



## Conditions of use 2014 fortyfivedownstairs Gallery Spaces

fortyfivedownstairs is a not-for-profit theatre and gallery based at 45 Flinders Lane, Melbourne, Australia. We showcase independent, experimental and thought-provoking visual art, theatre, live music and discussion.

### 1) Fees:

Your agreed Gallery Hiring Fee can be found in the schedule of your license agreement.

### 2) What your hire fee covers:

- Gallery lighting
- Curatorial advice
- Invitation template
- Free listings in Art Almanac, Art Guide Australia and Arts View (iphone app)
- Media, free-listings
- e-mail newsletter circulation to fortyfivedownstairs database (16000+)
- Access to targeted mailing list  
(shared charges apply for in-house organised mail-out, standard DL envelopes provided)
- Access to preferred printer & designer
- Strong presence on fortyfivedownstairs website
- All power & outgoings
- Staffing during weekday gallery hours
- Access to basic kitchen & bar facilities
- Air conditioning & heating
- Access to Three Phase power (up to 50 amps)

### 3) Exclusions

- a) There are some areas of the gallery which are not available for hanging artworks. Please refer to gallery hanging maps and discuss your requirements with a gallery staff member.
- b) The loading zone parking bay outside the theatre may be booked in advance for use during bump-ins and bump-outs only (subject to availability).

### 4) What your responsibilities are:

- a) Your contractual obligations can be found in your license agreement.
- b) You are also responsible for:
  - i) - installation and dismantling of your exhibition
  - ii) - transportation of artworks to and from gallery
  - iii) - additional costs incurred on your behalf
  - iv) - restoration of the relevant gallery space to its original condition
  - v) - assisting in keeping your gallery space clean and tidy condition during the course of your exhibition

### 5) Additional charges

- a) Additional charges you will incur
  - i) - Staff for opening functions
  - ii) - Hire of additional glasses for opening functions if deemed necessary by gallery management
  - iii) - Credit Card facilities
- b) Additional charges you may incur

- i) - All costs associated with postage & printing of invitations, catering for opening night functions, additional insurance.
- ii) - Staffing of gallery on weekends
- iii) - Repairs of gallery walls to original condition
- iv) - Printing of price lists & CV's
- v) - Additional lighting and sound if required
- vi) - Additional plinths or pedestals (construction or hire)
- vii) - Rubbish removal following exhibitions and functions.
- viii) - APRA licensing fees (where applicable)
- ix) - Insurance of property and artworks
- x) - Hanging assistance

## 6) Security, access and public hours:

- a) Hire Period
  - i) Hiring period is Tuesday to Saturday, with addition access on the first Monday for installing, and also on the closing Saturday for dismantling (Sundays by negotiation with the gallery).
- b) Issue of keys
  - i) A nominated person should sign for a key to the space in the week leading up to your exhibition, and as such will be in charge of access; opening and closing the gallery during installation/dismantling and on Saturdays. Keys must be returned at the conclusion of your exhibition (or within 7 days by arrangement). Financial settlement will not be completed until keys are returned. Lost or non-returned keys will incur a fee; locks and replacement keys will be at the hirer's expense.
- c) Gallery hours
  - i) The gallery is open to the public Tuesday – Friday 11.00am to 5.00pm, and Saturday 12.00pm – 4.00pm. A representative of fortyfivedownstairs will be present to open and supervise the gallery from Tuesday to Friday.
  - ii) It is the responsibility of the hirer to supervise the gallery on Saturdays.

