1. All payments made by the Client to Fern & Fallow in connection with this Agreement must be paid by EFTPOS in accordance with the account details provided in the Quote.
2. The time for payment is of the essence.

**Variations and Cancellations Fern & Fallow Events**

**Terms & Conditions**

1. These Terms and Conditions (**“Terms”**) form part of the contract (**“Agreement”**) between Fern & Fallow Events ABN 60 917 871 942 (**“Fern & Fallow”**) and the customer (**“Client”**) which will be binding on the parties when:
2. the Client signs their acceptance of a Quote provided by Fern & Fallow that sets out the Equipment/Floristry Fern & Fallow will provide and the Services Fern & Fallow will perform; or
3. Fern & Fallow agrees in writing to provide Equipment/Floristry and/or Services to the Client; or
4. the Client pays a deposit for the provision of Equipment/Floristry and/or Services by Fern & Fallow.
5. The Client acknowledges that these Terms and the Quote embody the whole Agreement between the Client and Fern & Fallow. The Client agrees that the scope and terms of the Quote, including prices, may change as a result of updated instructions from the Client.

**Performance**

1. Fern & Fallow agrees to provide the Equipment/Floristry and perform the Services as set out in the Quote (or as amended by updated instructions provided by the Client).
2. The Client authorises Fern & Fallow to do every act, matter or thing desirable or necessary to provide the Equipment/Floristry and perform the Services to the Client under the Agreement, including but not limited to, entering the Client’s Premises and setting up the Equipment/Floristry/Floristry.

**Quote and Pricing**

1. A Quote provided by Fern & Fallow is open for acceptance for fourteen (14) days from the date the Quote was issued to the Client. After this time a Quote may be varied.
2. A Quote is an invitation only to the Client to enter into an Agreement based upon that Quote. Any terms included in a Quote provided by Fern & Fallow will form part of these Terms and, if inconsistent, the terms of the Quote will prevail.
3. Unless expressly stated otherwise, any price quoted, sum payable, or amount used in the calculation of a Quote or sum payable, under these Terms has been determined without regard to GST. In addition to the payment of the Hire Fee, the Client must pay GST and any other taxes or duties imposed.

**Deposit**

1. Fern & Fallow require the Client, as a pre-condition to the Agreement, to pay to Fern & Fallow a deposit of 50% of the relevant Quote in respect of the Equipment/Floristry be provided and/or the services to be performed. Unless Fern & Fallow expressly waive the requirement for payment of the deposit in writing, no Agreement will be effective unless and until the deposit is paid.
2. The deposit must be paid by no later than one (1) month prior to the Hire Period or Delivery Day (**“Deposit Date”**).
3. Any deposit shall when paid be applied against the Hire Fees, or if the Client cancels the Agreement or any Equipment/Floristry, Fern & Fallow may, at its discretion, apply the deposit (or part thereof) as a credit against any such cancellation or variation.
4. Failure to pay the deposit on or before the Deposit Date may result in the cancellation of the Agreement or delay of the delivery of the Equipment/Floristry until such time as the deposit is paid. The Client acknowledges and agrees that Fern & Fallow are not responsible nor will be liable for any loss incurred as a result of any cancellation or delay caused by the Client not making timely payment of the deposit.

**Security Bond**

1. In the event that Fern & Fallow provide items to hire, as well as Floristry Services, it is required that the Client pay Fern & Fallow a security bond of 20% of the Hire Fee (excluding floristry costs), in addition to the deposit and any invoiced Hire Fees, to cover loss, damage or breakage to the Equipment unless stated otherwise in writing.
2. The security bond must be paid simultaneously with the balance of the Floristry /Hire Fee, as directed in clause 16 hereof.
3. Any portion of the security bond not applied by Fern & Fallow will be refunded once the Equipment has been returned and Fern & Fallow have conducted a satisfactory inspection of the Equipment to determine that no damage has occurred and no excessive repair or cleaning is required, in Fern & Fallow’s absolute discretion.
4. The refund of a security bond may take up to one (1) month from the conclusion of the Hire Period.

