

## HORT INNOVATION LEGAL TERMS FOR EVENT SPONSORSHIP

Horticulture Innovation Australia Limited ABN 71 602 100 149 of Level 7, 141 Walker Street North Sydney 2060 NSW Australia (**Hort Innovation**) is engaged in the promotion of the Australian horticulture industry and from time-to-time sponsors industry events for the horticulture industry.

The Event Organiser's application for sponsorship of the Event by Hort Innovation is subject to acceptance by Hort Innovation. A binding agreement will only come into force upon Hort Innovation written notification to you of its acceptance to sponsor the Event.

### 1. The Event

#### 1.1 Conduct

The Event Organiser must promote and conduct the Event in a professional manner and in accordance with this agreement.

#### 1.2 Hort Innovation's role

The Event Organiser acknowledges that it is solely responsible for the promotion and conduct of the Event and that Hort Innovation does not assume any responsibility for the Event.

### 2. Sponsorship Benefits

#### 2.1 Grant

2.1.1 The Event Organiser grants to Hort Innovation the Sponsorship Benefits specified in the Guidelines and in the Sponsorship Notification.

2.1.2 Hort Innovation's acceptance of the Application and payment of the Sponsorship Amount is conditional upon the Event going ahead as planned and in accordance with the details provided in the Application. Should the Event be cancelled or altered in any way, Hort Innovation:

- (a) reserves its rights to review the Sponsorship and the Sponsorship Amount in light of the changes; and
- (b) without limiting clause 2.1.2(a), may terminate this agreement by notice to the Event Organiser in which event the Sponsorship Amount or any part thereof will not be payable.

#### 2.2 Restriction

2.2.1 The Event Organiser must not use or refer to Hort Innovation's name or the Intellectual Property in any manner which, in Hort Innovation's opinion, may damage Hort Innovation's reputation or goodwill in the Products or the Intellectual Property.

2.2.2 The Event Organiser must not publish or cause to be published any information or material relating to the Event which:

- (a) is false or misleading;

- (b) is threatening, pornographic, blasphemous, obscene or otherwise offensive;
- (c) is defamatory;
- (d) infringes any person's intellectual property or other rights; or
- (e) is illegal.

2.2.3 The Event Organiser must not itself or through any third party use the Sponsorship Amount (or any part thereof) for any agri-political activity or purpose (including any form of internal or external political campaigning).

### **3. Promotional materials**

Hort Innovation will provide the Event Organiser with the promotional materials for the purposes of the Event, specified in the Sponsorship Notification or as otherwise specified by Hort Innovation in writing prior to the Event or as agreed in writing by the parties.

### **4. Event Organiser's Responsibilities**

The Event Organiser must:

- (a) Provide the Sponsorship Benefits
- (b) acknowledge and recognise Hort Innovation as a sponsor of the Event in accordance with the Application; and
- (c) within 30 days of conclusion of the Event (or such other period set out in the Sponsorship Notification), provide Hort Innovation with the Post Event Report in accordance with the instructions specified in the Sponsorship Notification.

### **5. Sponsorship**

#### **5.1 Sponsorship Amount**

Hort Innovation will pay, on receipt of an undisputed tax invoice:

- (a) 80% of the Sponsorship Amount within 30 days of receipt by Hort Innovation of the Sponsorship Benefits; and
- (b) 20 % of the Sponsorship Amount upon acceptance by Hort Innovation of the Post Event Report.

#### **5.2 Goods and services tax**

In relation to any goods and services tax (**GST**) payable for a taxable supply (as defined under GST Law) by a party under this agreement, the recipient of the supply must pay the GST subject to the supplier providing a tax invoice (as defined under GST Law).

#### **5.3 Funding**

The Event Organiser acknowledges that Hort Innovation has no obligation to make any payment to

the Event Organiser under this Agreement or by way of restitution (as on a quantum meruit or otherwise) for any benefit conferred on Hort Innovation or expense incurred by the Event Organiser, unless all funds pledged or otherwise payable to Hort Innovation (including, but not limited to, industry levies) in support of the Event are received by Hort Innovation into its nominated bank account in cleared funds.

## **6. Intellectual Property**

### **6.1 Proprietary rights**

Nothing contained in this agreement constitutes a grant to the Event Organiser of or creates in favour of the Event Organiser any goodwill or proprietary right in or in relation to the Intellectual Property.

### **6.2 Use**

6.2.1 The Event Organiser may only use the Intellectual Property during the Term with the prior written approval of Hort Innovation.

