

# Winston Music Application & Agreement to Hire

## DEFINITIONS

**Owner** is the proprietor of the equipment: Dale Cleves Music Pty Ltd ABN 90 007 894 046, Trading as Winston Music, 87 Winston Ave, Daw Park SA 5041, Tel (08) 8276 9988.

**Hirer** includes an agent of the hirer and agrees to hire the equipment specified in the Agreement and Invoice from the owner upon the terms and conditions in this agreement.

**Equipment** means any instrument or item of equipment listed in the Invoice and Page 1 of this agreement including accessories.

## TERMS & CONDITIONS

### 1. Offer and Acceptance

1.1 The hirer by his/her signature agrees to hire goods, accessories or equipment ("the goods") described herein from the owner for the hire period and to pay the total hire fee payable and observe the conditions, terms and covenants in the Agreement to Hire.

**1.2 The owner accepts this offer by issuing an official tax invoice for payment.**

### 2. Hire of Equipment

2.1 The hiring of the equipment will commence from the commencement date specified on the Invoice and continue for the term specified on the Invoice. Any extension of the period must be agreed to by the owner.

2.2 The hirer agrees to return the equipment to the owner on or before the end of the hire period as outlined on the Invoice and that failure to do so can be criminal theft and may be immediately reported to the police.

### 3. Payment for hire

3.1 The hirer agrees to pay the owner:

- (i) the hire charge calculated in accordance with the relevant writings and figures set forth in the Hire Agreement Invoice.
- (ii) A sum equal to the value of the goods, accessories and equipment lost or stolen during the relevant period.
- (iii) The owner's expenses both legal and incidental.
- (iv) accumulated interest on all amounts outstanding or overdue by the hirer by the rate of 10% per month calculated daily from the due date to the receipt of payment.

3.2 The required fees must be paid to the owner prior to the commencement date of the hire period. Equipment not returned on time and in accordance with this agreement will be subject to a continuance of the agreed rental until return is complete.

3.3 The owner will, unless otherwise agreed, make equipment delivery and collection arrangements to and from the hirer's site and the hirer will pay to the owner any charges and expenses incurred in such delivery, installation, tuning and/or collection. The owner will use its best endeavours to deliver the equipment by the agreed time but will not be liable to the hirer for a late delivery, non-delivery or any associated loss or damage due to a late or non-delivery.

### 4. Use, handling and maintenance

4.1 The hirer agrees to operate, maintain, store and transport the equipment only for its intended purpose with due care and diligence, and in accordance with the instruction below, as well as any additional instruction provided by the owner:

- (i) the equipment must not be subject to exposure to any excessive temperature, dust or humidity, any corrosive substance (including any cleaning products) or any amount of moisture.

- (ii) cleaning of the instrument cabinet by anything other than a slightly water-dampened clean polishing cloth is strictly prohibited.

4.2 Transport, handling or technical/repair must be carried out only by persons authorised by the owner, including all freight carriers, technicians and repairers (including piano tuning).

4.3 Any adjustment to the positioning of a grand piano must be discussed with the owner for before handling to minimise risk of damage piano leg breakage. All damage or loss incurred in handling by anyone other than the owner's authorised carrier is the responsibility of the hirer.

4.4 The hirer agrees to comply with all occupational health and safety laws and regulations relating to the use and handling of the equipment.

4.5 The hirer shall ensure the equipment is returned to the owner clean of all foreign matter or agrees to a reasonable cleaning fee being charged by the owner.

### 5. Hirer's warranties

5.1 The hirer warrants that:

- (i) The particulars in the Contract are correct in every respect and are not misleading in any way including, without limitation, by omission;

- (ii) The hirer will not tamper with, repair or modify the instrument in any way, or permit another to do so, without prior written permission of the owner;

- (iii) The hirer agrees that the equipment complies with its description, has been received by the hirer clean and in good working order;

- (iv) The hirer will not in any way part with possession of the equipment, nor assign this hire contract, nor remove the equipment from the address registered on the contract without the prior approval of the owner;

### 6. Loss, damage or breakdown of equipment

***The hirer is responsible for covering the cost of replacing the Instrument if it is lost or destroyed while you have it, and the Owner recommends that you insure the Instrument while you have it.***

6.1 The hirer will be responsible to pay for the repair or replacement of the equipment in the case of any loss or damage irrespective of how the loss or damage occurred, except for fair wear and tear, during the hire period.

6.2 If the Instrument is totally destroyed, lost and that is caused by anyone other than the Owner, or if the instrument is not returned to the Owner, then the hirer must pay the Owner the Replacement Value of the Instrument.

6.3 You must tell the Owner of any loss or damage to the Instrument within 24 hours of any loss or damage occurring.

6.4 The Instrument may only be repaired by the Owner or someone authorised by the Owner.

**6.5 On delivery of the piano, the hirer or an authorised agent will be required to be present to inspect and sign an Instrument Condition Sheet.**

By signing this, the hirer acknowledges that the Instrument is in the condition described in the Instrument Condition Sheet. The hirer will not be required to repair any damage or marks noted on the Instrument Condition Sheet.

### 7. Indemnity

7.1 To the full extent permitted by law the hirer releases, discharges and indemnifies the owner from all claims and demands on the owner arising out of or consequent on the use or misuse of the equipment during the hire period.

