

TERMS AND CONDITIONS OF HIRE – NICK PARSELL PERCUSSION ACADEMY

(“Hire Terms”)

1. Definitions

- 1.1 “**Commencement Date**” means the date on which the Hirer receives delivery of the Instrument from Parnell (or its agent).
- 1.2 “**End Date**” means the date on which these Hire Terms end if terminated by either party in accordance with clauses 3.1, 8.4 and 11.
- 1.3 “**eWAY**” means Web Active Corporation Pty Ltd trading as eWAY ABN 32 086 209 403 or such other payment platform engaged by Parnell.
- 1.4 “**Hire Charge(s)**” means the total hire amounts charged by Parnell to the Hirer for the hire of the Instrument including the Initial Payment, Ongoing Hire Charges and any other charges owing by the Hirer to Parnell under these Hire Terms.
- 1.5 “**Hire Order**” means (as applicable):
 - 1.5.1 an order submitted by the Hirer to Parnell on the Website to hire the Instrument; or
 - 1.5.2 a hard copy application form provided by the Hirer to Parnell to hire the Instrument.
- 1.6 “**Hire Period**” means a period of three months.
- 1.7 “**Hirer**” means the person specified in a Hire Order as the hirer of an Instrument;
- 1.8 “**Initial Payment**” means the total amount specified in the Hire Order for the:
 - 1.8.1 hire charges for the first Rental Period starting on the Commencement Date; and
 - 1.8.2 delivery of the Instrument to the Hirer.
- 1.9 “**Instrument**” means the Instrument to be hired by the Hirer as selected by the Hirer in the Hire Order.
- 1.10 “**Ongoing Hire Charges**” means the hire amounts charged by Parnell to the Hirer for the hire of the Instrument for each Hire Period following the first Rental Period as set out in the Hire Order.
- 1.11 “**Ongoing Hire Payment Dates**” means every three month anniversary of the Commencement Date up to the End Date.
- 1.12 “**Parnell**” means Nicholas John Parnell in his own personal capacity and trading as Nick Parnell Percussion Academy ABN 57 938 174 799.
- 1.13 “**PPSA**” means the *Personal Property Securities Act 2009* (Cth) as amended.
- 1.14 “**Premises**” means the premises listed in the Hire Order as the location to which Parnell will deliver the Instrument and where the Hirer will store the Instrument.
- 1.15 “**Term**” means the period of hire of the Instrument starting on the Commencement Date and ending on the End Date.
- 1.16 “**Website**” means the website available at www.nickparnell.com.

2. Hire and delivery

- 2.1 Parnell agrees to hire to the Hirer the Instrument on these Hire Terms and the Hirer agrees to hire the Instrument from Parnell on these Hire Terms.
- 2.2 The Hirer must be over 18 years of age and possess a valid credit card to hire the Instrument from Parnell (unless otherwise agreed in writing by Parnell).
- 2.3 These Hire Terms will apply to the hire of the Instrument despite any conflicting terms proposed by the Hirer, unless waived in writing by Parnell.
- 2.4 Parnell will attempt to deliver the Instrument via Parnell, its agent or courier (as appropriate) within 14 days. However, if the Instrument is unavailable delivery may be delayed. Any guarantees or representations made as to delivery times are subject to any delays resulting from postal delays or circumstances outside the control of Parnell for which Parnell will not be responsible. If you wish to query a delivery, please contact Parnell at academy@nickparnell.com.au

3. Hire charges and payment

- 3.1 The Hirer must pay the Hire Charges for the hire of the Instrument for the Term. Unless otherwise agreed in writing by Parnell, the Hirer will pay the Hire Charges to Parnell by credit card using its credit card details and the eWAY Payment Gateway.
- 3.2 The Hirer acknowledges that Parnell may increase the Ongoing Hire Charges by giving notice in writing to the Hirer. Any change in the Ongoing Hire Charges will be effective from the Hire Period following that in which Parnell provides written notice to the Hirer. If the Hirer does not accept the change in Ongoing Hire Charges, the Hirer may terminate these Hire Terms immediately by providing written notice to Parnell. These Hire Terms will end on the last day of the Hire Period in which the Hirer provides its written notice to Parnell.
- 3.3 The Hirer must pay the Initial Payment to Parnell upon submitting a Hire Order.