## 7) Promotional support and standards

fortyfivedownstairs has publication standards and guidelines for the promotional material for exhibitions:

- a) Invitations
 

fortyfivedownstairs will provide design for all invitations, working to existing templates. Templates for all other collateral that is designed for use by all exhibitors are provided. Hirers will be given access to the templates and the visual standards guide approximately 2 months before their exhibitions (earlier if requested). Hirers are not permitted to produce promotional collateral for their exhibitions that do not use the template provided. In any case fortyfivedownstairs staff must proof and sign-off the final invitation. In order to allow for this process the artwork must be ready and provided to fortyfivedownstairs a minimum of four weeks prior to the exhibition. Either you can put together the design/artwork yourselves (for collateral other than your invitation) or we can arrange to have it done for you. If the latter the artist should supply:

  - i) a high resolution file (300dpi) of the image they wish to use,
  - ii) details of the image (title, media, size, year),
  - iii) an artist's statement and title for the exhibition
- b) fortyfivedownstairs has its own website ([www.fortyfivedownstairs.com](http://www.fortyfivedownstairs.com)) with a regularly updated 'what's on' section. fortyfivedownstairs can place information about your exhibition onto this section of the website from approximately six weeks before your opening. For this to occur we require a short blurb about your work (80 – 120 words) and a low resolution .jpg image of at least 650px wide.
- c) fortyfivedownstairs sends e-mail every 2 weeks to our e-mail mailing list. Once you have provided appropriate media information you will be included in this newsletter. The email newsletter is sent to approximately 16000 contacts.
- d) fortyfivedownstairs will send out information about your exhibition to our media contacts on your behalf, however to do this we require that you send us a media release and 3 – 5 images at least 5 weeks prior to the opening of your exhibition.
- e) Proofing – All marketing collateral must be approved by fortyfivedownstairs staff prior to being printed and/or distributed.

## 8) Sale of works:

Conditions of use valid from 15 January 2014 unless superseded.

- a) fortyfivedownstairs staff will negotiate the sale of art works during weekday gallery hours and at opening functions. No commission is charged for this but bank fees and processing costs may be incurred.
- b) Non removal of works - All works, including sold pieces, must remain on display during the exhibition.
- c) Full payment before hand-over - Where fortyfivedownstairs has been responsible for the sale of an item for you the work will not be handed over to the purchaser until full payment is received.
- d) Framing and delivery costs are the responsibility of the purchaser unless other arrangements are made. Any change in arrangements must be conveyed to fortyfivedownstairs in writing.
- e) In the event that you have managed your own sales, or receive follow on sales, we request that you let us know a total number of sales and monetary amounts. This information would be extremely useful to us for our records, and we have no intention of asking for commission or any other financial gain. We would keep all such information private and use it only towards our total yearly figures.

## 9) Installation and Dismantle:

- a) Curatorial advice  
 fortyfivedownstairs maintains a reputation for the quality of its exhibitions and the standard of its exhibiting artists. To ensure the continuity of this high standard of presentation fortyfivedownstairs retains the right for final approval for all work displayed to ensure that the artist and the gallery are presented to the fullest advantage.
- b) Lighting  
 Gallery lights must not be adjusted or refocused except by a gallery technician. This is normally done either Monday afternoon between 2.00pm and 5.00pm or Tuesday morning from 9:30am – 11.00am but may be altered to fit in with specific exhibitions by prior arrangement. Artists should be present to ensure that this is done to their satisfaction.
- c) Fixing and fixtures.  
 Exhibiting artists should discuss appropriate fixing techniques with the gallery staff before commencing installation.
- d) Hanging and de-hanging of works
  - i) Access for installation on first day (normally Mondays) of hiring period is 9am - 5pm. When required, this may be extended with prior notice.
  - ii) The gallery should not be left unlocked and unattended at any stage.
  - iii) Do not drill/hammer into brick walls – nails and screws should only be used in the areas of mortar around each brick. Under no circumstances should dynabolts be used. Adhesive products (e.g. blu tack, Velcro stickers) damage the paint work, and are not permitted to be used in the gallery or entrance areas.
- e) Hanging arrangements are the responsibility of the hirer. Assistance can be provided for an additional fee. Hirers need to provide their own nails and tools for hanging. A proposed layout of the exhibition should be discussed with the office staff no later than one week prior to hanging.
- f) Please ensure all access doors (including the Flinders Lane door if restaurant is shut) are closed upon your entry at the beginning of your installation day. The large sliding door at the entrance to the gallery itself is to be kept closed at all times. The general public is not permitted access while you are hanging your work. For your security and ours this situation is minimised greatly if doors remain closed.
- g) The floorboards must be respected and drilling/nailing/gluing or attaching anything to them is strictly forbidden. Specialist mats can be provided where electric cables are to be used for installations. Also please be mindful of pushing/pulling heavy items across the floors.
- h) When leaving the gallery, please run through the closing checklist on the inside of the switchboard cupboard door (where the light switches are).
  - i) If you run into any problems dealing with the gallery space, please contact the staff directly. Contact details can be found on the inside of the switchboard cupboard door.
  - j) Removal of works and dismantling of exhibition.  
 The exhibition should be dismantled and all works (excepting those where purchaser pick-up has been arranged) should be removed at the conclusion of your final exhibition day.  
 It is the hirer's responsibility to patch and repaint the gallery walls where necessary before the conclusion of their hire period. fortyfivedownstairs will provide all material (filler, paint, brushes etc). Costs will be incurred if the gallery space is not returned to a good condition.
- k) Preparation of sold works – All sold works should be adequately packaged (bubble wrapped where possible) and labeled with the catalogue number and title ready for the purchaser to collect from fortyfivedownstairs. Non-wrapped sold works will attract a fee.
- l) Rubbish removal – Any rubbish left on the premises will incur a disposal charge.

