

# **NEWBURY RACECOURSE PLC**

## **TERMS AND CONDITIONS**

### **1 Definitions**

In these Conditions, unless the context otherwise requires:

**Act** means any production company, performers, musicians or other live act or equipment

**Balance** means the balance of the Charges remaining due after the Deposit has been paid

**Business Day** means a day other than Saturday, Sunday or a public holiday in England

**Business Hours** means between 9 am and 5 pm on a Business Day

**Charges** means the sums which the Customer has agreed to pay to Newbury Racecourses Plc in respect of the Services for the Function

**Conditions** means the terms and conditions contained in this document

**Contract** means the contract for the supply of Services by Newbury Racecourse Plc to the Customer comprising these Conditions, the Event Agreement and the Function Sheet

**Customer** means the company or other organisation by or on whose behalf the booking is made

**Deposit** means the greater of £1,000 or 25% of the total anticipated Charges

**Event Agreement** means the document confirming the Customer's requirements which is signed when entering into the Contract

**Event of Force Majeure** means, as regards a party, the occurrence of circumstances beyond the reasonable control of that party including (without limitation);

- a) industrial action, strikes, lockouts, blockades, riots, acts of war, acts of terrorism, piracy, destruction of essential equipment by fire, explosion, storm, flood, earthquake;
- b) failures of, shortages in or a loss of access to equipment, power, supplies, fuel or transport facilities;
- c) failure of a third party to provide required consent, exemption or clearance unless caused by the act or omission of either party;
- d) cancellation of the Function by a third party unless caused by the act or omission of either party;
- e) failure of a third party to permit reasonable advance access to the Premises or to provide proper and reasonable food preparation amenities unless caused by the act or omission of either party; or
- f) failure of a third party to permit access to the Premises unless caused by the act or omission of either party.

**Function** means the function, party or other occasion at which the Services are to be provided

**Function Sheet** means the document stating the Customer's detailed requirements for the Function, which shall not contradict the Event Agreement in any material respect, save for variations permitted in accordance with Condition 12

**Guest** means any person attending the Function

**Payment Request** means a written request for payment of all or any of the Charges, including an invoice

**Premises** means the rooms or locations within the venue, stadium or other premises at which the Services are to be provided

**Services** means the supply of food and drink and any catering and other services agreed between the parties as set out in the Event Agreement and the Function Sheet

**VAT** means Value Added Tax or any similar tax in force from time to time

#### **a) General**

**No variation to these Conditions shall be effective unless agreed in writing and signed**

**on by a director on behalf of Newbury Racecourse Plc**

- b) No variation to the Event Agreement or the Function Sheet shall be effective unless agreed in writing and signed on by a director on behalf of Newbury Racecourse Plc
- c) These conditions shall prevail over any conditions offered by the customer

### **2 Formation of the Contract**

- a) The Contract shall be created upon the last to occur of the following: (i) When Newbury Racecourse Plc receives the signed Event Agreement from the Customer; and (ii) When Newbury Racecourse Plc receives the Deposit; and (iii) When the Event Agreement is signed on Newbury Racecourse behalf. The Event Agreement is attached to these Conditions
- b) Approximately 6 weeks before the date of the Function, Newbury Racecourse Plc will send a Function Sheet to the Customer. The Function Sheet forms part of the Contract and contains further details about the Services to be provided by Newbury Racecourse Plc at the Function, including the number of Guests and specific choice of menu.

### **3 Newbury Racecourse Plc obligations**

Newbury Racecourse Plc shall perform the Services:

- a) with all reasonable care and skill;
- b) in accordance with good industry practice; and
- c) in accordance with all legislation, statutes, regulations and other enactments having the force of law from time to time which are applicable to the provision of the Services.

