

Studio Hire Terms

TAPAC STUDIO HIRE TERMS AND CONDITIONS

1. INTRODUCTION

1.1 These terms and conditions set out the rules upon which you (“**you**”) agree to use and hire a TAPAC studio (“**Studio**”) operated by The Auckland Performing Arts Centre at Western Springs Incorporated, a registered charitable trust, of 100 Motions Road, Western Springs, Auckland (“**TAPAC**”).

1.2 You agree to be bound by and adhere to these studio hire terms and conditions (“**Rules**”).

1.3 You may also sign a short-form contract setting out when you require use of a Studio and the rate you agree to pay for the Studio hire.

1.4 By using any Studio, you agree to these Rules, irrespective of whether you have signed a short-form contract referred to in 1.3 above.

1.5 If you don’t agree to these Rules, don’t use a Studio or the TAPAC venue.

1. DEFINITIONS AND INTERPRETATION

1.1 Unless the context requires otherwise, in this Agreement:

Agreement means this agreement and its schedules A, B, C and D, and any amendment or addendum.

Booking means a request by the Hirer to hire the Studio for the Hire Period.

Confirmed Booking means a Booking where the Hirer has paid the Deposit and signed this Agreement.

Default Interest Rate means the current Kiwibank standard variable home loan rate plus 3%.

Deposit means the non-refundable deposit, being 20% of the Total Hire Fee (plus GST) specified in Schedule A.

Due Date means the date any Payment is due as specified in Schedule A or as set out in this Agreement.

Finish Date means the finish date as specified in Schedule A.

GST means the goods and services tax chargeable under the Goods and Services Tax Act 1985.

Hire Fee means the fee (plus GST) payable by the Hirer to TAPAC each time the Studio is used as specified in Schedule A.

Hirer means the Hirer and includes any person acting on behalf of or with the authority of the Hirer.

Hire Period means the total hours and dates the Hirer will hire the Studio or Studios as specified in Schedule A.

Hourly Rate means the applicable rate (plus GST) charged for the Studio or Studios as specified in Schedule A.

Payment means any payment (plus GST) specified in Schedule A or amount that is payable under this Agreement by the Hirer to TAPAC.

Person Under the Hirer's Control means any person or persons associated with the Hirer during the Hire Period who enter the Venue including, without limitation, the Hirer's student, or the Hirer's student's friend, caregiver or family member. Any Hirer's students friends, caregivers or family members must not exceed the number of participants specified in Schedule A at any one time.

Start Date means the start date as specified in Schedule A.

Studio means the studio, studios or other areas of the Venue specified in Schedule A.

Total Hire Fee means the total of the Deposit and any Payment (plus GST) to be paid by the Hirer to TAPAC over the Hire Period as specified in Schedule A or in this Agreement.

Venue means all internal and external areas of TAPAC including the car park and surrounding grounds.

You means you and includes any person acting on behalf of or with your authority.

2.2 In these Rules unless the contrary intention appears:

- (a) the singular includes the plural and vice versa; and
- (b) a reference to you includes a person, company, trust or partnership.

3. WARRANTIES

3.1 You warrant that:

- (a) you are an individual able to enter into a contract or a legal entity;
- (b) the Studio will only be used for the purpose you have advised TAPAC and an approved activity; and
- (c) you have read and understand these Rules.

4. YOUR OBLIGATIONS

4.1 You will:

- a. if requested, provide TAPAC with proof of your legal entity;
- b. ensure you have appropriate and adequate insurance in place for the purpose of hire and will provide TAPAC with proof of such insurance if requested to do so;
- c. make the Payments on the Due Date and pay any other amounts under these Rules as and when they fall due;
- d. Please note all payments must be made from a New Zealand bank account unless otherwise agreed.