## 10) Exhibition launches and artist functions:

- a) Exhibition openings are normally held from 5 – 7pm on the first Tuesday of your exhibition. The gallery can provide full assistance and support for these functions. The gallery manager will discuss arrangements for your opening function with you.
- b) The venue has a limited capacity, guest numbers should be discussed in advance.
- c) Use of Galleries for other activities
  - i) fortyfivedownstairs retains the right to program one-off events during your hire period. Any event programmed will be scheduled to run outside of normal gallery hours, have minimal effect on your exhibition and be completely packed up before the gallery re-opens. A fortyfivedownstairs staff member will be present for the duration of any event to ensure the security of your artwork. These events are considered of benefit to exhibiting artists through additional exposure provided to new audiences.
  - ii) From time to time, performance seasons in the theatre will utilise the gallery level for Front of House purposes (box office and bar). As with one-off events, this is considered of benefit to exhibiting artists through additional exposure provided to new audiences. Artists should raise any concerns regarding this with gallery management prior to acceptance of hiring agreement.
- d) fortyfivedownstairs exhibitions and opening functions are free to the public unless by specific prior arrangement.
- e) fortyfivedownstairs does not permit beer to be served at the exhibition opening function.

## 11) Occupational Health and Safety.

- i) The gallery is a workspace both for yourself and for the administration staff and as such falls under all workplace legislative requirements including Disability and Discrimination Acts and the Occupational Health and Safety Act.
  - 1.1 «Occupational Health and Safety Act 2004 - SECT 24  
Duties of self-employed persons to other persons  
(1) A self-employed person must ensure, so far as is reasonably practicable, that persons are not exposed to risks to their health or safety arising from the conduct of the undertaking of the self-employed person.
- b) How this affects you:
  - i) Please discuss the safety aspects of your work with the Technical Coordinator.
  - ii) fortyfivedownstairs requires the nominated key holder to complete a basic orientation / induction session. The access key will be issued upon completion of this session.
  - iii) Of principal OH&S concern are:
    - (1) Trip Hazards; such as cables items on the floor. If necessary for an installation please discuss with the staff
    - (2) Working at Heights. Although most pictures are hung at a height than can be reached easily, if you need to work at higher than 1.8 metres then you must prepare a Safe Work Methods Statement.
    - (3) Electrical safety including Testing and Tagging of all portable electrical equipment; even the cables on domestic appliances must comply with electrical safety standards once they are brought onto the premises
    - (4) Hazardous substances - these may include solvents, if you bring products into the space you should ensure you have relevant, documented Materials Safety Data Sheets for each chemical.
    - (5) Safe fixing of exhibition materials.

