

TERMS AND CONDITIONS

1. APPLICATION OF TERMS

- 1.1 BaDaBoom Limited (**we, us** or **our**) provides to schools and other venues (**you** or **your**) an interactive percussion-based show and related workshops, incorporating puppets and musical instruments made out of recycled materials (**performances**).
- 1.2 These terms and conditions (**terms**) set out the terms under which we will provide the performances to you. By engaging us to provide the performances, you acknowledge and agree that you have read, understood and accepted these terms and agree to be bound by them.
- 1.3 We may change these terms at any time by sending an email to you notifying you of the change. By continuing to engage us to provide performances, you will be bound by the amended terms.

2. PERFORMANCES

- 2.1 Each show will normally be for a duration of around 45 minutes, with no break, although the duration of the show may vary.
- 2.2 We may at any time change the performances (including the music, instruments, script, puppets, set and performers) without notice and without giving any reasons for the change.
- 2.3 In addition to providing the performances, we may from time to time provide other goods and services such as (without limitation) recordings of the performances, merchandise and workshop materials.

3. BOOKINGS

- 3.1 You may book performances directly with us by email. In order for us to confirm the booking, we may require you to pay a deposit and, in this case, we will only confirm your booking once you have paid the deposit to our nominated bank account.
- 3.2 Your booking is only confirmed once we send you an email to this effect. We reserve the right to reject your booking if we are already booked for the time that you would like the performance or for any other reason.
- 3.3 Provided that you have the capability to make bookings, and with our prior written approval, attendees may book performances directly with you through your website or your booking agent's website (**Direct Attendee Bookings**). If you or your booking agent charges a handling fee for making the booking, you or your booking agent must notify the attendee of the fee at the time that the attendee makes the booking. Any such handling fee must be reasonable.

4. OUR FEES

- 4.1 We charge a fee per attendee for our performances, with a minimum fee for each performance. We will notify you of both the fee per attendee and the minimum fee before you make a booking. You may make a combined booking with other schools or venues to assist you to meet the minimum fee.
- 4.2 We charge a fee per attendee for both shows and workshops. Different fees may apply for each, depending on the number of attendees. So, for example, a whole school might view a show but only a single class might have a workshop at a particular time.
- 4.3 We will send you an invoice for our fees. GST is charged on our fees and disbursements.

- 4.4 If we ask you for a deposit, you must pay this at the time you make the booking. You must pay then pay the balance on or before the 20th day of the month following the date of the invoice.
- 4.5 You and we must agree our fees for Direct Attendee Bookings reasonably in advance and in writing. You must pay our fees for Direct Attendee Bookings in full, and without set off or deduction, to our nominated bank account within 5 working days from the closing date for bookings in respect of any performance.
- 4.6 If you cancel your booking, the following fees will apply:
- (a) for any cancellation of a booking within 21 days of a performance, a fee of 50% of the total fee payable for the performance will apply; and
 - (b) for any cancellation of a booking which is not within 21 days of a performance, no cancellation fee will apply.
- 4.7 Except for a cancellation in accordance with clause 4.6(a) above, fees are non-refundable. In particular, no refunds will be available in connection with any:
- (a) any attendees who do not attend a performance; or
 - (b) any cancellation of or delay to any performance which is caused by any event beyond our control.
- 4.8 We may charge a fee for the other goods and services (such as performance recordings, merchandise or workshop materials) that we provide to you or your attendees.
- 4.9 If you do not pay any amount owing to us when it is due, then we may charge you interest at a default interest rate of 4% per annum above the then current interest rate of our principal lending bank.