**Floristry and/or Hire Fee**

1. The Client will pay the balance of the Floristry and/or Hire Fee to Fern & Fallow no later than seven (7) days prior to the commencement of the Delivery Day / Hire Period, unless otherwise agreed by Fern & Fallow (**“Payment Date”**).
2. Failure to pay the Floristry and/or Hire Fee on or before the Payment Date may result in the delay of the delivery of the Equipment/Floristry until such time as the Floristry and/or Hire Fee is paid in full. Fern & Fallow are not responsible for any loss incurred as a result in delays caused by the Client not making timely payment of the Floristry and/or Hire Fee. The Client acknowledges and accepts that Fern & Fallow will not be liable for failure to deliver, or for delay in delivery, nor any loss suffered by the Client as a result of its non-payment or late payment of the Floristry and/or Hire Fee.
3. **Variations and Substitutions to Bookings**
4. Any request by the Client to vary a booking must be in writing, and may be refused by Fern & Fallow in its absolute discretion, acting reasonably.
5. All Floristry Services provided by Fern & Fallow are subject to substitution, as a result of, but not limited to, quality control, seasonal variation, unavailability, shipping and freight.
6. Fern & Fallow agree to substitute unavailable flowers with a similar variety, quality, colour, look and value at its discretion.
7. Fern & Fallow reserves the right to vary a booking, provided that such variation does not materially prejudice the Equipment/Floristry and/or Services contained in the Quote.
8. Where there are changes in the costs incurred by Fern & Fallow in relation to the provision of Equipment/Floristry or Services, Fern & Fallow may vary the quoted price in order to account for any such change by providing notice to the Client.
9. Unless otherwise agreed in writing by Fern & Fallow, the Client may not cancel this Agreement (or any part of this Agreement) unless the Client pays to Fern & Fallow, any and all costs incurred by Fern & Fallow in relation to your cancelled booking (or part thereof) up until and including the date of cancellation.
10. Cancellation of a booking by the Client within:
11. thirty (30) days of the Delivery Day /Hire Period will incur a cancellation fee of 25% of the Floristry and/or Hire Fee; and
12. fourteen (14) days of the Delivery Day /Hire Period will incur a cancellation fee 50% of the Floristry and/or Hire Fee.
13. The parties acknowledge and agree that the cancellation fees set out in clause 24 hereof are reasonable estimates of loss likely to be suffered by Fern & Fallow in the event of cancellation of the Agreement by the Client, noting that such events require extensive planning and preparation and that considerable time and effort is required to arrange alternate and/or replacement bookings.
14. Cancellation of a booking as a result of unfavourable weather conditions will remain subject to the above cancellation policy. Fern & Fallow is in no way responsible for unfavourable weather conditions that may cause the Client to cancel their booking.
15. If Fern & Fallow are unable to provide the Equipment/Floristry or Services, Fern & Fallow may cancel the Client’s order.
16. To the maximum extent permitted by law, Fern & Fallow expressly excludes liability for any damage, delay or failure to performs its obligations under the Agreement, including, but not limited to indirect or consequential losses or expenses suffered by the Client, due to circumstances beyond the reasonable control of Fern & Fallow, including, but not limited to acts of God, war, rain, hail, wind, fire, explosion, pandemics, civil disobedience, and legislation not in force at the date of the Agreement.