## 12) Insurance:

- a) The insurance policy held by fortyfivedownstairs does not cover your activities or use of the gallery. You are also required to indemnify fortyfivedownstairs against any claims made through any act or omission made by you or your representatives.
- b) A "Certificate of Currency" must be provided to us. Further information about insurance for artists is available at NAVA (<http://www.visualarts.net.au/>)
- c) If you do not already have Public Liability Insurance please obtain it before occupancy of the gallery.
- d) Low cost policies are available to visual artists through membership of a number of agencies. These include Regional Arts Victoria (<http://www.rav.net.au/funding-and-resources/artists/art-pli>) or Artswokers (<http://www.artworkers.org/index.php?apply=&webpage=default&CID=2102&PHPSESSID=&menuID=564>).

## 13) Smoking and consumption of alcohol:

- a) The building including all access stairs and landings are non-smoking areas
- b) Under the terms of fortyfivedownstairs' liquor licence alcohol may only be consumed in designated areas of the gallery. Alcohol including that in glasses may not be taken out of the immediate premises under any circumstances.
- c) During event openings and on other occasions where alcohol is served fortyfivedownstairs and its representatives and staff will observe Responsible Service of Alcohol.
- d) The bar and/or refreshment operation are operated exclusively by fortyfivedownstairs or by an approved catering company.

If you need further clarification or more information on anything outlined in this license agreement please contact the gallery on (03) 9662 9966 or at [info@fortyfivedownstairs.com](mailto:info@fortyfivedownstairs.com)

Forty Five Downstairs Inc (hereafter known as the Licensor) agrees to License the Venue to the Licensee subject to the following terms and conditions:

## **1 For the purpose of this Agreement:**

- 1.1 This agreement is subject to the laws of the State of Victoria, Australia
- 1.2 Nothing in this agreement shall constitute a tenancy between the parties
- 1.3 This agreement together with its annexures constitutes the entire contract between the parties
- 1.4 This agreement may not be amended except by writing signed by the parties.
- 1.5 Where the Licensee comprises more than one party, the obligations of such parties are joint and several; The Licensee includes its successors and assigns; and Licensee includes the Licensee's employees, agents and contractors; and
- 1.6 The singular includes the plural and vice versa.

## **2 Hiring**

- 2.1 The hiring shall entitle the Licensee and its Guests to use the areas as set out in the schedule together with the Common Areas of the Venue during the Hire Period or the Hire Date for the purpose set out in item 4 of the Schedule.
- 2.2 During hire periods where the venue is not occupied Forty Five Downstairs reserves the right to use the space for other purposes where such purposes do not conflict with the Licensee's use of or programming for the venue.

## **3 Conditions of use**

- 3.1 The Licensee shall at all times comply with the Conditions of Use for the venue and such conditions that Forty Five Downstairs as from time to time may deem to be appropriate. The current Conditions of Hire will be available online at The Licensor's web site and from The Licensor's administrative staff.

## **4 Deposit and Charges**

- 4.1 The Licensee must pay The Licensor:
  - (a) the Deposit on signing this Agreement;
  - (b) and
    - (i) if the Licensee is a Performer, the balance of the Charges must be paid within seven (7) days of the issue of an invoice by The Licensor following the final Performance of the Licensee; and
    - (ii) if the Licensee is an Exhibitor, the balance of the Charges must be paid at least twelve weeks before the commencement date for the Exhibition; and
    - (iii) if the Licensee is for a Catered event or private function the balance of the Charges must be paid ten days before the Event.
- 4.2 The Licensor may use the Deposit in satisfaction or part satisfaction of any amount due to The Licensor pursuant to this Agreement.
- 4.3 Unless otherwise specified, all Charges and other amounts payable by The Licensor pursuant to these terms and conditions are exclusive of GST (as defined in the *A New Tax System (Goods and Services Tax) Act 1999* and the Licensee shall pay GST in addition to those Charges and other amounts payable.