- 3.4 The Hirer will pay the Ongoing Hire Charges to Parnell on the Ongoing Hire Payment Dates. The Hirer authorises Parnell and eWAY to debit the Ongoing Hire Charges from the Hirer's credit card on the Ongoing Hire Payment Dates unless otherwise advised in writing by the Hirer to Parnell. If the credit card payment is declined, Parnell will issue a notice to the Hirer at the details provided in the Hire Order ("Final Notice"). If the Final Notice is not paid within seven days of the date of the Final Notice, Parnell will render a further invoice to the Hirer for the total amount outstanding. If this invoice is not paid in total to Parnell within seven days of the date of the invoice, Parnell may engage a debt collection agency to recover the invoiced amount from the Hirer as a debt due and payable upon demand in writing.
- 3.5 For the avoidance of doubt but subject to clauses 3.4, 4.6 and 11.5, Parnell and eWAY will not debit any Ongoing Hire Charges from the Hirer's credit card after either party has provided notice to the other that these Hire Terms will terminate at the end of the then current Hire Period.
- 3.6 The Hirer uses the eWAY Payment Gateway for its credit card transactions. All credit card transaction performed using the eWAY Payment Gateway are secured payments. Further information about eWAY and online credit card payments is available at www.eWAY.com.au.
- 3.7 The Hirer must pay:
- 3.7.1 all taxes, insurances and other charges in connection with these Hire Terms;
 - 3.7.2 a sum equal to the amount of any goods and services tax (GST) payable by Parnell on any supplies made by Parnell under or in connection with these Hire Terms, calculated by multiplying the GST exclusive consideration payable for the relevant supply or supplies by the prevailing GST rate; and
 - 3.7.3 any costs or expenses reasonably incurred by Parnell in enforcing these Hire Terms as a result of the Hirer's breach of these Hire Terms or in order to return the Instrument to the same condition as at the Commencement Date (excluding fair wear and tear).
- 3.8 In the event of non-payment of the Hire Charges in accordance with these Hire Terms:
- 3.8.1 the Hirer will pay all reasonable collection expenses, legal costs and any other expenses incurred by Parnell in connection with the non-payment by the Hirer; and
 - 3.8.2 the Hirer acknowledges and agrees that Parnell has the right (without prejudice to any other rights and remedies it may have) to recover, remove and/or re-hire the Instrument. For that purpose, Parnell's employees, agents or workers may without notice enter any place Parnell believes the Instrument to be without committing a trespass.
- 3.9 Parnell will have no obligation to make good any damage caused by the recovery or removal of the Instrument pursuant to clause 3.8.2 and Parnell will not be liable for and the Hirer will indemnify Parnell against any costs, claims, damages or losses suffered by the Hirer as a result of such removal.

4. Hirer obligations

- 4.1 The Hirer must comply with:
- 4.1.1 the Instrument's care instructions available at nickparnell.com/marimbahire; and
 - 4.1.2 all applicable statutory laws and regulations.
- 4.2 The Hirer must ensure that the Instrument is:
- 4.2.1 returned to Parnell in the same packaging as it is delivered to the Hirer and in the same condition as at the Commencement Date (except for fair wear and tear);
 - 4.2.2 used for the purpose for which the Instrument was designed and in a manner which has regard to the capabilities and limitations of the Instrument;
 - 4.2.3 not removed from the Premises without the Parnell's written consent; and
 - 4.2.4 at all times safely protected from theft, loss or damage.
- 4.3 If the Instrument becomes unsafe to use, the Hirer will immediately stop using the Instrument to prevent the Instrument causing injury, loss or damage to any person or property.
- 4.4 The Hirer must immediately notify and provide full details to Parnell if the Instrument is involved in injury to any person or damage to property. The Hirer is liable to Parnell for any and all loss or damage to, or caused by, the Instrument or its operation for the duration of the Term.
- 4.5 Risk in the Instrument passes to the Hirer on delivery of the Instrument to, or collection of Instrument by, the Hirer and remains with the Hirer until the Instrument is collected by or returned to Parnell.