- e. strictly adhere to the Hire Period and you agree that failure to do so will incur additional charges;
- f. treat TAPAC's premises and equipment with all reasonable care and will reimburse TAPAC for any damage inflicted on TAPAC's premises or equipment as a result of your negligence or recklessness or that of any Person Under Your Control;
- g. comply with any lawful directions TAPAC may give;
- h. keep noise to an acceptable level at all times;
- i. comply with the code of conduct specified in Schedule C ("Code");
- j. comply with the terms and conditions of these Rules;
- k. work co-operatively with TAPAC's management, staff and other employees;
- l. comply with the Health and Safety requirements in the Health and Safety at Work Act 2015 and TAPAC's health and safety policies and procedures and will ensure that all Persons Under Your Control do the same;
- m. ensure the health and safety of all Persons Under Your Control in accordance with the Health and Safety at Work Act 2015 and TAPAC's health and safety policies and procedures;
- n. operate any equipment including, without limitation, any sound, lighting or projection equipment in a manner that is in accordance with the Health and Safety at Work Act 2015;
- o. undertake the TAPAC induction to the Venue prior to the start of the Hire Period and take responsibility for familiarising yourself with the Venue's evacuation procedure in case of fire;
- p. ensure that the Studio's exits remain free and clear at all times during the Hire Period;
- q. ensure no glitter, rosin or powder of any kind is used in the Studios;
- r. immediately notify TAPAC of any:
 - s. hazards which you observe or become aware of at the Venue; and
 - t. incident, accident or near miss you become aware of at the Venue including, without limitation, those involving any equipment or any Person Under Your Control;
- u. provide TAPAC with any assistance required to conduct any incident or accident investigation at no cost to TAPAC;
- v. promptly advise the person at TAPAC reception of any health and safety issues or concerns;
- w. not do or allow to be done by any Person Under Your Control anything that may void or diminish any TAPAC policy of insurance or any fixtures, fittings, equipment or goods at TAPAC irrespective of whether those items are the property of TAPAC or not;
- x. not do anything to prejudice TAPAC's good name;
- y. not assign use of the Studio;
- z. advise TAPAC immediately if you have any matter before the court or if any of the events outlined in clause 16.1 (c) - (e) are likely to occur;
- aa. comply with all relevant statutes, regulations and bylaws whilst at TAPAC;
- bb. obtain all necessary consents and permissions required for the Hirer's use including, without limitation, in relation to any music played;

- cc. The Contractor warrants and acknowledges that it has the qualifications, expertise and experience appropriate to perform the Services and that it has fully disclosed to TAPAC any matter that may affect TAPAC's operations and business including, without limitation, its reputation or the ability of the Contractor to perform the Services;
- dd. advise TAPAC of any medical condition (including stress-related symptoms) or personal or other circumstances which may impact on the Contractor's ability to perform the Services safely or effectively; and
- ee. advise TAPAC immediately if the Contractor has any matter before the court or any other matter of serious concern.

5. DEPOSIT AND BOOKING CONFIRMATION

5.1 You agree to pay the Deposit or the Total Hire Fee, as requested by TAPAC, to hold the Studio for the Hire Period. The Deposit is non-refundable.

5.2 A Booking is confirmed when you have paid the Deposit or the Total Hire Fee, as requested by TAPAC ("Confirmed Booking").

5.3 In the event you fail to make a Confirmed Booking, TAPAC will use its reasonable endeavours to contact you. If TAPAC is unable to contact you within 3 working days of such contact or if you fail to make a Confirmed Booking, TAPAC may hire the Studio to any party without notice. In these circumstances, TAPAC has no liability to you.

5.4 You agree that the Studio can only be booked for minimum periods of one hour.

5.5 Set-up, pack up and vacating the Studio must take place within the agreed hours during the Hire Period. Any unauthorised overrun will be charged for each additional hour used whether all or only part of that hour was used at the Hourly Rate plus 50% (plus GST).

5.6 TAPAC cannot guarantee the renewal of bookings each year.

6. COMMENCEMENT AND HIRE PERIOD

6.1 The hire of the Studio will commence on the first day and finish on the last day of the Hire Period.

6.2 TAPAC will hire the Studio to other parties or use the Studio as it so determines at its sole discretion for any period outside the Hire Period.

6.3 In the event any part of the Hire Period falls on a public holiday, TAPAC will use its best endeavours to offer extra Studio hours to make up the hours that fall on that public holiday, unless you, with prior arrangement, specifically request those hours to be deducted from the Hire Period and the Total Hire Fee.