5. YOUR OBLIGATIONS

- 5.1 If you are aware of any medical condition of an attendee that may adversely affected by our performance (for example, any condition relating to sounds or lights), you must notify us in advance of that medical condition and we will reasonably consult with you to determine if that attendee should attend the performance.
- 5.2 You must ensure that attendees behave at all times in an appropriate and respectful manner during any performance. In particular, you must ensure that attendees do not:
- (a) behave in an loud or unruly manner, including by heckling or harassing the performers, or otherwise disrupt any performance;
 - (b) behave in an offensive or abusive manner;
 - (c) bring any mobile telephones or other electronic device to any performance; or
 - (d) damage any of our property.
- 5.3 You are responsible for all health and safety requirements in relation to the venue and attendees, including ensuring they are aware of any emergency procedures. You must also comply with all other applicable laws in relation to the venue and attendees. This applies both to shows and any workshops that we may provide from time to time.
- 5.4 You must provide us with full access to the venue:
- (a) in order to set up, for not less than 60 minutes before the performance; and

(b) for not less than 60 minutes to pack up after the performance.

5.5 You must inform us of any special access requirements relating to the venue so we can allow for a longer time to set up before the performance and to pack up afterwards. We may charge reasonable additional fees if we incur additional costs in setting up or packing up.

6. OUR RIGHTS AND OBLIGATIONS

6.1 We will provide our performances and other services under this agreement with due care and skill.

6.2 You acknowledge and agree that we may need to cancel a performance, for example in the case of adverse weather conditions or for any other reason outside of our reasonable control. If we decide to cancel a performance, we will give you as much notice of the cancellation as we reasonably can.

7. INTELLECTUAL PROPERTY RIGHTS

7.1 We or our licensors own all intellectual property rights (including copyright, trade marks, design rights, know-how and other intellectual property rights) in relation to our performances, including our instruments, music, script, merchandise, recordings and other materials.

7.2 You will not do anything to invalidate or adversely affect these intellectual property rights and will ensure that attendees do not do so either.

8. PHOTOGRAPHY AND FILMING

8.1 You acknowledge and agree that we can take photographs and videos of our performances at your premises, provided that no photographs or videos are taken of attendees or other individuals.

8.2 You must not take any photographs and videos of our performances without our prior written consent, and must ensure that attendees do not do so.

9. MERCHANDISE

9.1 We may sell merchandise at your venue with your prior written consent. Our merchandise may include workshop materials, recordings, musical instruments and other goods relating to the performances.

10. LIABILITY

10.1 We will not be liable to you or your attendees:

- (a) for any loss or damage caused to your personal property (excluding where such loss or damage is due to our negligence);
- (b) for any loss or damage to you or your personal property which has been caused by an attendee or other third party who is not connected with our performances; or
- (c) for any loss or damage to you or your personal property which has been caused by events that are beyond our control and which could not have reasonably been foreseen or prevented.

10.2 Neither you nor we will be liable to the other for any consequential, indirect or special losses under or in relation to these terms.

- 10.3 Our liability under these terms (whether in contract, tort or otherwise) is limited to the fees paid for the performances that we have provided to you at the time of the event or circumstance giving rise to the loss or damage.

11. DISPUTES

- 11.1 If you have a complaint relating to our performances or otherwise to these terms, you should contact us by email at jess@badaboom.co.nz. If you are dissatisfied with our response, we will consider reasonable requests to resolve the complaint through alternative dispute resolution procedures, including mediation or arbitration.

12. GENERAL

- 12.1 These terms constitute the entire agreement between you and us relating to the performances.
- 12.2 These terms replace any previous related agreements and understandings between you and us.
- 12.3 We may assign our rights and obligations under these terms at any time to any other person.
- 12.4 We may subcontract all or any of our obligations under these terms to a third party. If we do this, we will remain liable to you for the performance of the subcontractor's obligations.
- 12.5 No delay, neglect or forbearance in taking enforcement action in relation to any provision of these terms by a party will be a waiver, or in any way prejudice any right, of that party.
- 12.6 If any part of these terms is held to be invalid, illegal or unenforceable, that part will be severed and the remainder of these terms will remain in full force and have full effect.
- 12.7 These terms will be exclusively governed by the law of New Zealand and any legal action against us or you must be taken in a court in New Zealand.