is unsure of whether a product falls under Restricted Content or Unacceptable Props or otherwise complies with this section, Exhibitor is encouraged to ask SMASH for clarification.

**11. FOOD AND DRINK SALES**

- (1) The sale of foods and drinks (**'Consumable Items'**) is restricted to Exhibitors that are approved by SMASH and Venue as a 'food vendor'. Consumable Items must not be sold by the Exhibitor without approval of SMASH. No correspondence will be entered into and the decision of SMASH is final and binding.
- (2) If an Exhibitor sells Consumable Items at the Convention without approval, Exhibitor will be asked by SMASH to remove the Consumable Items from sale. If Exhibitor does not comply, Exhibitor's Consumable Items will be removed by SMASH and will be available for collection by Exhibitor at the end of the Convention. No correspondence will be entered into and the decision of SMASH is final and binding.

**12. STAFF ENTRY**

- (1) Exhibitor will be issued with the number of exhibitor passes agreed to as part of Exhibitor's application. Exhibitor must indicate to SMASH the number of passes required. Additional passes must be requested by 5:00pm AEST Friday, 22nd October 2021.
- (2) Exhibitors must be in possession of an exhibitor pass at all times while at the exhibition venue. If requested at any time, Exhibitor must show its exhibitor pass to SMASH. Any Exhibitor that is not in possession of a pass may be removed from or denied entry to the exhibition venue. No correspondence will be entered into and the decision of SMASH is final and binding.
- (3) The number of passes that will be provided to Exhibitor is the quantity listed on the SMASH invoice issued to Exhibitor. SMASH and Exhibitor may agree to a different quantity by agreement in writing. Additional passes will also be available for purchase from SMASH.

**13. THEFT**

It is the Exhibitor's responsibility to protect its products from theft. SMASH takes no responsibility for any damage incurred by the Exhibitor or to their property before, during or after the Convention.



## 14. INTELLECTUAL PROPERTY

(1) In these Terms:

**“Intellectual Property (Rights)”** means all intellectual property rights, including all copyright, patents, trademarks, design rights, trade secrets, circuit layouts, domain names, know-how and other rights of a similar nature worldwide, whether registered or not, and any applications for registration or rights to make such an application.

**“Works”** means any material made available on the Site and includes our written texts, documents, articles, news, newsletters, posts, commentaries, surveys, data, photographs, pictures, graphic works, video, or images.

(2) Exhibitor acknowledge that ownership of the Intellectual Property Rights relating to the Site and our Convention is the property of, licensed by or vest on creation in SMASH.

(3) The Works on the Site and generated by or related to the Convention including any digital content (**“Copyright Material”**) are subject to copyright and owned by the copyright owner. The Copyright Material on the Site and exhibited at the Convention is protected by copyright under the laws of Australia and through international treaties. Unless otherwise indicated, all rights (including copyright) in the Copyright Material and compilation of the Site (including but not limited to text, graphics, logos, button icons, video images, audio clips, code, scripts, design elements and interactive features) are owned or controlled by us. Copyright Material of a third party may be the subject of copyright owned by that third party.

(4) The Site and the Copyright Material or any part of it (including, without limitation, any content or images) may not be copied, reproduced, adapted, publicly displayed, duplicated, translated or distributed in any way (including mirroring) to any other device, server, website or other medium for publication or distribution, without our express prior written consent. Exhibitors shall take due care to respect the Intellectual Property Rights of others and shall not engage in unauthorised use, copying, reproduction, lending, reselling, manipulation, disassembly, distribution or publication of any Copyright Material including the Works of third parties.

(5) All Intellectual Property including any trademarks, service marks, trade names and any other proprietary designations are owned, registered or licensed by us. Any other trademarks, service marks, logos, trade names and any other proprietary designations are the trademarks or property of the respective parties. “SMASH” and all associated trade marks on the Site are our trademarks or any related entities. Exhibitor must not use our trademarks:

- (a) in or as the whole or part of Exhibitor’s own trademarks;
- (b) in connection with activities, products or services which are not ours; or
- (c) in a manner which may be confusing, misleading or deceptive.

(6) The obligations accepted by Exhibitors under this clause survive termination or expiry of these Terms.

## 15. EXHIBITORSHIP TERMINATION

(1) These Terms will continue to apply until terminated by either the Exhibitor or by us as set out below.