7.2 Without limiting clause 5.1 of this agreement, the hirer agrees that to the full extent permitted by law, no warranties are

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given by the owner in respect of the equipment. Any liability of the owner pursuant to any warranty, which cannot be excluded by law, will not exceed either the cost of repairing the equipment or the cost of resupplying the equipment, at the discretion of the owner.

## 8. Liability

The hirer will assume all risks and liabilities for, and in respect of, the equipment and for all injuries to or deaths of persons and any damage to property however arising from the hirer's possession, use, maintenance, repair, storage or transport of the equipment.

## 9. Title to equipment

The hirer acknowledges that the owner retains title to the equipment and that the hirer has rights to use the equipment as a mere bailee only. The hirer agrees that the hirer has no rights to pledge the owner's credit in connection with the equipment. The hirer agrees not to agree, offer or purport to sell, assign, sub-let, lend, pledge, mortgage let or hire or otherwise part with or attempt to part with personal possession or otherwise not to deal with the equipment and not to conceal or alter the goods or make any addition or alteration to the equipment.

## 10. Access to the Instrument

You must provide the Owner or anyone the Owner authorises with access to the Instrument at all reasonable times:

- (a) for inspection, repair, tuning; and
- (b) to take possession of the Instrument.

## 11. Repossession and remedies on default

- 11.1 The owner may immediately terminate this agreement and retake possession of the equipment if the hirer breaches any provision of this agreement, notwithstanding anything else herein contained.
- 11.2 All damages or charges or loss incurred by the owner in repossessing due to a breach are to be paid by the hirer, including any cost the owner may have incurred in relation to collecting amounts outstanding relevant to this agreement.

## 12. Completion of the hire period

The hire period is completed when the equipment has been returned to the owner in the same condition as when it was hired on or by the date and time outlined on the Invoice.

## 13. Privacy Act. Acknowledgement that credit information may be given to credit reporting agency.

- 13.1 Under Section 18E (8) of the Privacy Act, Dale Cleves Music Pty. Ltd. (the Credit Provider) is allowed to give a credit reporting agency personal information about your credit application. The information which may be given to an agency is covered by Section 18E (3) of the Act and includes: Identity particulars as permitted by the Privacy Commissioner's determination issued under Section 18E (3); the fact that you have applied for credit and the amount; the fact that Dale Cleves Music Pty. Ltd. is a current credit provider to you; payments which have become overdue more than 60 days, and for which collection action has commenced; advice that payments are no longer overdue; cheques drawn by you which have been dishonoured more than once; in specified circumstances, that in the opinion of Dale Cleves Music Pty. Ltd. you have committed a serious credit infringement; that credit provided to you by Dale Cleves Music Pty. Ltd. has been paid or otherwise discharged.
- 13.2 The Applicants/s hereby agree that the Credit Provider may contact any trade references or other credit references at any

time whether now or in the future for the purposes of assessing credit worthiness.

- 13.3 The Applicant/s hereby agrees to the Credit Provider receiving from any other provider or providing to any other credit provider any credit information whether by the way of report record or otherwise relating to credit worthiness for the purposes of exchanging of information, assessing credit worthiness and notification of default.
- 13.4 The Applicant/s hereby agrees to the Credit Provider obtaining from a credit reporting agency a credit application and the applicant further consents to the Credit Provider obtaining such records from time to time for the purpose of assessing credit worthiness during the continuance of credit provision.
- 13.5 The Applicant/s hereby agrees to the Credit Provider obtaining from a business which provides credit information in relation to my/our commercial credit worthiness or commercial dealings and such information for the purposes of assessing this application for credit.
- 13.6 The Applicant/s hereby agrees that in the event of default of payment of my debts that the Credit Provider may disclose all information relating to my/our account to its collection agency for the purpose of receiving any or all amounts outstanding.

## 14. Entire Agreement

This Rental Agreement contains everything the parties have agreed in relation to the rental of the Instrument. No party can rely on an earlier written document or anything said or done by or on behalf of another party before this Rental Agreement was executed.

## 15. Variation And Construction Of Agreement

- 15.1 Each provision of this Rental Agreement is individually severable. If any provision is or becomes illegal, unenforceable or invalid in any jurisdiction it is to be treated as being severed from this Rental Agreement in the relevant jurisdiction, but the rest of this Rental Agreement will not be affected. The legality, validity and enforceability of the provision in any other jurisdiction will not be affected.
- 15.2 No variation of this Rental Agreement will be of any force or effect unless it is in writing and signed by each party to this Rental Agreement.
- 15.3 A waiver of any right, power or remedy under this Rental Agreement must be in writing signed by the party granting it. A waiver only affects the particular obligation or breach for which it is given. It is not an implied waiver of any other obligation or breach or an implied waiver of that obligation or breach on any other occasion. The fact that a party fails to do, or delays in doing, something the party is entitled to do under this Rental Agreement does not amount to a waiver.

## 16. Governing Law

This Rental Agreement is governed by the law of South Australia. The parties submit to the jurisdiction of its courts.

## 17. Australian Consumer Law

- 17.1 Your rights set out in this Rental Agreement are in addition to the rights as a consumer under the Australian Consumer Law.
- 17.2 Your consumer rights are not excluded, restricted or modified by this Rental Agreement.

## 18. GST

Goods and Services Tax will be charged on all payments due under this Rental Agreement.