



INSTRUMENT RENTAL AGREEMENT

THIS INSTRUMENT RENTAL AGREEMENT (this “Agreement”).

BETWEEN:

Leisure Coast Wind & Brass (ABN: 45 611 336 220) of 141 Kembla Street Wollongong NSW 2500

(the “owner”)

OF THE FIRST PART

- AND –

Applicant

(the “Hirer”)

OF THE SECOND PART

(the Owner and Hirer are collectively the “Parties”)

IN CONSIDERATION OF the mutual covenants and promises in this Agreement, the receipt and sufficiency of which consideration is hereby acknowledged, the Owner leases the Instrument to the Hirer, and the Hirer leases the Instrument from the Owner and does not constitute a Hire Purchase Agreement.

Should the Hirer intend on purchasing the Instrument outright, this needs to be expressed to the Owner in writing at which time a Hire Purchase Agreement or Agreement for Sale of Goods will be considered.

This Instrument Rental Agreement has the following terms:

Definitions

1. The following definitions are used but not otherwise defined in this Agreement:
 - a. “Instrument” means musical instrument, the protective case and any other accessories supplied with the musical instrument by the Owner and not purchased separately by the Hirer.
 - b. “New” means the Instrument being offered through this Agreement has never been used before, with the exception of technical set-up and play-testing in the workshop of Leisure Coast Wind & Brass.

- c. "Preloved" means the Instrument being offered through this Agreement has been used by previous Hirers. Any preloved Instrument is cleaned, sanitized and serviced upon return and prior to any new hire Agreements. Signs of wear and tear may be present on these Instruments.
- d. "Casualty Value" means the market value of the Instrument at the end of the Term or when in relation to a Total Loss, the market value the Instrument would have had at the end of the Term but for the Total Loss. The Casualty Value may be less than but will not be more than the original price of the Instrument.
- e. "Total Loss" means any loss or damage that is not repairable or that would cost more to repair than the market value of the Instrument.

Lease

- 2. The Owner agrees to lease the Instrument to the Hirer, and the Hirer agrees to lease the Instrument from the Owner in accordance with the Terms set out in this Agreement.

Term

- 3. The Agreement commences on the date of acceptance for a minimum period of 1 month for Preloved instruments and 3 months for New Instruments (the "Term").

Rent

- 4. The rent, inclusive of GST, will be paid in monthly instalments, in advance, beginning on the date of acceptance and will be paid on the anniversary of each succeeding month throughout the Term (the "Rent").
- 5. The Hirer must notify the Owner in writing within 48 hours of any change of address, email or phone number.

Residual Value

- 6. The residual value (the "Residual Value") of the Instrument will be the current market value at the time of the acceptance of this Agreement.

Purchasing the Instrument

- 7. The Hirer has the option to purchase the Instrument at the end of the Term by paying the following amounts:
 - a. The Residual Value of the Instrument; and
 - b. any fees, taxes, and expenses related to the purchase of the Instrument.
- 8. After the Hirer has paid all the costs and fees associated with purchasing the Instrument, the Owner will return the following amounts, or the remaining portions of these amounts, to the Hirer:
 - a. any money received from an insurance claim or action that is not used to repair or replace the Instrument.

Delivery of Instrument

9. The Hirer will, at the Hirer's own expense and risk, pick up and transport the Instrument from Leisure Coast Wind & Brass.
10. If, however, the Hirer requests to have the Instrument delivered, the Hirer will be charged a delivery fee which will be added to the first month's Rent.
 - a. The Owner will endeavour to deliver the Instrument to the Hirer quickly and safely, however, the Owner shall hold no liability to postage delays incurred by third parties.

Use of Instrument

11. The Hirer will use the Instrument in a good and careful manner and will comply with all of the manufacturer's requirements and recommendations respecting the Instrument.
12. The Hirer will use the Instrument for the purpose for which it was designed and intended and not for any other purpose.
13. Unless the Hirer obtains the prior written consent of the Owner, the Hirer will not alter, modify or attach anything to the Instrument unless the alteration, modification or attachment is easily removable without damaging the functional capabilities or economic value of the Instrument.

