

Exclusively Flutes

ABN: 49384862970

Agreement For Hire Of Musical Instrument

Recitals:

- R1. The owner is the proprietor of the instrument listed in the schedule to this Agreement ("schedule").
- R2. The hirer will hire the instrument specified in the schedule from the owner upon the terms and conditions in this Agreement.

Operative Part:

1. Hire of the instrument

- 1.1 The hiring of the instrument will commence from the commencement date specified in the schedule and continue for the term specified in the schedule.
- 1.2 The hirer is entitled to use the instrument for the hire period and for any agreed extension of the period.
- 1.3 The hirer agrees to return the instrument to the address of the owner on or before the end of the hire period as outlined in the schedule.
- 1.4 The owner will not refund any hire charge monies if the hirer elects to return the instrument prior to the end of the hire period, regardless of reason.

2. Payment for rental

- 2.1 The hirer agrees to pay the owner the hire fee specified in the schedule for the instrument for the hire period, if a hire charge is applicable.
- 2.2 The hire fee must be paid to the owner prior to or on the commencement date of the hire period.

3. Use, operation and maintenance

- 3.1 The hirer agrees that the use of the instrument carries with it dangers and risks of injury and the hirer agrees to accept all dangers and risks.
- 3.2 The instrument shall not be used by anyone other than the hirer without the expressed permission of the owner.
- 3.3 The hirer agrees to operate, maintain and store the instrument strictly in accordance with any instruction provided by the owner, with due care and diligence, only for its intended use and in accordance with any instructions and recommendations whether supplied by the owner or posted on the instrument as to the operations, maintenance and storage thereof.

4. Hirer's warranties

- 4.1 The hirer warrants that:
 - 4.1.1. the instrument will be used in accordance with the conditions outlined in the schedule;
 - 4.1.2. the particulars in the schedule are correct in every respect and are not misleading in any way including, without limitation, by omission;
 - 4.1.3. the hirer will not, without prior written consent of the owner, modify, or permit any modification of, the instrument in any way; and
 - 4.1.4. the hirer agrees that the instrument complies with its description, is in merchantable condition and is fit for the hirer's purpose.

5. Indemnity

- 5.1 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 instrument during the hire period.

6. Loss, damage or breakdown of the instrument

- 6.1 The hirer will be responsible for any loss or damage to the instrument irrespective of how the loss or damage occurred (fair wear and tear excepted) during the hire period.
- 6.2 If there is a breakdown or failure of the instrument then the hirer shall return the instrument to the owner at the hirer's expense and the hirer shall not attempt to repair the instrument.

7. Purchase

- 7.1 This hire agreement does not give the hirer any right to purchase the instrument at the end of the hire term, or any extension or holding over period, except by separate agreement.

8. Liability

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

9. Disclaimer

- 9.1 To the extent permitted by law the owner disclaims all liability for and does not give any warranties to the hirer as to the condition of the instrument.

10. Title to goods

- 10.1 The hirer acknowledges that the owner retains title to the instrument and that the hirer has rights to use the instrument as a mere bailee only. The hirer does not have any right to pledge the owner's credit in connection with the goods and agrees not to do so.
- 10.2 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 instrument and not to conceal or alter the goods or make any addition or alteration to, or repair of, the instrument.

11. Repossession

- 11.1 The owner may retake possession of the instrument if the hirer breaches any provision of this agreement, notwithstanding anything else herein contained.
- 11.2 If repossession takes place, the owner shall only charge the hire fee up to and including the time of repossession.

12. Completion of the hire period

- 12.1 The hire period is completed when the instrument has been returned to the owner:
 - 12.1.1. in the same condition as when it was hired; and
 - 12.1.2. on, or by the date and time outlined in the schedule.

13. Non-merger

- 13.1 The covenants, agreements and obligations contained in this agreement will not merge or terminate upon the termination of this agreement and to the extent that they have not been fulfilled or satisfied or are continuing obligations they will remain in force and effect.

14. Severance

- 14.1 If any provision of this agreement is wholly or partly invalid, unenforceable, illegal, void or voidable, this agreement must be construed as if that provision or part of a provision had been severed from this Agreement and the parties remain bound by all of the provisions and part provisions remaining after severance.

15. Governing law

- 15.1 This Agreement is governed by the laws of South Australia. Each party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction there in connection with matters concerning this Agreement.

16. Interpretation

- 16.1 In this Agreement, unless the context otherwise requires:
 - 16.1.1 A reference to the singular includes the plural and vice versa;

- 16.1.2 A reference to any party to this Agreement includes the party's executors, administrators, successors or permitted assigns, and where applicable, its servants and agents;
- 16.1.3 A reference to an individual shall include corporations and vice versa; and
- 16.1.4. If a word or expression is defined, its other grammatical forms have a corresponding meaning.
- 16.2 In this Agreement, headings are for convenience only and do not affect interpretation.