**Delivery**

1. Unless otherwise agreed by Fern & Fallow in writing, fees for the delivery and collection of Equipment/Floristry will be charged as follows:
   1. delivery and collection within a ten (10) kilometre radius of the suburb of Cockatoo in the State of Victoria will be free;
   2. delivery and collection within a ten (10) to thirty (30) kilometre radius of the suburb of Cockatoo in the State of Victoria will incur a delivery fee of $30;
   3. delivery and collection within a thirty (30) to fifty (50) kilometre radius of the suburb of Cockatoo in the State of Victoria will incur a delivery fee of $80; and
   4. delivery and collection within a fifty (50) to one hundred (100) kilometre radius of the suburb of Cockatoo in the State of Victoria will incur a delivery fee of $150.
2. In the circumstance that collection is not necessary, the delivery fees stated in section 32 will be halved.
3. Fern & Fallow do not service areas outside of a one hundred (100) kilometre radius of the suburbs of Cockatoo or Sassafras in the State of Victoria unless stated otherwise in writing.
4. The Client is responsible for ensuring clear and safe access is provided to the Client’s Premises to enable Fern & Fallow to deliver and set up the Equipment/Floristry. If, for whatever reason Fern & Fallow, its employees or agents are unable to gain clear and safe access to the Client’s Premises for delivery of the Equipment/Floristry, Fern & Fallow may charge the Client a delivery fee, as set out in clause 29 hereof, for each unsuccessful attempt.
5. The Client will be liable for all injury, loss or damage suffered by Fern & Fallow, its employees or agents whilst at the Client’s Premises.
6. The Client is responsible for ensuring someone is available to accept delivery of the Equipment/Floristry within the estimate timeframe for delivery. Fern & Fallow may charge the Client a delivery fee, as set out in clause 29 hereof, for each unsuccessful attempt.
7. Any time provided by Fern & Fallow for the delivery of Equipment/Floristry or the provision of Services is an estimate only. If Fern & Fallow cannot deliver the Equipment/Floristry or provide the Services during an estimated timeframe, Fern & Fallow will endeavour to deliver the Equipment/Floristry or provide the Services within a reasonable time.
8. Fern & Fallow will not be liable for any loss or damage suffered by the Client or any third party for failure to deliver the Equipment/Floristry or provide the Services during an estimated timeframe.
9. Unless otherwise agreed, the Client must arrange for the Equipment/Floristry to be available for collection from the Client’s premises within three (3) days from the conclusion of the Hire Period (**“Collection Date”**). If the Client fails to make the Equipment/Floristry available for collection by Fern & Fallow prior to the Collection Date, the Client will be liable for late fees chargeable at a rate of 10% of the Hire Fee per day, payable on demand.
10. All Floristry Equipment, and materials remain the possession of Fern & Fallow and are considered as hired Equipment inbuilt within the Floristry Fee. All flowers upon delivery are considered the possession of the Client. However, if upon the collection of hired items flowers have not been claimed or arranged to be set aside with prior notice, Fern & Fallow reserve the right to dispense with any flowers however Fern & Fallow see fit.
11. If Fern & Fallow cannot contact the Client using reasonable efforts, or the Client does not make the Equipment available for collection within one (1) month of the Collection Date, the Client will be deemed to have purchased the Equipment and hereby authorise Fern & Fallow to deduct the appropriate sum from its security bond, at the Client’s expense and without further notice to the Client. If the security bond payment is insufficient to discharge the outstanding sum(s) owing to Fern & Fallow, the Client will continue to owe the outstanding amount to Fern & Fallow as a debt.

**Title and Risk**

1. Subject to the provisions of these Terms, the Agreement is an agreement for the hire of Equipment only and does not constitute or give rise to the sale of the Equipment to the Client. The Client acknowledges that legal and equitable ownership of, and title to, the Equipment, remains with Fern & Fallow at all material times.
2. Risk in the Equipment/Floristry passes to the Client immediately upon acceptance of the Equipment/Floristry by the Client.

**Damage, Lost, Stolen or Unclean Equipment/Floristry**

1. The Client must inspect the Equipment/Floristry and duly notify Fern & Fallow of any discrepancies thereof at the time of delivery. The Equipment/Floristry provided will be deemed to be accepted in the quantity specified in the Quote and of an acceptable standard unless the Client’s notifies Fern & Fallow that the Equipment/Floristry (or any subset thereof) is not in a satisfactory condition, and such acceptance will operate as a bar to any claims against Fern & Fallow under the Agreement or otherwise.
2. Any missing, damaged or exceedingly unclean Equipment will be charged at full replacement and/or cleaning cost, which will be deducted from the security bond payment. Should this amount exceed the total security bond held by Fern & Fallow, the Client will remain liable to pay the balance that remains owing.
3. Exceedingly unclean Equipment will be charged to the Client and deducted from the Client’s security bond, at the following rates (unless otherwise specified in writing by Fern & Fallow):
4. Cutlery – 15 cents per piece or $30 for 200 pieces
5. Crockery – 15 cents per piece
6. Glassware – 10 cents per piece
7. Linen – 20 cents per piece
8. Candleholders and vases – 10 cents per piece