### **4 Customer's obligations**

The Customer shall:

- a) Confirm in writing the final number attending not less than 5 working days before the event. Charges for food and beverages will be based on that number or the number attending, if greater.
- b) Return the Function Sheet to Newbury Racecourse Plc not less than 14 days prior to the date of the Function.
- c) Ensure that persons attending the event observe these conditions; do not commit any nuisance, disturbance or infringement which might jeopardise Newbury Racecourse Plc; comply with all reasonable requests of Newbury Racecourse staff.
- d) Comply with all EU and UK laws and regulations rules relating to fire, security, health and safety and otherwise at the Premises.
- e) Not carry out any electrical or other works, use of their own electrical equipment or fix anything to the floors, ceilings or any other part of the Premises without prior written consent.
- f) Not bring any flammable, noxious or dangerous items on to the Premises and shall remove items promptly when requested by Newbury Racecourse staff
- g) Not bring or consume any food or beverages on the Premises other than those supplied by Newbury Racecourse Plc.
- h) Not use the Newbury Racecourse logo on promotional or other literature or tickets except in such a form as may be previously agreed in writing by the Newbury Racecourse.
- i) Not display any notices, signs, or other devices, or leave any brochures, or other literature on or about the Premises without written approval

j) Not use the address, email, telephone or fax numbers on any company letterheads, brochures or other literature without prior written consent

k) Obtain Newbury Racecourse Plc prior written consent before hiring any Act for the Function

l) Ensure that the Act has public liability insurance to the value of at least £2 million to cover any death of or injury to any person or the loss of or damage to any property resulting from the malfunction of the Act's equipment and from their actions generally.

m) Ensure that empty cartons, boxes and packing materials are only placed in locations designated by Newbury Racecourse Plc

n) Keep all fire exits, including all staircases, gangways, passages and doors, free from obstruction

o) Pay the cost of clearing up unreasonable debris (including but not limited to party string and vomit) resulting from acts of the Guests, employees of the Customer or by persons employed in the Act.

### **5 Deposits**

a) Subject to 6d below, the Customer shall pay a Deposit in order to reserve the date or dates of the Function with Newbury Racecourse Plc for the provision of the Services unless the Event Agreement is received by Newbury Racecourse Plc less than 30 days before the date of the Function.

b) Newbury Racecourse Plc shall send the Customer a Payment Request asking for payment of the Deposit. The Customer shall pay the Deposit to Newbury Racecourse Plc within 14 days of the date of that Payment Request.

c) Newbury Racecourse Plc shall send the Customer a Payment Request for the Balance approximately 30 days before the date of the Function showing the Deposit credited against the total Charges. The Balance shall be paid at least 14 clear days before the date of the Function.

d) If the Event Agreement is received by Newbury Racecourse Plc less than 30 days before the date of the Function, the Charges will be due in full with the Event Agreement and shall be paid at least 14 clear days before the date of the Function.

### **6 Payment**

a) In the event that the Customer does not pay any amount within 7 days of becoming due, Newbury Racecourse Plc shall be entitled to cancel the Contract by writing to the Customer. If the Customer has paid a Deposit, Newbury Racecourse Plc shall be entitled to set off the Deposit against any losses or costs Newbury Racecourse Plc suffers and could not avoid as a result of the cancellation.

b) If Newbury Racecourse Plc does not cancel the in the circumstances set out in Condition 7a, Newbury Racecourse Plc shall be entitled to charge interest on the unpaid amount daily.

c) If the Customer pays any amount by debit or credit card, the card shall be charged at the time such payment is made.

d) The Customer authorises Newbury Racecourse Plc to charge to its debit or credit card (as appropriate) any charges which the Customer incurs in respect of the Function and which remain unpaid at the conclusion of the Function.

e) The Charges and Deposit do not include VAT. VAT shall be added to the Charges and Deposit on the Payment Request and be payable at the current rate as at the date of the Payment Request.

f) If, within 7 days of the date of the Payment Request, the Customer has not notified Newbury Racecourse Plc that it disputes whether amounts contained in the Payment

Request are properly due it shall be deemed to have accepted that the sums stated as payable are properly due and to have waived all its rights to subsequently dispute whether those sums are due.