6.4 TAPAC may, at its complete discretion, require you to change the Studio if the booked Studio needs maintenance or repair or in extraordinary circumstances. TAPAC will use its best endeavours to provide reasonable notice.

7. EXTENSION OF OR ADDITION TO CONFIRMED BOOKING

7.1 If you request an extension of a Confirmed Booking or additional facilities or equipment, TAPAC will try and accommodate it where possible. You will be charged at the Hourly Rate unless the extension falls on a public holiday or outside normal hours in which case an additional fee will be payable. TAPAC reserves the right to charge an administration fee for any extension or addition.

8. REDUCTION OR POSTPONEMENT OF CONFIRMED BOOKING

8.1 Where you wish to reduce or postpone a Confirmed Booking, the cancellation clauses of these Rules will apply.

9. CANCELLATION OF HIRE

9.1 Any notice of cancellation, postponement or reduction of a Confirmed Booking must be given in writing. If no written notice is received, the cancellation payment is 100% of the Total Hire Fee payable for the total of all the dates cancelled, postponed or reduced.

9.2 If you cancel, postpone or reduce a Confirmed Booking within:

(a) 21 business days of the next date in the Hire Period, a cancellation payment of 25%;

(b) 14 business days of the next date in the Hire Period, a cancellation payment of 50%;

(c) 7 business days of the next date in the Hire Period, a cancellation payment of 75%; or

(d) 48 hours of the next date in the Hire Period a cancellation payment of 100%;

of the Total Hire Fee for all the dates cancelled, postponed or reduced is payable by you to TAPAC. The above cancellation payment is in addition to the non-refundable deposit.

9.3 TAPAC may cancel any Confirmed Booking where, at its sole discretion, it considers that the:

(a) Confirmed Booking will or might contravene any order, regulation or statute, or any other requirement of a public or local authority or otherwise be in breach of these Rules;

(b) management of the Confirmed Booking by you is inadequate or deficient;

(c) behaviour of any Person Under Your Control may lead to danger or injury to any person, property or to any part of the Venue, including the Studio; or

(d) circumstances warrant such cancellation including, without limitation, any serious emergency. In the event of a serious emergency, the relevant Payment for the part of the Hire Period that was disrupted will be refunded.

9.4 In addition to TAPAC's right of termination pursuant to clause 16, if any Payment is overdue TAPAC may cancel any future bookings it holds for you, whether paid or not, after giving 5 working day's notice.

10. ADDITIONAL CHARGES

10.1 TAPAC has the right to invoice you for any additional charges resulting from your use including, without limitation, any:

- (a) damage to the Studio or Venue caused during the Hire Period;
- (b) Studio overrun;
- (c) any theft of TAPAC property from the Studio or Venue during the Hire Period;
- (d) extra cleaning, rubbish removal, resetting or reinstatement;
- (e) costs, losses or expenses incurred by TAPAC in relation to any breach of the terms and conditions of these Rules;
- (f) emergency services call-out or fire alarm activation for a non-emergency situation;
- (g) any call-outs to a security company as a result of your behaviour or any Person Under Your Control; or
- (h) extra services requested.

10.2 Any additional personnel required including, without limitation, a cleaner or technician, will be charged at a minimum of a 3 hour call.

10.3 You acknowledge and agree that if the fire alarm is set off for any reason that is not an emergency as a result of any act or omission by you or any Person Under Your Control, then TAPAC has the right to impose an additional fire service fee for the full amount charged for the call-out by the New Zealand Fire Service. You acknowledge that this fee may be in excess of \$1,500.

11. PAYMENT

11.1 In respect of any Payment, TAPAC will send you an invoice 10 working days prior to the Due Date for each Payment, other than where you are required to pay the Deposit or the Total Hire Fee to ensure a Confirmed Booking. Failure to receive the invoice or receive it within 10 working days of the Due Date, does not discharge you of the obligation to make each Payment on its Due Date.

11.2 In respect of any other Payment due under these Rules, TAPAC will issue an invoice to you and require payment within 10 working days unless otherwise specified in these Rules.