(2) SMASH may terminate these Terms by written notice to Exhibitor if:

- (a) Exhibitor has breached any provision of the Terms;
- (b) SMASH believes that Exhibitor is making unauthorised or improper use of the Convention Services;
- (c) SMASH is required to do so by law;
- (d) without cause if the provision of the Convention Services to Exhibitor by SMASH is, in the opinion of SMASH, no longer commercially viable.

(3) SMASH reserves the right to terminate these Terms at any time and may suspend or deny, in our sole discretion, Exhibitor’s access to all or any portion of the Convention Services without notice if Exhibitor’s conduct impacts our name or reputation or violates the rights of any other party.



## 16. WARRANTIES AND REPRESENTATIONS

- (1) No warranty of any kind whether express or implied is made in relation to the accuracy of our Copyright Material or any content on the Site or our Convention Services.
- (2) It is Exhibitor's sole responsibility to determine that the Convention Services or any part of these meet the needs of Exhibitor or are otherwise suitable for the purpose for which they are purchased.
- (3) Exhibitor acknowledges that SMASH is not bound to provide Exhibitor with any equipment, funding, material or other assistance or support in connection with the Convention.
- (4) SMASH makes no warranty or representation in relation to the Convention including about the size or number of visitors to the Convention or any benefit that Exhibitor is likely to receive from promoting its products and services at the Convention.
- (5) SMASH excludes from these Terms all other warranties, conditions and terms implied by law except for any, the exclusion of which would contravene any law.
- (6) This clause survives the termination or expiry of these Terms for whatever reason.

## 17. DISCLAIMER

- (1) There may be risks associated with participating in activities covered under the Convention Services. It is possible that Exhibitor may become injured or ill while participating in the Convention Services or incur damage or loss in relation to Exhibitor's products.
- (2) Exhibitor participates of its own free will in the Convention Services and accordingly, knowingly and voluntarily assumes all risks associated with the Convention Services.
- (3) Nothing in these Terms limits or excludes any guarantees, warranties, representations or conditions implied or imposed by law, including the Australian Consumer Law (or any liability under them) which by law may not be limited or excluded.
- (4) Subject to this clause, and to the extent permitted by law:
  - (a) all terms, guarantees, warranties, representations or conditions which are not expressly stated in these Terms are excluded; and
  - (b) SMASH will not be liable for any direct, indirect, special or consequential loss or damage, loss of profit or opportunity, or damage to goodwill arising out of or in connection with the Convention Services or these Terms (including as a result of not being able to use the Convention Services or the late supply of the Convention Services), whether at common law, under contract, tort (including negligence), in equity, pursuant to statute or otherwise.
- (5) Use of the Site and the Convention Services is at Exhibitor's own risk. Everything on the Site and the Convention Services is provided to Exhibitor on an "as is" and "as available" basis, without warranty or condition of any kind, except as otherwise expressly provided in these Terms.
- (6) In the event of the unforeseen event of postponement or variation to the date for holding the Convention, SMASH will not be liable to Exhibitor for any loss occasioned.
- (7) None of the affiliates, directors, officers, employees, agents, contributors, third party content providers or licensors of SMASH (including any third-party providers) make any express or implied representation or warranty about the Convention Services and the Copyright Material. This includes (but is not restricted to) loss or damage Exhibitor might suffer as a result of any of the following:
  - (a) failure of performance, error, omission, interruption, deletion, defect, unlawful third-party conduct, or theft or destruction of Exhibitor's products;
  - (b) the accuracy, suitability or currency of any information on the Site, the Convention Services, or any of the Copyright Material (including third- party material and advertisements on the Site);
  - (c) costs incurred because of Exhibitor using the Site and the Convention Services;
  - (d) the Copyright Material or operation in respect to Site links which are provided for the Exhibitor's convenience;
  - (e) any failure to complete a transaction, or any loss arising from e-commerce transacted on the Site; or



- (f) any defamatory, threatening, offensive or unlawful conduct of third parties or publication of any materials relating to or constituting such conduct.

(8) This clause survives the termination or expiry of this agreement for whatever reason.

## **18. LIMITATION OF LIABILITY**

(1) To the extent permissible at law, SMASH is not liable for any direct, indirect, punitive, incidental, special, consequential damages including without limitation any claims, losses, liability, loss of data, loss of profits, revenue, business or goodwill arising out of or in any way connected with the provision of or failure to provide any products or services under these Terms.