4.6 If the Instrument is lost, stolen or damaged during the Term (excluding fair wear and tear), Parnell will render an invoice to the Hirer for the total costs to repair or replace the Instrument as reasonably determined by Parnell. If the Hirer fails to pay the total amount specified in the invoice to Parnell within seven days of the date of the invoice, the Hirer authorises Parnell and eWAY to debit such amount from the Hirer's credit card. If the credit card payment is declined, Parnell will issue a Final Notice to the Hirer. If the Final Notice is not paid within seven days of the date of the Final Notice, Parnell will render a further invoice to the Hirer for the total amount to replace or repair the Instrument as reasonably determined by Parnell. If this invoice is not paid in total to Parnell within seven days of the date of the invoice, Parnell may engage a debt collection agency to recover the invoiced amount from the Hirer as a debt due and payable upon demand in writing.

5. Access and inspection

5.1 Parnell and its representatives have the right to enter the Premises at any time upon giving prior reasonable notice to the Hirer to inspect, maintain and/or repair the Instrument or to repossess the Instrument. The Hirer must assist Parnell and its representatives in exercising its rights under this clause 5.

6. Liability and indemnity

6.1 To the maximum extent permitted by law, Parnell's total liability to the Hirer for loss or damage incurred by the Hirer in respect of the Instrument and under these Hire Terms is limited to (at Parnell's election):

- 6.1.1 the repair or replacement of the Instrument; or
- 6.1.2 the refund of the Hire Charges paid by the Hirer to Parnell.

6.2 The Hirer will indemnify and will continue to indemnify Parnell against any liability, loss, damage, claim, action, demand, costs or expenses incurred or suffered by Parnell howsoever arising out of the Hirer's hire, use or possession of the Instrument, including, but not limited to:

- 6.2.1 any breach of these Hire Terms;
- 6.2.2 any breach of any laws by the Hirer;
- 6.2.3 any act or omission (negligent or otherwise) by the Hirer; or
- 6.2.4 any action or trespass resulting from Parnell entering the Premises in accordance with clause 5.

6.3 Under no circumstances will either party be liable, whether in contract or tort or otherwise at law or equity, for any indirect or consequential loss or damage whatsoever. For the purposes of these Hire Terms, consequential loss includes loss of profit, loss of production, loss of any plant or facility, business interruption, loss of business opportunity or any other indirect, consequential, special, contingent or penal damage or loss.

7. Insurance

7.1 The Hirer must at its cost effect and maintain during the Term insurance policies for the Instrument as requested in writing by Parnell.

7.2 Parnell may require the Hirer to provide copies of the insurance policies contemplated in clause 7.1 and, where such a request is made, the Hirer will provide a copy of the insurance policy within 24 hours of such a request.

7.3 Where Parnell has effected an insurance policy and is required to pay an additional premium because of an act or omission of the Hirer, Parnell may recover the cost from the Hirer as a debt due and payable upon demand in writing.

8. Ownership of Instrument

8.1 The Hirer acknowledges that it has not acquired any right in the Instrument and will not hold itself out or permit itself to be held out as having the Instrument in its apparent ownership or disposition.

8.2 The Hirer must not dispose or purport to dispose of, or create or permit to be created any security interest in the Instrument other than with the written consent of Parnell.

8.3 The Hirer must not lease, hire, bail or otherwise part with possession of the Instrument to anyone else without the written consent of Parnell.

8.4 A breach of this clause 8 will entitle Parnell to terminate these Hire Terms by notice to the Hirer and demand return of the Instrument immediately.