12. OVERDUE PAYMENT

12.1 You agree to pay interest on any Payment from (and including) its Due Date until it is repaid in full. Interest on any overdue Payment will be charged at the Default Interest Rate. Interest will accrue daily on the outstanding amount and will be compounded annually.

12.2 TAPAC reserves the right to refer the outstanding Payment to a debt collection agency or other such authorised agency for collection.

12.3 All costs or all expenses incurred while trying to recover any overdue Payments including, without limitation, any administrative costs and charges, debt collection fees and legal fees will be added to and form part of the outstanding amount.

13. INDEMNITY

13.1 You agree to indemnify TAPAC against any loss, damage or expense incurred by TAPAC as a result of your activities including, without limitation:

(a) any claim, suit, action or proceeding brought against TAPAC as a result of you breaching these Rules; and

(b) indemnify TAPAC against all costs, claims, damages and legal, or other expenses of whatsoever kind, including copyright, which TAPAC may suffer, incur or be held liable to pay in the event of any prosecution, suit or other legal proceeding brought against TAPAC as a consequence of the use of the Studio and Venue by you or any Person Under Your Control.

14. LIABILITY

14.1 TAPAC is not liable for any loss or expense you incur if TAPAC is not able to provide the Studio to you as a result of earthquake, fire, failure or unavailability of any building service or any event beyond TAPAC's control.

14.2 To the extent permitted by law, TAPAC is not liable to you for any loss in connection with or arising under these Rules. The maximum amount of TAPAC's liability for any loss, damage, claim or expense is limited to the Total Hire Fee.

15. GENERAL CONDITIONS

15.1 You agree that TAPAC has the right, at any time during the Hire Period, to record or photograph you and, with their permission, any Person Under Your Control, for the purpose of publicity, promotional, educational or funding purposes for TAPAC or any of its activities.

15.2 You undertake to assist TAPAC in acquiring any consents contemplated in clause 15.1.

15.3 You agree to provide TAPAC with publicity material that may be helpful to promote your use of the Venue or TAPAC.

15.4 Any property that is brought into TAPAC by you or any Person Under Your Control will be at the owner's risk at all times.

15.5 No waiver of any breach of these Rules will be treated as a waiver of any other or any subsequent breach. The failure by TAPAC to enforce any provision of these Rules at any time is not to be interpreted as a waiver of that provision.

15.6 Notice is deemed to be served on you if sent to the address or email address you provided to TAPAC.

16. TERMINATION

16.1 TAPAC may terminate the Hire Period by written notice to you with immediate effect if you:

- a. breach any of the terms of these Rules and fail to remedy the breach within 5 working days of notice in writing from TAPAC requiring the breach to be remedied;
- b. fail to make any Payment on the Due Date whether demanded or not;
- c. are made bankrupt, dissolved, placed into liquidation or become insolvent;
- d. declare bankruptcy or a receiver is appointed in respect of your business or the assets of any business of yours or if an arrangement with your creditors is made or is likely to be made;
- e. are likely to your company removed from the register of companies or your trust is wound up or is likely to be wound up;
- f. have seriously or materially breached any term or condition of these Rule;
- g. TAPAC reasonably believes that the Contractor, by reason of sickness or injury, will be unable to carry out further Services under this Agreement in a timely, safe or efficient manner; or
- h. the Contractor has seriously or materially breached the terms of this Agreement including in relation to any non-disclosure about Covid-19 symptoms or other matters of a serious nature which may affect TAPAC's operations.

16.2 The termination of the Hire Period by TAPAC will be without prejudice to the rights and obligations of TAPAC immediately before termination.

16.3 On termination of the Hire Period you will immediately return to TAPAC any of its items, equipment or other property in your possession.

16.4 The provisions of clauses 12 and 13 will survive the termination of the Hire Period and remain binding on you.

17. FORCE MAJEURE

17.1 Neither party to this Agreement will be liable for any delay in performing or failure to perform its obligations under this agreement if such delay or failure is the result of an act of god, fire, explosion, industrial dispute, act of government (such as a change in legislation, regulation or order which may be under legislative authority) or anything beyond the reasonable control of the party ("Force Majeure").