- g) The Charges shall be due in full to Newbury Racecourse Plc in accordance with these Conditions and the Customer shall not be entitled to exercise any set-off, lien or any other similar right or claim.
- h) The time of payment shall be of the essence in the Contract.

## 8. Cancellation by Newbury Racecourse Plc

Newbury Racecourse Plc may cancel an event without any liability to the customer if:

- a) The Premises or any part of them have to be closed for reasons beyond the control of Newbury Racecourse Plc
- b) The customer becomes insolvent or adjudicated bankrupt
- c) The customer is already in arrears with any payment due to Newbury Racecourse Plc
- d) The customer is in breach of any of these Conditions and fails to rectify such breach within three weeks of receiving notice of such a breach from Newbury Racecourse Plc

## 9. Cancellation by the Customer

- a) The Customer is entitled to cancel the Contract by sending written notice to Newbury Racecourse Plc no later than 7 days after the date on which the Customer sends the Event Agreement to Newbury Racecourse Plc. If the Customer requests cancellation at a later date then Newbury Racecourse Plc has the right to retain all or part of the Deposit and in addition

Between 29 and 56 days notice –  
30% charge of projected food, beverage and room hire costs

Between 15 and 28 days notice –  
50% charge of projected food, beverage and room hire costs based on the numbers given when going to contract

Less than 14 days notice –  
100% full charge of projected food, beverage and room hire costs based on the numbers given as stated in the Event agreement

- b) Any cancellation fees charged to Newbury Racecourse Plc of sub-contracted bookings. E.g. musicians, lighting, florists or furniture made on behalf of the Customer in connection with the function will be payable by the Customer.

## 10 Liability

- a) Customers shall be liable for and shall indemnify Newbury Racecourse Plc against all loss or damage (including consequential loss or damage) resulting from the injury of person/s or loss of damage to the Premises or other property arising from the customers booking of the event, including but not limited to injury, loss or damage caused by the customer's employees, agents contractors or invitees
- b) Newbury Racecourse Plc shall not be liable to customers, their contractors or agents or any persons attending the event for injury except to the extent that such injury, loss or damage is caused directly and wholly by the negligence of Newbury Racecourse Plc
- c) Customers are advised to arrange insurance to cover their liabilities under these conditions

## 11. Inability to Provide an Aspect of the Services

If, for any reason beyond Newbury Racecourse Plc reasonable control, Newbury Racecourse Plc is unable to supply a particular Service specified on either the Event Agreement or the Function Sheet, Newbury Racecourse Plc shall notify the Customer as soon as possible. Where reasonably practicable, Newbury Racecourse Plc shall replace the particular Service with a Service of at least equal standard and value at no

additional cost to the Customer. Newbury Racecourse Plc shall agree the details of the replacement Service with the Customer. If it is not reasonably practicable for Newbury Racecourse Plc to replace the Service, Newbury Racecourse Plc shall refund in full all sums paid by the Customer for that particular Service.

## 12. Variations

- a) Subject to 12c, if the Customer wishes to vary the Services detailed on the Event Agreement and the Function Sheet after the Contract is made with Newbury Racecourse Plc, a request for that variation shall be made in writing to Newbury Racecourse Plc.
- b) Any variations may give rise to an additional cost to the Customer of a reasonable amount to reflect the difference in the Services to be provided. Newbury Racecourse Plc shall contact the Customer to discuss any request for a variation of the Services and to agree any additional Charges that this variation will incur.
- c) Newbury Racecourse Plc reserves the right not to vary the Contract  
Prices are reviewed annually on 1<sup>st</sup> January each year,

## 13 Force Majeure

- a) If either party is prevented from, hindered or delayed in the performance of its obligations under the Contract by an Event of Force Majeure the party concerned shall not incur any liability to the other except as specified in Condition 13b.
- b) If Newbury Racecourse Plc is prevented from providing the Services due to an Event of Force Majeure, Newbury Racecourse Plc shall be entitled, at its absolute discretion to: refund all sums paid by the Customer less an amount equal to any reasonable costs and losses it has suffered and could not reasonably avoid in preparing to provide the Services; or  
provide the Services on an alternative date.