6.2.2 Without limiting clause 5.2.1:

- (a) the Event Organiser acknowledges that the Intellectual Property may only be used by the Event Organiser if taken from copies or artwork provided or otherwise approved by Hort Innovation;
- (b) all materials using or incorporating the Intellectual Property must be provided to Hort Innovation for its written approval prior to their proposed use; and
- (c) the Event Organiser must not permit the Intellectual Property to appear in conjunction with the name or logo of any other person without the prior written approval of Hort Innovation.
- (d) May only use the Intellectual Property in accordance with Hort Innovation's brand guidelines.

### **6.3 Prohibitions**

The Event Organiser must not, during or after the Term:

- (a) represent in any way that it owns the Intellectual Property or is entitled to use the Intellectual Property other than as an authorised user of Hort Innovation;
- (b) apply or seek to register the Intellectual Property in its own name in any country; or
- (c) attack or contest the property rights of Hort Innovation in and to the Intellectual Property.

## **7. Insurance**

### **7.1 Cover**

7.1.1 The Event Organiser must at all times maintain:

- (a) public liability insurance in an amount of at least \$20 million for each occurrence;
- (b) such other insurance as may be required by law; and
- (c) such other insurance cover as Hort Innovation may from time to time reasonably require.

7.1.2 The Event Organiser must ensure that the interest of Hort Innovation is noted on the insurance policies referred to in clause 7.1.1 (a) and 7.1.1 (c).

## **7.2 Evidence of currency**

The Event Organiser must, on request by Hort Innovation, produce a current certificate of currency in respect of the insurance policies referred to in clause 7.1.

## **8. Confidentiality**

### **8.1 Acknowledgment**

The Event Organiser acknowledges that:

- (a) the Confidential Information is the proprietary to Hort Innovation.
- (b) Confidential Information given to it prior to this agreement was given on the condition that it be kept confidential; and
- (c) the right to maintain the confidentiality of the Confidential Information is a proprietary right which Hort Innovation is entitled to protect.

### **8.2 Protection**

The Event Organiser must:

- (a) take all such reasonable precautions as may be necessary to maintain the confidentiality of the Confidential Information;
- (b) only disclose the Confidential Information to those of its employees who need to know for the purposes of this agreement; and
- (c) immediately on demand from Hort Innovation:
  - (i) deliver to Hort Innovation all Confidential Information which is capable of being transferred by delivery; and
  - (ii) delete permanently all Confidential Information in electronic form stored on any computer or similar facility under the control of the Event Organiser.

### **8.3 Excluded information**

The Event Organiser's obligations under this clause 7 do not apply to any Confidential Information

which:

- (a) it can show was in its possession at the time of disclosure to it and was not acquired in breach of an obligation of confidence or under an obligation of confidence;
- (b) is in the public domain other than by the act or omission of the Event Organiser or its officers, employees or contractors; or
- (c) is acquired from a third party, provided that it was not acquired by the third party unlawfully or in breach of an obligation of confidence.

## **9. Warranties**

The Event Organiser warrants that entering into and exercising its rights and performing its obligations under this agreement will not breach any agreements between it and any third party or any rights of a third party and that it has full right and title to conduct the Event in the manner contemplated.

## **10. Privacy**

Personal information provided by the Event Organiser to Hort Innovation in relation to the Event will be used and disclosed for the purpose of Hort Innovation's sponsorship of the Event, to contact Event participants for Hort Innovations business purposes and otherwise be collected, stored, used and disclosed in accordance with Hort Innovation's privacy policy available at <https://www.horticulture.com.au/privacy-policy/>. The Event Organiser must ensure that it has obtained appropriate consents from Event delegates for the disclosure and use of the personal information by Hort Innovation as contemplated in this agreement.

## **11. Indemnity**

The Event Organiser indemnifies Hort Innovation against all damages, losses, costs and expenses suffered or incurred by Hort Innovation arising out of:

- (a) any breach by the Event Organiser of this agreement; and
- (b) any act or omission of the Event Organiser in connection with the promotion or conduct of the Event.

## **12. Compliance with laws**

The Event Organiser must comply with all applicable laws and regulations in exercising its rights or performing its obligations under this agreement or otherwise in connection with the promotion and conduct of the Event.

## **13. Termination**

### **13.1 Notice**

- (a) Hort Innovation may by notice to the Event Organiser terminate this agreement if Hort Innovation considers that adverse publicity in respect of or its association with the Event may damage Hort Innovation's reputation or goodwill or the reputation or goodwill in the

Products or the Intellectual Property;

- (b) Hort Innovation may terminate this agreement for convenience on 30 days prior written notice to the Event Organiser.

## **13.2 Default**

If the Event Organiser:

- (a) goes into liquidation, has a receiver or receiver and manager appointed to it or any part of its assets, enters into a scheme of arrangement with creditors or suffers any other form of external administration;
- (b) fails, within 7 days after receipt of notice, to remedy any breach of its obligations under this agreement which is capable of remedy;
- (c) breaches any provision of this agreement which is not capable of remedy, Hort Innovation may, by notice to the Event Organiser, terminate this agreement.