9. PPSA

9.1 If these Hire Terms are considered to be a PPS Lease, the Hirer acknowledges and agrees that:

- 9.1.1 these Hire Terms grant Parnell a purchase money security interest ("PMSI") in the Instrument and their proceeds to secure all amounts owed by the Hirer to Parnell;
- 9.1.2 Parnell may register its PMSI over the Instrument on the Personal Properties Securities Register ("PPSR");

- 9.1.3 it will do all things necessary and provide Parnell on request all information that Parnell requires to register a financing statement or financing charge statement on the PPSR;
- 9.1.4 it will not change its name in any form or other details on the PPSR without first notifying Parnell; and
- 9.1.5 it will, if requested by Parnell, pay to Parnell the cost of registering and maintaining registration of Parnell's security interest on the PPSR, within 14 days of the request.
- 9.2 Without affecting any other indemnity or rights under these Hire Terms, if the Hirer is in breach of any of its obligations under clause 9.1, the Hirer must indemnify Parnell against all loss or expense suffered by Parnell as a consequence of that breach.
- 9.3 Parnell need not give any notice under the PPSA (including a verification statement or a financing change statement) unless the notice is required by the PPSA and cannot be excluded.
- 9.4 No party may disclose information of the kind referred to in section 275(1) of the PPSA (except where the parties may do so where required due to the operation of section 275(7) of the PPSA) and the Hirer must not authorise the disclosure of such information.
- 9.5 The Hirer appoints Parnell as its attorney to sign in the Hirer's name all documents which Parnell considers necessary to enforce or protect its rights and powers under these Hire Terms and to perfect, preserve, maintain, protect or otherwise give full effect, under the PPSA and related regulations, to these Hire Terms and the PMSI created by these Hire Terms.
- 9.6 If Chapter 4 of the PPSA would otherwise apply to the enforcement of the PMSI under these Hire Terms, the parties agree that the following provisions of the PPSA will not apply, or are waived, as the context requires:
 - 9.6.1 section 95 (notice of removal of accession);
 - 9.6.2 section 118 (enforcement of security interest in accordance with land law decisions);
 - 9.6.3 section 123 (secured party may seize collateral);
 - 9.6.4 section 125 (obligation to dispose or retain collateral);
 - 9.6.5 section 128 (secured party may dispose of collateral);
 - 9.6.6 section 129 (notice of purchase);
 - 9.6.7 section 130 (notice of disposal);
 - 9.6.8 sections 132(1) and (4) (right to receive a statement of account);
 - 9.6.9 section 135 (notice of retention);
 - 9.6.10 section 142 (redemption of collateral); and
 - 9.6.11 section 143 (reinstatement of security agreement).
- 9.7 The Hirer agrees that, in addition to the above rights of Parnell under the PPSA, Parnell shall, if there is a default by the Hirer, have the right to seize, purchase, take possession, retain, deal with or dispose of any Instrument, not only under the PPSA but independently, pursuant to these Hire Terms.
- 9.8 Unless otherwise defined in these Hire Terms, the terms and expressions used in this clause 9 have the meanings given to them in, or by virtue of, the PPSA.

10. Privacy

Parnell will collect, hold and use the Hirer's personal information in accordance with his Privacy Policy available on the Website. Parnell's Privacy Policy sets out:

- 10.1 the purposes for which personal information is collected;
- 10.2 the consequences if personal information is not provided to Parnell;
- 10.3 the third parties to which Parnell discloses personal information;
- 10.4 how the Hirer may seek access or correction of its personal information;
- 10.5 whether personal information is likely to be disclosed to overseas entities and in which countries; and
- 10.6 how the Hirer can complain about a breach of Parnell's obligations in respect of its personal information and how such a complaint will be dealt with.

11. Termination

- 11.1 The Hirer may terminate these Hire Terms by providing at least 14 days' written notice to Parnell (via the e-mail address academy@nickparnell.com) before the end of a Hire Period. These Hire Terms will end on the last day of that Hire Period.
- 11.2 Parnell may terminate these Hire Terms by providing at least 14 days' written notice to the Hirer (via the e-mail address provided by the Hirer in the Hire Order) before the end of a Hire Period. These Hire Terms will end on the last day of that Hire Period.
- 11.3 Parnell may immediately terminate these Hire Terms if:
 - 11.3.1 the Hirer is in breach of these Hire Terms and fails to remedy the breach within 7 days of being given written notice of the breach by the Parnell; or