## **5 Caterer's and Exhibitors' Bond**

- 5.1 If the Licensee is an Exhibitor or Caterer, the Licensee will be required to pay a security deposit equivalent to 25 per cent of the Venue Hire Charges which will be refunded in full to the Licensee unless:
  - (a) the Licensee defaults under this Agreement; or
  - (b) the Venue, Common Areas or the Facilities are damaged by the Licensee or its Guests, in which case,

The Licensor may retain sufficient monies to make good that damage

- (c) There are outstanding fees and charges pertaining to the hire the payment of which may be satisfied by payment of all or portions of the bond, the remainder of which will be returned to the Licensee.

## **6 Termination of Hire**

- 6.1 The Licensor may cancel the hiring at any time prior to or during the Event if:
  - (a) the Licensee fails to fulfil any of its obligations in accordance with this Agreement;
  - (b) the Licensee alters the purpose, nature or content of the Event without The Licensor's prior written approval;
  - (c) The Licensor becomes aware of conduct by the Licensee or its Guests which could jeopardise public safety or carry the risk of personal injury or damage to property or damage to The Licensor's reputation; or
  - (d) if any other circumstance arises which in The Licensor's opinion makes it necessary to terminate the hiring.
- 6.2 Without limiting The Licensor's rights under clause 11, The Licensor may in its discretion also impose restrictions on the use of the Venue or the Event.
- 6.3 The Licensee agrees not to make any claim against The Licensor with respect to:
  - (a) any termination of the hiring; or
  - (b) any imposition of restrictions in accordance with clause 11.

## **7 Arbitration**

- 7.1 In the event of any dispute or difference arising as to the interpretation of these conditions, or of any matter or thing contained therein, the decision of The Licensor, or other authorised delegate shall be final and conclusive.

## **8 Additional charges**

- 8.1 If the Licensee cancels or postpones the hiring, the Licensee shall forfeit the Deposit and must pay to The Licensor (within 7 days of receipt of an invoice) any costs incurred by The Licensor in relation to the cancellation.
- 8.2 The Licensee must pay to The Licensor any additional costs or expenses incurred by the Licensee in relation to the Event including but not limited to the cost of the repair of any damage to the Venue or any other property in or about the Venue caused by the Licensee or its Guests, fair wear and tear excepted.

## **9 Services**

- 9.1 The Licensee agrees that The Licensor is not liable for any claim whatsoever arising from a failure by The Licensor, its agents or contractors to provide any of the Services:
  - (a) during the Event; or
  - (b) to the standard required by The Licensor.
- 9.2 The Licensor may in its discretion impose conditions upon any services will be provided including the requirement that the services shall be provided at the Licensee's cost.

## **10 House Seats**

- 10.1 When the premises are hired, four (4) seats per performance shall be reserved without charge for The Licensor's use. Any such seat not claimed by The Licensor before a performance may be returned for general sale on the day of the performance.

## **11 Hirer's general obligations**

- 11.1 The Licensee must, and must ensure that its representatives, agents or Guests:
  - 11.2 At all times obey all building, health, fire and local codes and by-laws and shall do nothing to endanger The

Licensor's occupancy of the premises. In particular not block or obstruct any designated exits access areas or fire protection equipment

- 11.3 do not behave in a dangerous, noisy, offensive or illegal manner;
- 11.4 do not do anything which is or is likely to be detrimental to the operation, prestige, reputation or image of The Licensor;
- 11.5 comply with all directions and instructions given by The Licensor in relation to any aspect of the Event;
- 11.6 do not cause any damage to the Venue or any other property in or about the Venue;
- 11.7 keep and leave the Venue in a clean and tidy condition at the end of the hiring;
- 11.8 do not overload any part of the Venue beyond its maximum permitted loading or permit more than the maximum number of Guests approved by The Licensor to attend the Event;
- 11.9 do not make any alterations to the Venue or install any fixtures or fittings without The Licensor's prior written consent;
- 11.10 vacate the Venue and immediately remove all belongings and other things brought to the Venue by the Licensee and any of its Guests at the conclusion of the Hire Period or Hire Date;
- 11.11 do not hinder or obstruct The Licensor and its employees agents or contractors or any other person permitted by The Licensor or authorised by law to exercise his or her duties in or about the Venue;
- 11.12 do not misuse, overload or interfere with the Venue's Facilities, fittings or equipment; and
- 11.13 obtain The Licensor's prior written approval for any Display to be used or installed at the Venue.