**Client Responsibilities**

1. The Client warrants to Fern & Fallow that it will:
2. at all times exercise reasonable care and diligence in the use of the Equipment/Floristry;
3. make the Equipment/Floristry available for collection in good order and working condition to Fern & Fallow on or prior to the expiration of Collection Date;
4. not tamper or in any way interfere with, or repair or attempt to repair the Equipment/Floristry;
5. be responsible for all accidental damage to the Equipment/Floristry, save and except where such damage is caused by Fern & Fallow;
6. be responsible for all loss or damage to the Equipment/Floristry occasioned by theft, malicious damage, or other unlawful act, save and except where such loss or damage occurs when the Equipment/Floristry is under the effective control Fern & Fallow;
7. at no time during the Hire Period part with possession of the Equipment/Floristry or in any way deal with it in a manner inconsistent with the rights of Fern & Fallow;
8. ensure that the Equipment/Floristry is secure at all time and where being stored in unlocked premises, supply such security measure to ensure that the Equipment/Floristry is secure at all times;
9. keep the Equipment/Floristry safe at all times during the Hire Period;
10. not remove or deface any label or other marks identifying the Equipment/Floristry and/or Fern & Fallow’s ownership of the Equipment/Floristry; and
11. not permit any person to improperly use the Equipment/Floristry.
12. The Client acknowledges and agrees that clause 43 is an Essential Term of the Agreement.

**Default**

1. The Client will be in default if:
2. it breaches any of its obligations under this Agreement and fails to remedy such breach within seven (7) days of being requested by Fern & Fallow to do so;
3. it breaches any Essential Term of this Agreement; or
4. where the Client commits, or is subject to, an Event of Default.
5. On the occurrence of any of the events provided in clause 45 hereof, Fern & Fallows may, without prejudice to any of its other rights either under these Terms or at law and without previous notice to the Client, enter the Client’s Premises or any other site where Fern & Fallows believes the Equipment/Floristry to be located, re-possess it and the Client hereby agrees not to make any claim or bring any action against Fern & Fallows as a result of the re-possession of the Equipment/Floristry.
6. The Client agrees to indemnify Fern & Fallows and keep Fern & Fallows indemnified against any loss or liability expense or cost which might be incurred by Fern & Fallows in entering upon the Client’s Premises or any other site where Fern & Fallows believes the Equipment/Floristry to be located and taking possession of the Equipment/Floristry thereof. Such indemnity covers any liability to any third party for trespass or for damage to the Client’s Premises or such other site where Fern & Fallows believes the Equipment/Floristry to be located, occasioned through the entry upon the Client’s Premises or such other site where Fern & Fallows believes the Equipment/Floristry to be located, the re-possession of the Equipment/Floristry or its removal from the area.

**Liability and Disclaimers**

1. To the maximum extent permitted by law, Fern & Fallow expressly exclude all guarantees, warranties, undertakings, or representations expressed or implied, whether arising by statute or otherwise, which are not given in these Terms.
2. Fern & Fallow will not be liable to the Client or any third party in respect of any claim for injury, death, loss or damage to any person or property caused by or arising out of the use of Equipment/Floristry supplied by Fern & Fallow, or out of any Services performed by Fern & Fallow, whether arising in contract, tort (including negligence) or statute, except to the extent that liability is imposed upon Fern & Fallow or implied into a transaction by the Agreement or by any statutory provisions that cannot otherwise be excluded by the Agreement.
3. Without limiting any other provision in these Terms, to the extent permitted by Law, in no event will Fern & Fallow’s liability exceed the amount of the Hire Fee paid by the Client for the use of the Equipment/Floristry and/or performance of Services.

**Warranties and Indemnity**

1. Except where agreed in writing, Fern & Fallow gives no warranty, express or implied, in respect of the Equipment/Floristry being fit for the purpose intended by the Client.
2. Certain State and Commonwealth legislation, including the *Competition and Consumer Act 2010* (Cth), imply warranties or conditions or impose guarantees or obligations which cannot be excluded, restricted or modified except to a limited extent. These Terms do not purport to exclude any statutory rights available to the Client and must in all cases be read subject to those statutory provisions. To the maximum extent permitted by law, Fern & Fallow’s liability for breach of any implied warranty or condition which cannot be excluded is restricted, at Fern & Fallow’s option, to:
3. the replacement of the Equipment/Floristry with substituted equivalent Equipment/Floristry;
4. the payment of the cost of having the substituted equivalent Equipment/Floristry re-supplied to the Client; or
5. the repayment to the Client of the cost of providing the Equipment/Floristry.
6. The Client will have personal liability for, and hereby irrevocably indemnifies and covenants to hold Fern & Fallow harmless from and against any and all losses that may be suffered by Fern & Fallow and which arise directly or indirectly:
7. in relation to Fern & Fallow properly carrying out its obligations in accordance with the Agreement; and
8. in connection with any breach of the Agreement by the Client.
9. Each indemnity contained in these Terms is an additional, separate, independent and continuing obligation that survives the termination of the Agreement despite any settlement of account or other occurrence and remains in full force and effect until all money owing, contingently or otherwise, under the relevant indemnity has been paid in full and no one indemnity limits the generality of any other indemnity.