17.2 If an event of Force Majeure occurs, then TAPAC will meet with the Hirer to determine to what extent all or part of the Hire Period is affected by the Force Majeure can still proceed or will be cancelled.

17.3 If an even of Force Majeure occurs with the consequences that the event or part of the event affected by the Force Majeure cannot proceed, the Hirer is liable to pay the following charges as calculated by TAPAC in its complete discretion;

- (a) the charges for the portion of the Hire Period which has not been affected by the Force Majeure; and

(b) the charges which have been incurred.

17.4 Unless otherwise provided in this Agreement, the Hirer and TAPAC will be responsible for their own costs and will mitigate all losses as much as is reasonably possible.

17.5 It is the Hirer's responsibility to have whatever insurance or other financial provisions they may need to ensure that their obligation are meet if a Force Majeure occurs.

18. SEVERABILITY

18.1 Should any part or portion of these Rules be held to be invalid, the remainder of these Rules will continue in force and effect as if the invalid provision had been deleted, provided that you and TAPAC may negotiate a valid and enforceable provision in replacement of the invalid provision.

19. DISPUTES

19.1 Any dispute between you and TAPAC affecting the terms of, or the rights or liabilities of either you or TAPAC, or either of them under these Rules will be submitted to the arbitration of a sole arbitrator to be appointed by TAPAC or if you disagree, to be nominated by the President of the New Zealand Law Society or his or her nominee.

SCHEDULE A

ADDITIONAL TERMS AND CONDITIONS OF STUDIO HIRE

1. HIRE TERMS

1.1 You will:

Care of Students

(a) if any Person Under Your Control is a pre-school or school child, provide pastoral care including, without limitation, to:

(i) monitor each child during each class to ensure that all children are present and in your care at all times;

(ii) supervise each child during any break times or to the toilet; and

(iii) stay on site until a parent or caregiver collects all children that are your responsibility;

Code Of Conduct

(b) ensure that each Person Under Your Control behaves in an appropriate and respectful manner whilst on TAPAC premises and complies with the code of conduct outlined in Schedule C ("Code"). TAPAC may, at any time, ask a person to leave its premises for non-compliance with the Code;

Use of Studio and Venue

(c) ensure that no glitter, rosin or powder of any kind is used on the floor of any Studio;

(d) reset the Studio to neutral and vacate the Studio by the time the class is booked to finish and leave the Studio in the same order, condition and repair as existed at the commencement of the Hire Period;

(e) ensure any resetting is done and the Studio is vacated within your allocated studio hours as agreed with TAPAC. You acknowledge and agree that failure to reset the Studio or not resetting or vacating it within your allocated Studio hours will incur additional charges at the Hourly Rate plus 50%, whether all or only part of any hour is used, plus any labour costs associated with resetting the Studio;

(f) not use the foyer as a rehearsal space or a break-out space or a dressing-room (including hair and makeup preparation). These activities must take place in the Studio;

(g) ensure that the foyer if used by you or any Person Under Your Control:

(i) is kept clean and tidy at all times; and

(ii) that the noise in the foyer is kept at a minimum at all times.

SCHEDULE B

GENERAL TERMS AND CONDITIONS OF STUDIO HIRE

1. SAFETY

1.1 You will consult the TAPAC Production Manager before plugging any cable into distribution boards or sockets or if you wish to use any of your own electrical equipment.

2. DAMAGE

2.1 You will not without the prior consent of TAPAC:

- (a) construct or paint any item in the Studio;
- (b) use nails, staples, screws or any fixings for any purpose in the Studio including sticking tapes and plastic adhesives;
- (c) use adhesive tapes for any purpose throughout the Venue including, without limitation, the walls of the foyer; or
- (d) remove existing displays or add your material to those displays.

2.2 You must report to a TAPAC staff member:

- (a) any damage that you discover upon arrival; and
- (b) any damage caused during your occupation.

3. EMERGENCY

3.1 You agree that if an emergency or a situation arises that is likely to endanger the safety of persons within the building, TAPAC reserves the right to suspend any Booking until there is no longer an emergency or hazard.