Repair and Maintenance of the Instrument

14. The Hirer will, at the Hirer's own expense, keep the Instrument in good repair; normal and reasonable wear and tear is accepted.
15. If the Instrument is not in good repair, appearance and condition when it is returned to the Owner, the Owner may make such repairs or may cause such repairs to be made as are necessary to put the Instrument in a state of good repair, appearance and condition; normal and reasonable wear and tear is excepted. The Owner will make the said repairs within a reasonable time of taking possession of the Instrument and will give the Hirer written notice of and invoices for said repairs or Casualty Value. Upon receipt of such invoices, the Hirer will immediately reimburse the Owner for the actual expense of those repairs or Casualty Value.
16. The Hirer may, but is not obligated to, enforce any warranty that the Owner has against a supplier or manufacturer of the Instrument. The Hirer will enforce such warranty or indemnity in its own name and at its own expense.

Warranties

17. The Instrument will be in good working order and good condition upon delivery.
18. The Instrument is of merchantable quality and is fit for the purposes it is ordinarily used.
19. There is no warranty on the Instrument other than the automatic consumer guarantees under Australian Consumer Law.
20. The Hirer is responsible for insuring the Instrument at the Hirer's cost.

Loss and Damage

21. To the extent permitted by law, the Hirer will be responsible for risk of loss, theft, damage or destruction to the Instrument from any and every cause.
22. If the Instrument is damaged, the Hirer will continue paying Rent, will provide the Owner with prompt written notice of such damage and will, if the Instrument is repairable, return the Instrument to the Owner to be put in a state of good repair, appearance and condition.
23. If the Instrument is lost, the Hirer will be required to pay the Residual Value of the instrument, will provide the Owner with prompt written notice of such loss.

Ownership, Right to Lease and Quiet Enjoyment

24. The Instrument is the property of the Owner and will remain the property of the Owner.
25. The Hirer will not encumber the Instrument or allow the Instrument to be encumbered or pledge the Instrument as security in any manner.
26. The Owner warrants that the Owner has the right to lease the Instrument according to the terms in this Agreement.
27. The Owner warrants that as long as no Event of Default has occurred, the Owner will not disturb the Hirer's quiet and peaceful possession of the Instrument or the Hirer's unrestricted use of the Instrument for the purpose for which the Instrument was designed.

Surrender

28. At the end of the Term or upon earlier termination of this Agreement, the Hirer will return the Instrument at the Hirer's cost, expense and risk to the Owner by delivering the Instrument to Leisure Coast Wind & Brass. If the Hirer fails to return the Instrument to the Owner at the end of the Term or any earlier termination of this Agreement, the Hirer will pay to the Owner any unpaid Rent for the Term plus the Casualty Value of the Instrument plus 10% of the Casualty Value, at which point ownership of the Instrument will pass to the Hirer.

Indemnity

29. The Hirer will indemnify and hold harmless the Owner against any and all claims, actions, suits, proceedings, costs, expenses, damages and liabilities, including legal fees and costs, arising out of or related to the Hirer's use of the Instrument.

Default

30. The occurrence of any one or more of the following events will constitute an event of default ("Event of Default") under this Agreement:
 - a. The Hirer fails to pay any amount provided for in this Agreement when such amount is due or otherwise breaches the Hirer's obligations under this Agreement.

- b. The Hirer becomes insolvent or makes an assignment of rights of property for the benefit of creditors or files for or has bankruptcy proceedings instituted against it under bankruptcy law of Australia or another competent jurisdiction.

Remedies

31. On the occurrence of an Event of Default, the Owner will be entitled to pursue any one or more of the following remedies (the "Remedies"):
 - a. Declare the entire amount of the Rent for the Term immediately due and payable without notice or demand to the Hirer.
 - b. Apply the Deposit toward any amount owing to the Owner.
 - c. Commence legal proceedings to recover the Rent and other obligations accrued before and after the Event of Default.
 - d. Take possession of the Instrument, without demand or notice, wherever same may be located, without any court order or other process of the law. The Hirer waives any and all damage occasioned by such taking of possession.
 - e. Terminate this Agreement immediately upon written notice to the Hirer.
 - f. Pursue any other remedy available in law or equity.

