



## FALMOUTH INTERNATIONAL SEA SHANTY FESTIVAL – TRADER TERMS AND CONDITIONS

### 1. DEFINITIONS

In these terms and conditions, the following terms shall have the meaning ascribed to them below:

“Business Day” means any day other than a Saturday, Sunday or public holiday in the United Kingdom;

“Event” means Falmouth International Sea Shanty Festival 2023;

“Event Marks” means the trademarks and/or logos owned or controlled by the Rights Holder;

“Rights Holder” means ‘Southwest Bars and Events Ltd’

“Trader” means the trader identified in the accompanying online application form in which reference is made to these binding terms and conditions;

“Trader Rights” means the right to trade at the Event in accordance with the terms and conditions contained herein;

“Trader Rights Fee” means the fee to be paid by the Trader to the Rights Holder as described in the accompanying online application form in which reference is made to these binding terms and conditions.

### 2. KEY OBLIGATIONS OF THE RIGHTS HOLDER

(1) The Rights Holder warrants and undertakes:

- (a) that it is authorised to grant the Trader Rights to the Trader;
- (b) to procure the delivery of the Trader Rights to the Trader;
- (c) to keep the Trader informed with respect to material developments or changes to the Event which may affect the Trader Rights; and
- (d) that no further party will be authorised to use the Event Marks in conflict with the Trader Rights granted to the Trader.

### 3. KEY OBLIGATIONS OF THE TRADER

(a) The Trader represents warrants and undertakes:

- (i) to pay the Trader Rights Fee to the Rights Holder in accordance with Clause 4 below;
- (ii) not to use or exploit any rights of a commercial nature connected with the Event other than as set out herein (the “Commercial Rights”);
- (iii) not to establish an internet website relating to the Event without the prior written approval of the Rights Holder unless otherwise provided for in this Agreement. For the avoidance of doubt, such consent shall not be unreasonably withheld or delayed;
- (iv) not to engage in any joint promotional activity without the prior written approval of the Rights Holder unless otherwise provided for in this Agreement. For the avoidance of doubt, such consent shall not be unreasonably withheld or delayed;
- (v) that it shall not do or permit anything to be done which might adversely affect the rights of the Event or any of the Commercial Rights; and
- (vi) that it will not use glass samples or other dangerous materials in undertaking promotional activity during the Event.

(b) The Trader shall ensure that all equipment, structures and other items brought by it to the Event comply with all relevant health, fire and safety requirements and all applicable laws and regulations including without limitation the requirements set out in the Health & Safety at Work Act 1974 and all orders, regulations, instruments and other subordinate legislation made under that Act and the Trader shall provide to the Rights Holder all relevant structural plans, risk assessments, method statements and all safety certificates required by law or otherwise in respect of the same to the Rights Holder no less than thirty (30) Business Days prior to the Event. The Rights Holder shall notify the Trader no less than sixty (60) working days before the Event of any deadlines in respect of documentation required. All documents must be provided in electronic format, be up to date and Event specific. The Rights Holder reserves the right to make a charge, of no more than the actual cost incurred by the Rights Holder to the Trader, for any documentation not provided correctly. Notwithstanding anything to the contrary contained herein the Trader acknowledges and agrees that the Rights Holder is subject to the terms of certain licence agreements pertaining to public entertainment with local authorities and/or other governmental bodies relating to the Event which lay down regulations relating to the qualifications for personnel, including security personnel, permitted to work at the Event. The Trader acknowledges and accepts that any personnel engaged by the Trader to work at the Event shall comply with all such regulations provided that copies of such regulations are provided to the Trader in advance of the Event or at the soonest opportunity in the event of a change after the start of the Event.

#### **4. PAYMENT**

(a) In consideration for the grant of the Trading Rights, the Trader shall pay to the Rights Holder the Trader Rights Fee as set out in the accompanying online application form in which reference is made to these binding terms and conditions.

(b) The Trader Rights Fee shall be paid in accordance with the terms set out in the accompanying online application form in which reference is made to these binding terms and conditions. Fifty percent (50%) of the Trader Rights Fee shall be paid to the Rights Holder as a non-refundable deposit to secure the relevant trading space. Notwithstanding Clause 5(a) below, failure to pay the deposit or balance shall be deemed to be a material breach of this Agreement, which shall entitle the Rights Holder to (i) retain the deposit and (ii) terminate this Agreement immediately on written notice to the Trader.