(2) Except as provided in these Terms, SMASH exclude all representations and warranties relating to the subject matter of these Terms, our Site and the supply of our Convention Services.

(3) SMASH's Convention Services are provided "as is" and specific results cannot be guaranteed. It is Exhibitor sole responsibility to determine that the Convention Services or any part of these meet Exhibitor's needs or are otherwise suitable for the purposes for which they are used.

(4) These Terms are to be read subject to any legislation that prohibits or restricts the exclusion, restriction or modification of any implied warranties, conditions, guarantees or obligations. If such legislation applies, to the extent possible SMASH limits its liability as follows, at our option:

- (a) for any claims relating to these Terms, to the fees payable as an Exhibitor under this agreement (if applicable);
- (b) in the case of products including any digital products (a) the replacement of the products or the supply of equivalent products; (b) the repair of the products; (c) the payment of the cost of replacing the products or of acquiring equivalent products; or (d) the payment of having the products repaired; or
- (c) in the case of services, the supply of the services again or the payment of the cost of having the services supplied again.

(5) This clause survives the termination or expiry of this agreement for whatever reason.

## **19. RELEASE AND INDEMNITY**

(1) The Exhibitor agrees to release and indemnify SMASH against any loss, expenses, actions or claims (including any legal costs) arising from or in connection with the Convention and Exhibitors use of the Exhibition Space, any wilful or negligent act or omission of the Exhibitor, death, injury, loss or damage suffered by Exhibitor or any of its visitors, invitees or licensees or Exhibitor failing to comply with a term or condition of this agreement.

(2) Exhibitor agrees to defend, indemnify and hold SMASH, our affiliates, employees, agents, contributors, third party content providers and licensors harmless from and against all actions, suits, claims, demands, liabilities, costs, expenses, losses and damage (including legal fees on a full indemnity basis) brought against or sustained by SMASH, which:

- (a) is directly or indirectly caused by Exhibitor's breach of these Terms;
- (b) is directly or indirectly caused by any willful, reckless or negligent act of Exhibitor;
- (c) concerns personal injury to any person caused or contributed to by Exhibitor;
- (d) is caused by Exhibitor's act or omission and constitutes a loss of or damage to property;
- (e) is brought by any third-party in respect of personal injury, death or damage to third-party property; or
- (f) arises from Exhibitor's act or omission.

(3) Except as required by law, SMASH will not be liable for any claim, loss or liability for personal injury, death or damage to Exhibitor or its property however it may be caused.

(4) SMASH reserve the right, at our own expense, to assume the exclusive defence and control of any matter subject to indemnification by Exhibitor, and in such case, Exhibitor agree to cooperate with our defence of such claim.

(5) In no event will SMASH be liable to Exhibitor for any indirect, incidental or consequential damages including, without limitation, direct, indirect, special, punitive, or exemplary damages.

(6) This clause survives the termination or expiry of this agreement for whatever reason.





## **20. DISPUTES**

### **(1) Compulsory process**

A Party shall not start arbitration or court proceedings (except proceedings seeking interlocutory relief) in respect of a Dispute unless it has complied with this clause.

### **(2) Notification**

A Party claiming that a Dispute has arisen shall notify each other party to the Dispute giving details of the Dispute.

### **(3) Initial period – efforts to resolve Dispute**

During the 30-day period after a notice is given (or longer period agreed in writing by the Parties to the Dispute) (Initial Period) each Party to the Dispute (Disputant) covenants with the other to cooperate and take all reasonable steps necessary to attempt to resolve the Dispute.

### **(4) Mediation**

If the Disputants are unable to resolve the Dispute within the Initial Period, each Disputant agrees that the Dispute shall be referred for mediation, at the request of any Disputant, to:

- (a) a mediator agreed on by the Disputants; or
- (b) if the Disputants are unable to agree on a mediator within seven days after the end of the Initial Period, then the Parties must submit the dispute for mediation through the Chair of Resolution Institute (ACN 008 651 232) or the Chair's designated representative and the Resolution Institute Mediation Rules shall apply to the mediation.

### **(5) Role of mediator**

The role of any mediator is to assist in negotiating a resolution of the Dispute. A mediator may not make a decision that is binding on a Disputant unless that Disputant has so agreed in writing.

### **(6) Information**

Any information or documentation disclosed by a Disputant under this clause shall be kept confidential and may not be used except to attempt to resolve the Dispute.

### **(7) Costs of mediation**

Each Disputant shall pay its own costs of complying with this clause. The Disputants shall pay equally the costs of any mediator engaged.