## **12 Hirer's Responsibility**

The Licensee shall be responsible for all acts or omissions of its employees, agents, contractors and Guests.

## **13 Insurance and Indemnity**

- 13.1 The Licensee must:
  - (a) maintain for the term of the hiring the insurance specified in item 9 of the Schedule; and
- 13.2 The Licensee indemnifies The Licensor against all claims, losses, actions, damages, costs and expenses arising out of or in connection with the failure of the Licensee or its Guests to perform or observe any of its obligations under this Agreement.

## **14 Copyright**

The Licensee warrants to The Licensor that all Performances or Exhibitions at the Venue shall be carried out with the necessary consent, authorisation or permission and that no such performance shall infringe the copyright or other intellectual property rights of any person.

## **15 Security**

The Licensee shall:

- (a) be responsible for the provision of security and safety of everyone in attendance at the Venue;
- (b) ensure that all keys and passes to the Venue are kept in charge of persons authorised by The Hirer;
- (c) not make or permit any duplicates of such keys or passes to be made;
- (d) immediately return such keys and passes to The Licensor on the expiration of the hiring; and
- (e) ensure the Licensee's employees, agents, contractors and Guests are properly supervised at all times.

## **16 No Representation**

The Licensee acknowledges that The Licensor does not warrant or represent that the Venue or any of the Facilities

or Services will be suitable for the Event and the Licensee shall not make any claim against The Licensor with respect to the standard of the Venue, the Facilities or the Services.

## **17 Reservation of Rights**

The Licensee acknowledges the right of The Licensor and all other persons The Licensor may authorise to free and unrestricted access to the Venue without hindrance or charge during the hiring period.

## **18 Rights Personal**

The Licensee's rights under this Agreement are personal to the Licensee and may not be assigned or otherwise dealt with by the Licensee without the prior written consent of The Licensor.

## **19 Notices**

Without limiting any other lawful means of the giving of notice, it is sufficient for The Licensor to give any notice, invoice or other communication under this Agreement by leaving it at or sending it by prepaid post, facsimile or electronic transmission to the relevant contact address of The Licensor set out in item 1 of the Schedule or to such other address as may be notified by the Licensee to The Licensor.

## **20 Trading Hours**

- 20.1 No evening Performance or Exhibition shall conclude later than 11pm without the prior written consent of The Licensor.
- 20.2 No function shall conclude later than 12.30am on any day.
- 20.3 Where the final performance for a season occurs on a Sunday the performance must conclude by 8pm with the bump-out concluding by midnight of that day

## **21 Sale of Liquor**

- 21.1 All supply of liquor including sales will be conducted by The Licensor.
- 21.2 All proceeds from the sale of liquor and other beverages over the bar will be retained by The Licensor.
- 21.3 All liquor sales must conclude by **11pm** and the consumption of liquor must conclude by **11:30pm**.

## **22 Box Office**

- 22.1 The Licensor shall have sole control and supervision of the box office.
- 22.2 In the event the Space Hire Charges are not paid in full in advance, all Box Office Proceeds from the sale of admission tickets to a Performance must be provided to The Licensor by the Licensee to be banked in a bank account in the name of The Licensor and be held in trust by The Licensor until at least seven (7) days after the final Performance of the Licensee.
- 22.3 Should a Licensee default in the payment of any monies under this Agreement, The Licensor may retain sufficient monies from the Box Office Proceeds to pay for any loss or damage suffered by The Licensor arising from the Licensee's default.

## **23 Alterations to Venue or Facilities**

- 23.1 The Licensee shall not make any alterations or repairs to the Venue or the Facilities without the prior written consent of The Licensor.
- 23.2 The Licensor reserves the right to accept or reject any contractor or repairer proposed by the Licensee.
- 23.3 The Licensor reserves the right to remove or make safe, or to correct any violation as may be deemed necessary in order to bring The Licensor's production into all applicable safety rules if the Licensee fails to comply when requested by The Licensor.