#### **5. TERMINATION**

(a) Without prejudice to Clause 4(b) above, either party shall have the right at any time to terminate the Agreement immediately by giving written notice to the other if that other party:-

(i) has committed a material breach of any of its obligations under the Agreement which breach cannot be remedied in time for the Event;

(ii) has committed a material breach of any of its obligations under the Agreement and has not remedied the breach (if capable of remedy) within 7 days of being required to do so; or

(ii) goes into liquidation or if an administrator or receiver is appointed over or that party's assets.

(b) In the event of termination or expiry of the Agreement the Trader's rights under the Agreement shall terminate and the Rights Holder may grant the Trader Rights to any third party.

#### **6. LIABILITY**

(a) The Trader agrees to indemnify the Rights Holder and keep it indemnified at all times against all claims, proceedings, demands, damages, liabilities and costs, including legal costs, incurred in consequence of any breach or alleged breach of the warranties given in Clause 3.

(b) No party shall be liable to the other for loss of profits, business, production, revenue, goodwill, anticipated savings and any kind of indirect, special or consequential loss or damage.

(c) No party shall be liable for failure or delay in performing their obligations under this Agreement to the extent that such failure or delay is the result of any cause or circumstance beyond the reasonable control of that party and that failure or delay could not have been prevented or overcome by that party acting reasonably and prudently (a so-called 'Force Majeure Event'). For the avoidance of doubt, a Force Majeure Event shall include but not be limited to any strike, lock-out or industrial action, any destruction, breakdown, malfunction or damage of or to any premises, plant, equipment or materials; any civil commotion or disorder, riot, invasion, war or terrorist activity; any action taken by governmental or public authority of any kind (including not granting a consent, exemption, approval or clearance); and any fire, explosion, storm, flood, earthquake, subsidence, epidemic or other natural physical disaster; or the material threat of any of the foregoing.

(d) In the event that a Force Majeure Event disrupts or delays the Event, the Rights Holder shall not be under any obligation to repay any portion of the Trader Rights Fee already paid to the Rights Holder prior to the occurrence of such Force

Majeure Event.

(e) Notwithstanding Clause 6(c) above, where the Rights Holder decides to cancel the Event (due to a Force Majeure Event or otherwise), the parties shall endeavour to agree in good faith to the provision of substitute alternative rights of the same or similar value. Where the parties are unable to agree to such substitute alternative rights within 30 days of cancellation of the Event, the Trader shall be entitled to a pro rata refund of any portion of the Trader Rights Fee already paid to the Rights Holder in respect of the Event, provided that:

(i) Such pro rata refund shall be based on the proportion of the Trader Rights delivered to the Trader at the time of cancellation (as determined by the Rights Holder), less any expenses incurred by the Rights Holder in respect of the provision of the Trader Rights; and

(ii) the Rights Holder's insurers have accepted liability for any claim in respect of cancellation.

(f) If the Event is cancelled as a result of the COVID-19 epidemic, the Trader shall be entitled to a full refund of the Trader Rights Fee (and recharges for site services) already paid to the Rights Holder, less any expenses incurred by the Rights Holder in respect of the provision of the site services. If the Event is postponed as a result of the COVID-19 epidemic, the Trader shall be entitled to a full refund of the Trader Rights Fee (and recharges for site services) already paid to the Rights Holder, less any expenses incurred by the Rights Holder in respect of the provision of the site services. Such election shall be made in writing within 14 calendar days of the announcement of such postponement, or such later time as agreed to in writing by Trader.

(g) The Rights Holder shall procure that it has public liability insurance cover for the Event of £5 million.

## **7. GOVERNING LAW**

(a) This Agreement shall be binding on the parties.

(b) This Agreement is subject to English Law and the parties submit to the non-exclusive jurisdiction of the English Courts.

(c) This Agreement may only be modified or any provision waived if such modification or waiver is in writing and signed by a duly authorised representative of each party.

(d) This Agreement shall constitute the entire agreement between the parties with respect to the subject matter hereof, and shall supersede any and all prior agreements, representations or understanding between the parties, whether written or oral.

(d) This Agreement may be executed in any number of counterparts, each of which when executed shall constitute an original, but all of which when taken together shall constitute one and the same Agreement.