- 11.3.2 the Hirer becomes insolvent or otherwise unable to pay its debts as and when they fall due.
- 11.4 Upon termination of these Hire Terms, the Hirer must package (in the original packaging as the Instrument is delivered to the Hirer) and prepare the Instrument for collection by Parnell or its agent in accordance with Parnell's reasonable directions. If the Hirer fails to maintain the original packaging, the Hirer will pay all costs to re-package and return the Instrument in accordance with Parnell's reasonable directions. The Hirer irrevocably authorises Parnell or its agent to enter the Premises and retrieve the Instrument upon termination of these Hire Terms.
- 11.5 If the Hirer fails package and prepare the Instrument to Parnell in accordance with clause 11.4, Parnell will render an invoice to the Hirer for the total costs to replace or repair the Instrument as reasonably determined by Parnell. If the Hirer fails to pay the total amount specified in the invoice to Parnell within seven days of the date of the invoice, the Hirer authorises Parnell and eWAY to debit such amount from the Hirer's credit card. If the credit card payment is declined, Parnell will issue a Final Notice to the Hirer. If the Final Notice is not paid within seven days of the date of the Final Notice, Parnell will render a further invoice to the Hirer for the total amount to replace or repair the Instrument as reasonably determined by Parnell. If this invoice is not paid in total to Parnell within seven days of the date of the invoice, Parnell may engage a debt collection agency to recover the invoiced amount from the Hirer as a debt due and payable upon demand in writing.
- 11.6 The termination of these Hire Terms does not affect the parties' rights which have accrued before termination or any rights and obligations of the parties which survive termination.
- 12. Force majeure**
- 12.1 Subject to clause 12.2, neither party will be responsible for any delays in delivery or collection due to causes beyond their control, including but not limited to acts of God, war, terrorism, civil commotion, riots, embargoes, orders or regulations of government or any other relevant jurisdiction, fires, floods, strikes or lockouts.
- 12.2 Nothing in clause 12.1 will limit or exclude the Hirer's responsibility and liability under these Hire Terms for an Instrument that is lost, stolen or damaged beyond fair wear and tear during the Term or has become unsafe to use as a result of the Hirer's acts or omissions.
- 13. Time is of the essence**
- Time is of the essence in relation to all obligations of the Hirer under these Hire Terms.
- 14. Assignment**
- Parnell may assign or sub-contract any or all of its rights under these Hire Terms. The Hirer must not assign or sub-contract any or all of its rights under these Hire Terms without the prior written consent of Parnell.
- 15. Entire agreement**
- These Hire Terms will constitute the whole of the agreement between Parnell and the Hirer and supersedes previous agreements and arrangements whether written, oral or implied between Parnell and the Hirer relating to the hire of Instrument by the Hirer.
- 16. Disputes**
- 16.1 In the event of any dispute that may arise between Parnell and Hirer in relation to these Hire Terms ("Dispute"), the party seeking to have the Dispute resolved must issue to the other party a notice setting out all details relevant to the Dispute ("Dispute Notice").
- 16.2 Within 14 days of receipt of a Dispute Notice, the parties must meet in Adelaide, South Australia (or such other place agreed by the parties) to negotiate resolution of the Dispute unless the parties agree to hold such discussions by teleconference or via other electronic means. The parties agree that those negotiations must be conducted in good faith.
- 16.3 In the event that the Dispute is not resolved in accordance with clause 16.2, either party will be entitled to take the matter to litigation in the courts of South Australia.
- 16.4 Nothing contained in this clause 16 will prevent a party from seeking urgent interlocutory relief.
- 17. Governing law**
- These Hire Terms are to be governed and interpreted in accordance with the laws of the State of South Australia. The parties agree to submit themselves to the non-exclusive jurisdiction of the courts of South Australia and any competent appellate courts.
- 18. Severability**
- Every provision of these Hire Terms will be deemed severable as far as possible from the other provisions of these Hire Terms. If any provision is found to be void, illegal or unenforceable for any reason, it will be deemed to be severed and omitted from these Hire Terms. These Hire Terms with the offending provision severed and omitted and with any consequential amendment if necessary, will otherwise remain in full force.
- 19. Amendments**
- Any amendment to a term of these Hire Terms must be made in writing and executed by the parties.