## 14 Assignment and Subcontracting

- a) Neither party shall be entitled to assign or transfer the Contract, whether in whole or in part, without the prior written consent of the other.
- b) Notwithstanding Condition 14a, Newbury Racecourse Plc shall be entitled to sub-contract the Services in whole or in part provided that:

it remains wholly responsible for the acts or omissions of its sub-contractors as if they were Newbury Racecourse Plc's own acts or omissions; and

prior to appointing any sub-contractor Newbury Racecourse Plc shall use reasonable endeavours to verify that the sub-contractor will be able to provide the Services.

## 15 Entire Agreement

- a) Each of the parties acknowledges that it is not entering into the Contract in reliance upon any representation, warranty, collateral contract or other assurance (except those set out in these Conditions and the documents referred to in it) made by or on behalf of any other party before the execution of the Contract. Each of the parties waives all rights and remedies which, but for this Condition 15, might otherwise be available to it in respect of any such representation, warranty, collateral contract or other assurance, provided that nothing in this Condition 15a shall limit or exclude any liability for fraud.
- b) Any conditions or warranties (whether express or implied by statute or common law or arising from conduct or a previous course of dealing or trade custom or usage or otherwise howsoever) as to the care and skill with which Newbury Racecourse Plc shall provide the Services are expressly negated by these

Conditions to the fullest extent permitted by law.

- c) No variation of the Contract shall be effective unless in writing and executed by or on behalf of each of the parties.

## 16 Waiver

Delay in exercising, or a failure to exercise, any right or remedy in connection with the Contract shall not operate as a waiver of that right or remedy. A single or partial exercise of any right or remedy shall not preclude any other or further exercise of that right or remedy, or the exercise of any other right or remedy. A waiver of a breach of the Contract shall not constitute a waiver of any subsequent breach.

## 17 Details of Future Events

From time to time Newbury Racecourse Plc would like to send the Customer details of future events and promotions which may be of interest in accordance with its marketing policy. If the Customer would like to receive this information this will be shown by ticking the relevant box on the Event Agreement. All personal information held by Newbury Racecourse Plc shall be held in accordance with all relevant data protection legislation.

## 18 Notices

- a) All notices including any request for variation of the Services by the Customer, should be made in writing and sent by post or fax to the address of the other party shown on the Event Agreement.
- b) Any notice sent by fax shall only be valid when the sender has received a receipt confirming a satisfactory fax transmission.
- c) A notice shall be deemed to have been received:

if delivered by hand within Business Hours when so delivered or, if delivered by hand outside Business Hours, at the start of the next Business Day;

if sent by first class recorded delivery post on a Business Day, at 9.00 am on the second Business Day after posting; or, if the notice was not posted on a Business Day, at 9.00 am on the third Business Day after posting.

- d) In proving service of a notice, it shall be sufficient to prove that delivery was made or that the envelope containing the notice was properly addressed and posted.

- e) E-mail notice shall not be valid for the purposes of these Conditions.

## 19 Relationship between Parties

Nothing in these Conditions shall constitute or be deemed to constitute a partnership or other form of joint venture between the parties or constitute or be deemed to constitute either party the agent or employee of the other for any purpose whatsoever.

## 20 Third Party Rights

No person who is not a party to the Contract is entitled to enforce any of its terms, whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

## 21 Severability

The parties intend each of these Conditions to be severable and distinct from the others. If a Condition is held to be illegal, invalid or unenforceable, in whole or in part, the parties intend that the legality, validity and enforceability of the remainder of these Conditions shall not be affected.

## 22 Governing Law and Jurisdiction

The Contract and these Conditions are governed by, and shall be interpreted in accordance with, English law and each party irrevocably submits to the exclusive jurisdiction of the English Courts in relation to all matters arising out of or in connection with the Contract.

Company.....

Signed by.....Date.....