## **13.3 Effect of termination**

13.3.1 If Hort Innovation terminates this agreement under clauses 13.1 or 13.2, without limiting Hort Innovation's rights under this agreement Hort Innovation shall not be liable to pay the Sponsorship Amount and if the Sponsorship Amount has already been paid, the Event Organiser must on demand from Hort Innovation repay Hort Innovation the Sponsorship Amount.

13.3.2 On termination of this agreement:

- (a) the Event Organiser must immediately cease using the Intellectual Property;
- (b) the Event Organiser must immediately cease referring to Hort Innovation as a sponsor of the Event; and
- (c) at the option of Hort Innovation, the Event Organiser must return to Hort Innovation or destroy all promotional materials provided to the Event Organiser under clause 2.3 and all other materials in the possession or under the control of the Event Organiser which contain the Intellectual Property.

## **14. Relationship**

Nothing in this agreement constitutes any party as an agent, partner, joint venturer or employee of the other party or creates any agency, partnership, joint venture or employment relationship.

## **15. Miscellaneous**

### **15.1 Notices**

15.1.1 A notice under this agreement must be by email to the addressee's email address.

15.1.2 An email is deemed to have been received on sending, unless the sender receives an error message indicating that the email was not delivered to the intended recipient.

15.1.3 For the purposes of this agreement:

- (a) Hort Innovation's email address is [communications@horticulture.com.au](mailto:communications@horticulture.com.au) and
- (b) Event Organiser's email address is the address included in the Event Organiser's application.

## **15.2 Amendment**

From time to time, Hort Innovation may vary this agreement by replacing the existing terms with new terms. Hort Innovation will make the new terms available on the Hort Innovation website under the Hort Innovation Event Sponsorship section. It is the Event Organiser's responsibility to ensure that it reads and accepts the latest agreement terms.

## **15.3 Assignment**

The Event Organiser may only assign a right under this agreement with the prior written consent of Hort Innovation.

## **15.4 Governing law and jurisdiction**

15.4.1 This agreement is governed by and must be construed in accordance with the laws of New South Wales.

15.4.2 Each party:

- (a) irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales and all courts which have jurisdiction to hear appeals from those courts; and
- (b) waives any right to object to proceedings being brought in those courts for any reason.

## **15.5 Order of precedence**

15.5.1 This agreement consists of the following documents:

- (a) the terms in the body of this agreement;
- (b) the Guidelines;
- (c) the Sponsorship Notification, and
- (d) the Application;

and in case of a conflict or inconsistency, the document listed earlier in this clause 15.5.1 will prevail to the extent of such conflict or inconsistency.

15.5.2 This agreement contains the entire agreement between Hort Innovation and the Event Organiser with regards to the Event.

## 16. Definitions and interpretation

### 16.1 Definitions

16.1.1 Where commencing with a capital letter:

**Application** means the Event Organiser's sponsorship application submitted via the Hort Innovation website: <https://www.horticulture.com.au/hort-innovation/news-events/events/>

**Confidential Information** means, in respect of a party, all trade secrets and know-how, financial information and other commercially valuable information of whatever description and in whatever form provided Hort Innovation to the Event Organiser under this agreement;

**Event** means the industry event which is promoted and organized by the Event Organiser as more fully set out in the Application.

**Event Organiser** means the applicant set out in the Application and "You" or "Your" is ascribed the same meaning.

**GST Law** means A New Tax System (Goods and Services Tax) Act 1999 (Cth).

**Guidelines** means the current Hort Innovation Event Sponsorship Guidelines available on the Hort Innovation website;

**Hort Innovation Logo** means the logo specified in the Sponsorship Notification or as otherwise provided by Hort Innovation;

**Intellectual Property** means the intellectual property owned by or licensed by Hort Innovation including the Hort Innovation Logo; and

**Post Event Report** means a detailed and comprehensive report in relation to the Event as specified in the Sponsorship Notification and which is in a form acceptable to Hort Innovation.

**Products** means horticulture and related or incidental products produced by the Australian horticulture industry.

**Sponsorship Amount** means the amount specified in the Sponsorship Notification

**Sponsorship Notification** means the email from Hort Innovation confirming acceptance of the Application by Hort Innovation;

### 16.2 Presumptions of interpretation

16.2.1 Unless the context otherwise requires a word which denotes:

(a) the singular denotes the plural and vice versa; and



(b) a person includes an individual, a body corporate and a government.

16.2.2 Where a word or phrase is given a defined meaning another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.