**Photography**

1. The Client grants to Fern & Fallow an authority to use, display, print and distribute in any photographs taken by Fern & Fallow at the Client’s Premises, whether or not for valuable consideration. For the avoidance of doubt, the Client acknowledges and agrees that Fern & Fallow is not liable to pay the Client any fee, royalty or other form of consideration for this authority.
2. If the Client would prefer not to have photographs taken by Fern & Fallow, the Client must notify Fern & Fallow in writing, and Fern & Fallow will respect the Client’s request.

**Fern & Fallow Events Philanthropy**

1. Fern & Fallow are committed to supporting its local community and those in need, by donating 10% of the Floristry and/or Hire Fee to the benefit of a charity of the Client’s choosing. In the event that the Client does not select a nominated charity, Fern & Fallows reserves the right, to select a charity on the Client’s behalf, in its absolute discretion.

**General**

1. If a provision in the Agreement is wholly or partly void, illegal or unenforceable in any relevant jurisdiction, that provision or part must, to that extent, be treated as deleted from the Agreement for the purposes of that jurisdiction. This does not affect the validity or enforceability of the remainder of the provision or any other provision of the Agreement.
2. No failure, delay, relaxation or indulgence by Fern & Fallow in exercising any power or right conferred upon Fern & Fallow under the Agreement will operate as a waiver of that power or right. No single or partial exercise of any power or right precludes any other or future exercise of it, or the exercise of any other power or right under the Agreement.
3. These Terms may be amended from time to time by Fern & Fallow, without further notice to the Client.
4. These Terms are governed and interpreted according to the laws of Victoria and the Client consents and submits to the jurisdiction of the Courts of Victoria.

**Definitions**

1. The following definitions apply in this Agreement unless the context requires otherwise:

“Controller” has the meaning given in the Corporations Act.

“Corporations Act” means the Corporations Act 2001 (Cth).

“**Equipment**” means collectively all the goods and Equipment agreed to and separately each item of the goods and Equipment designated in the Agreement and includes all additional Equipment.

**“Floristry”** means collectively all the equipment, flowers and Floristry Services agreed to and separately each item of the equipment and Floristry designated in the Agreement and includes all additional Floristry.

**“Essential Term”**means any term in these Terms which is expressly stated to be an Essential Term and also includes any term which, by its nature and importance, would cause one or other of the parties not to enter into this Agreement without that term being included.

**“Event of Default”** means the occurrence of any of the following:

* 1. for a Client that is a corporation or body corporate, where the Client is insolvent, is wound-up, goes into liquidation, has an administrator appointed to it, has a receiver appointed over any of its assets or anything having a substantially similar effect to any of the events specified in this definition happens to the Client under the law of any jurisdiction; or
  2. for a Client that is a natural person, where the Client becomes insolvent, makes an assignment for the benefit of their creditors, is declared or commits an act of bankruptcy under the Bankruptcy Act 1966 (Cth) or anything having a substantially similar effect to any of the events specified in this definition happens to the Client under the law of any jurisdiction.

**“Floristry and/or Hire Fee**” means the fee which the Client has by this Agreement agreed to pay to Fern & Fallow for the provision of the Equipment/Floristry and/or Services for the Hire Period. Additional Equipment/Floristry will be separately invoiced to the Client and will be in addition to the Floristry and/or Hire Fee and will be added to any invoice of the Floristry and/or Hire Fee to the Client.

“**Hire** **Period**” means the period for which the Equipment/Floristry is hired by the Client as specified in the Quote, being the period commencing on the delivery of the Equipment/Floristry to the Client’s Premises and expiring on the Collection Date as stated in these Terms.

“**Client**” means the company or person the agreement is made with as “the Client” and includes where applicable its lawful successors and assignees.

“**Client’s Premises**” means the designated place, venue, or location at which the Equipment/Floristry is to be delivered to and at which place the Client is to use the Equipment/Floristry.

“**Quote**” means the written quote or invoice provided by Fern & Fallow to the Client, which sets out the Equipment/Floristry to be provided and/or the Services to be performed.