### **(8) Location, timing and attendance**

The mediation will be held in Sydney, Australia, within 30 days after expiry of the Initial Period. Each Disputant agrees to attend the mediation by a representative having full authority to resolve the dispute. At the mediation each Disputant may be represented by one or more legal representative.

### **(9) Failure to resolve**

If the dispute fails to resolve at mediation or if one of the Disputants fails or refuses to attend the mediation, the mediator will be requested to inform each Disputant in writing that the mediation has been terminated without resolution (Mediation Termination Notice). Upon receipt of Mediation Termination Notice, the dispute resolution process will be terminated. A party to a dispute will only be entitled to pursue other remedies available to it at law or otherwise, after receipt of Mediation Termination Notice.

### **(10) Confidentiality**



All communications concerning negotiations made by the Disputants arising out of and in connection with this dispute resolution clause are confidential and to the extent possible, must be treated as "without prejudice" negotiations for the purpose of applicable law of evidence.

## 21. **PRIVACY**

Please refer to our '**Privacy Policy**' which is made a part of these Terms.

## 22. **NO WAIVER**

Any failure on our part to enforce any right or provision of these Terms will not constitute a waiver of future enforcement of that right or provision.

## 23. **ASSIGNMENT**

- (1) Exhibitor agree that SMASH may assign, transfer, sub-licence or otherwise deal with our rights and/or obligations under these Terms.
- (2) Exhibitor may not without our prior written consent assign, transfer, sub-licence or otherwise deal with any of Exhibitor rights and obligations under these Terms.

## 24. **ENTIRE AGREEMENT**

Unless otherwise stated, these Terms and our '**Privacy Policy**' shall constitute the entire agreement between Exhibitor and us in relation to Exhibitor's use of the Site and our Convention Services.

## 25. **SEVERABILITY**

If any part of provision of these Terms is invalid, unenforceable or in conflict with the law, that part or provision is replaced with a provision which, as far as possible, accomplishes the original purpose of that part of the provision otherwise it is to be read down or severed to the extent necessary without affecting the validity or enforceability of the remaining provisions.

## 26. **LAW AND JURISDICTION**

- (1) The Terms and information on this Site are governed by and construed in accordance with the laws of the State of New South Wales, Australia. Exhibitor submits to the non-exclusive jurisdiction of the Courts of New South Wales and Courts of Appeal from them for determining any dispute concerning these Terms.
- (2) If any provision of these Terms is found to be invalid or unenforceable by a Court of Law, such invalidity or unenforceability will not affect the remainder of the Terms which will continue in full force and effect.

## 27. **FORCE MAJEURE**

Notwithstanding any other provision of these Terms, SMASH need not act if it is impossible to act due to force majeure, meaning any cause beyond our control (including war, riot, natural disaster or law taking effect after the date of these Terms). Exhibitor agree that SMASH have no responsibility or liability for any loss or expense suffered or incurred by Exhibitor because of not acting for so long as the force majeure continues.

## 28. **FEEDBACK AND AUTHORISATIONS**

- (1) Exhibitor feedback is important to us. SMASH encourage Exhibitors to provide feedback, reviews, comments and suggestions for improvements to the Site and our Convention Services ("**Feedback**"). Exhibitor may submit Feedback by emailing us at exhibitors@smash.org.au.
- (2) Exhibitor authorise us to use Feedback for the purpose of promoting and marketing our Convention Services by consenting to us displaying Exhibitor client name as follows:
  - (a) on our portfolio list;
  - (b) on our Site, our partner websites and in media releases;
  - (c) by making representations of the Convention Services in any media publicity for news, review and on



social media.

**(“Marketing”)**

- (3) Exhibitor grant to us a non-exclusive, worldwide, perpetual, irrevocable, fully-paid, royalty-free, sub-licensable and transferable license under all intellectual property rights that Exhibitor own or control to use, copy, modify, publish, display, create derivative works based upon and otherwise use the Feedback and Marketing for any purpose, including (but not limited to) media publicity and advertising, promotional and review purposes.

**29. HOW TO CONTACT US**

- (1) This Site is owned and operated by SMASH Incorporated (ABN 46 310 471 217).
- (2) Exhibitor can contact us through the contact details on our Site by email at the following address: [artists@smash.org.au](mailto:artists@smash.org.au)

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Terms last updated 27th Apr 2021