3.2 You agree that in the event of an emergency, you and all Persons Under Your Control will be under the control of the TAPAC Production Manager, technician, venue manager or staff member until the police or other emergency service officers are present.

4. CHANGES TO EXISTING SYSTEMS

4.1 You will not make any changes to the existing lighting and sound systems without the TAPAC's Production Manager's prior approval. If any repairs are required as a result of any unauthorised changes this cost will be included as additional charges.

5. PROMOTION

5.1 You must seek TAPAC's prior approval to the placement of any promotional material in the Venue and failure to do so may result in additional charges.

6. CAR PARK

6.1 Any vehicles parked in the car park are at the owner's risk. TAPAC has no liability for any vehicles in the car park or the TAPAC grounds.

7. ANIMALS

7.1 You will not and will ensure that any Person's Under Your Control do not bring animals in any part of the Venue with the exception of guide dogs.

SCHEDULE C

CODE OF CONDUCT AND PERFORMANCE

1. CODE OF CONDUCT

1.1 You agree to comply with the rules, policies and procedures contained in this Code.

1.2 You will:

- a) use your best endeavours to protect the interests and reputation of TAPAC;
- b) exercise expected standards of professionalism, behaviour and performance;
- c) demonstrate courtesy and respect for colleagues, TAPAC staff and students;
- d) comply with all laws, reasonable instructions and TAPAC policies and procedures;
- e) maintain appropriate standards of behaviour and attire whilst at TAPAC;
- f) maintain standards of security of equipment, the venue and information;
- g) advise the other party immediately about any potential matters of concern that may adversely affect all or any part of TAPAC's business or reputation including any symptoms or concerns relating to Covid-19;
- h) ensure that any Person's Under Your Control behave in a manner which complies with this Code whilst at the Venue; and
- i) cooperate with all other groups using TAPAC.

1.3 TAPAC regards the following as unacceptable behaviours:

- a) physically abusing, fighting or threatening another person while on TAPAC business or premises;
- b) irresponsible or unacceptable behaviour including obscene language that could cause offence;
- c) causing injury or endangering the safety of yourself, any Person's Under Your Control,, employees, students or their friends or families, contractors or the public including (but not limited to) failing to properly use equipment, or failing to report any accident or near accident;
- d) irresponsible or unauthorised use of fire prevention or safety equipment, or other TAPAC property;
- e) driving near TAPAC or in the car park at a speed exceeding the speed limit, or in a dangerous or careless manner;
- f) committing any act that results in wastage and/or damage to property;
- g) unauthorised possession, use, or removal from TAPAC premises or movement of any TAPAC property or property belonging to another person;
- h) falsifying any records submitted to TAPAC or other acts of dishonesty;
- i) unauthorised consumption of alcohol or drugs at TAPAC, or being, in the opinion of TAPAC, affected by alcohol or drugs such that you cannot use the Studio properly and safely;
- j) possession of illegal drugs;

- k) disclosure or misuse of information obtained in the course of doing business with TAPAC;
- l) abuse of Privacy Act provisions;
- m) serious harassment of any person while on TAPAC premises or business;
- n) conduct which could seriously damage the reputation of an individual or TAPAC;
- o) conviction of a criminal offence where such conviction harms the interests of TAPAC or its customers, or could materially harm the trust that TAPAC has in you;
- p) failure to comply with all relevant legislation including Health and Safety;
- q) unauthorised involvement in any activity that causes a conflict of interest with TAPAC's interests;
- r) arriving at TAPAC in a condition where you are unable to properly and safely use the Studio or teach a class;
- s) smoking in a smoke free area including in and around the TAPAC Venue or on the Western Springs College grounds;
- t) using a naked flame in the Venue;
- u) consuming food and beverage in the Studios or theatre;
- v) keeping any food or beverage near any electrical cables;
- w) causing injury or endangering the safety of themselves, employees, students or their friends or families, contractors or the public including (but not limited to) failing to properly use equipment, failing to report any accident or near accident or failing to report any Covid 19 or other serious matter of concern;
- x) any actions deemed to be of a sufficiently serious nature that could seriously affect the operations of TAPAC; or
- y) depositing any substance in the sinks, drains or toilets that could cause blockage or damage.