Assignment

32. THE HIRER WILL NOT ASSIGN THIS AGREEMENT, THE HIRER'S INTEREST IN THIS AGREEMENT OR THE HIRER'S INTEREST IN THE INSTRUMENT WITHOUT PRIOR WRITTEN CONSENT OF THE OWNER.
33. If the Hirer assigns this agreement, the Hirer's interest in this Agreement or the Hirer's interest in the Instrument without the prior written consent of the Owner, the Owner will have recourse to the Remedies and will be entitled to all damages caused by the assignment.
34. THE OWNER WILL NOT ASSIGN THIS AGREEMENT, THE OWNERS INTEREST IN THIS AGREEMENT OR THE OWNER'S INTEREST IN THE INSTRUMENT WITHOUT THE PRIOR WRITTEN CONSENT OF THE HIRER. THE OWNER WILL NOT ASSIGN OR TRANSFER THE OWNER'S RIGHT TO COLLECT RENT OR ANY OTHER FINANCIAL OBLIGATION OF THE HIRER.
35. If the Owner assigns this Agreement, the Owner's interest in this Agreement or the Owner's interest in the Instrument without the prior written consent of the Hirer, the Hirer will be entitled to terminate this Agreement without penalty.

Renewal

36. The Hirer may renew this Agreement for an additional Term if the Hirer has given the Owner 30 days' written notice of the Hirer's intention to renew and if the Hirer is not in default of any of the terms under this Agreement.

Other than as agreed upon in writing between Parties, the renewal will be on the same terms as this Agreement, except for this renewal clause.

Entire Agreement

37. This Agreement will constitute the entire Agreement between Parties. Any prior understanding or representation of any kind proceeding the date of this Agreement will not be binding on either Party except to the extent incorporated in this Agreement.

Address of Notice

38. Service of all notices under this Agreement will be delivered personally, via email or registered post to the Hirer's or Owner's address' listed above.

Payment

39. All dollar amounts in this Agreement refer to Australian dollars, and all payments required to be paid under this Agreement will be paid in Australian dollars.

Interest

40. Interest is payable on any overdue amounts under this Agreement at a rate of 10.00 percent per annum or at the maximum rate allowed under applicable legislation, whichever is lower.

Interpretation

41. Headings are inserted for the convenience of the Parties only and are not to be considered when interpreting this Agreement. Words in the singular mean and include the plural and vice versa. Words in the masculine mean and include the feminine and vice versa.

Governing Law

42. This Agreement will be construed in accordance with and governed by the laws of Australia and the Parties submit to the exclusive jurisdiction of the Australian courts.

Severability

43. If there is a conflict between any provision of this Agreement and the applicable legislation of New South Wales (the "Act"), the Act will prevail and such provisions of the Agreement will be amended or deleted as necessary in order to comply with the Act.

Further, any provisions that are required by the Act are incorporated into this Agreement.

General Terms

- 44. This Agreement may be executed in counterparts. Electronic signatures are binding and are considered to be original signatures.
- 45. Time is of the essence in this Agreement.
- 46. This Agreement will extend to and be binding upon and inure to the benefit of the respective heirs, executors, administrators, successors and assigns, as the case may be, of each Party to this Agreement.
- 47. Neither Party will be liable in damages or have the right to terminate this Agreement for any delay or default in performance if such delay or default is caused by conditions beyond its control including, but not limited to Acts of God, Government restrictions, wars, insurrections, natural disasters, such as earthquakes, hurricanes or floods and/or any other cause beyond the reasonable control of the Party whose performance is affected.

Notice to Hirer

48. **NOTICE TO HIRER:** This is a lease. You are not buying the Instrument. Do not sign this Agreement before you read it.

You are entitled to a copy of this Agreement when you sign it.

X

Hirer Name

Business: Leisure Coast Wind & Brass

Owner: Peter Wouters

Peter Wouters

X

Hirer Signature

Date: _____