

Alakazam Clowns terms and conditions of booking

(Last updated 10/01/2009)

Alakazam Clowns has made every effort to word these terms and conditions in plain English, with clarification of various clauses where necessary. If you do not understand any part of these terms, please call us for clarification or seek legal advice before agreeing to them.

Any booking **WHETHER CONFIRMED VERBALLY, ELECTRONICALLY OR IN WRITING** will be subject to a legally binding contract carrying the following non-negotiable terms and conditions of booking:

1. Definitions

This booking contract is negotiated by Alakazam Clowns (the 'agent') between the 'client' and the 'artist'.

In this respect, Alakazam Clowns acts as an employment agency in issuing this contract and cannot be held responsible for non fulfilment of bookings or non payment of fees by 'the client'.

2. Confirming the booking

Confirmation:

- i) 'Confirmation' will mean any verbal, electronic or written acceptance of this booking by BOTH the 'client' and the 'artist'.
- ii) All bookings take effect immediately upon 'confirmation'.
- ii) Non-signature/non-return of contract is not sufficient to cancel the booking or acceptance of these terms.

Upon 'confirmation' of the booking, Alakazam Clowns will issue a contract to the 'client' for confirmation of details and this must be returned within 4 working days. A copy of this contract will be forwarded to the 'artist' immediately who will then finalise and confirm the booking. Both the 'client' & the 'artist' may keep one copy of the contract for their personal records.

Alakazam Clowns will store the contract(s) for safe keeping (copies available on request) and will act as the 'agent' negotiator between both parties for the period up to and including the date of the event, and for eighteen months after the event.

3. Changes to contract

The agreed booking fees may be subject to change (in agreement with both the 'client' and the 'artist') if any details on the contract are altered. All changes to the contract must be arranged & agreed by Alakazam Clowns in advance of the event.

4. Payment of fees

The agreed booking deposit is due within 5 working days of the event unless special circumstances are agreed between Alakazam Clowns and the 'client'. Deposit can be paid by credit/debit card, cheque or BACS transfer (details on your contract & invoice.)

Unless otherwise agreed by the 'artist' and Alakazam Clowns in writing on the cover of your contract, the balance is payable to the 'artist' in cash or by cheque on the day of the event.

If any fee which the 'client' is due to pay

least 5 working days before the event, the 'artist' has the right to cancel this booking without penalty and the 'client' will forfeit any other fees paid previously, and remain liable for any cancellation fees due (see clause 5.)

5. Cancellations

Cancellation by the 'client':

Cancellation by the 'client' is not allowed for any reason except circumstances covered by 'force majeure' (see clause 18.) In the event that the 'client' cancels the booking, the 'client' agrees to inform Alakazam Clowns immediately. Alakazam Clowns agrees to inform the 'artist' of the cancellation immediately.

- i) Cancellation by the 'client' within 48 hours of confirmation will not carry a cancellation fee unless the event date is within the following 7 days, in which case the full booking fee will be due.
- ii) Cancellation by the 'client' after 48 hours of confirmation and up to 10 days from the event will result in loss of deposit and 50% of the remaining balance (excluding travel costs & expenses) will be payable by the 'client' to the 'artist' within 14 days after the event date.
- iii) Cancellation by the 'client' within 10 days and up to 5 days of the event will result in loss of deposit and 75% of the remaining balance (excluding travel costs & expenses) will be payable by the 'client' to the 'artist' within 14 days after the event date.
- iv) Cancellation by the 'client' within 5 days of the event will result in loss of deposit and 100% of the remaining balance (excluding travel costs & expenses) will be payable by the 'client' to the 'artist' within 14 days after the event date.

If the 'artist' is able to re-fill a cancelled date then no cancellation fees will be due unless the new date is of a lower value than the cancelled date, in which case the 'artist' will be entitled to recover from the 'client' the difference in value, excluding travel costs & expenses.

In the event of a cancellation, the 'artist' agrees to make all reasonable attempts to refill the date.

'Artist' cancellation fees should be sent by the client' to Alakazam Clowns within 14 days after the event date. Alakazam Clowns agrees to forward the fees to the 'artist' within 14 days of receipt.

On behalf of the 'artist', any payment outstanding from the 'client' outside of these terms will be referred to Alakazam Clowns' debt recovery company and will be subject to a surcharge of 15% plus VAT

surcharge together with all other charges and legal fees incurred will be the responsibility of the 'client' and will be legally enforceable.

It is the 'clients' responsibility to ensure their venue can accommodate the 'artist' and cancellation of the booking or non-performance of the 'artist' due to venue restrictions will place the 'client' liable for cancellation fees as detailed above.

Cancellation by the 'artist':

Cancellation by the 'artist' is not allowed for any reason except circumstances covered by 'force majeure' (see clause 18.)

In the unlikely event that the 'artist' cancels the booking, the 'artist' agrees to inform Alakazam Clowns immediately. Alakazam Clowns agrees to inform the 'client' of the cancellation and make all reasonable attempts to find a suitable replacement artist of similar standard, style & value, at no extra cost to the 'client'. Should a suitable replacement not be found, Alakazam Clowns agrees to refund the 'client' their deposit plus any other booking fees already paid in advance.

Should the 'artist' cancel a booking under circumstances not covered by 'force majeure' (see clause 18) the 'client' may pursue unlimited damages from the 'artist' as they see fit.

The 'artist' also agrees to pay Alakazam Clowns an administration fee equal to the commission due on the booking (referred to previously as the 'deposit') and this must be paid to Alakazam Clowns within 7 working days on cancellation.

The 'artist' also agrees to pay any difference between the balance of this contract and the fees charged by any replacement artist arranged for the 'client' by Alakazam Clowns

There will be no refund given to the 'client' against the booking deposit already paid, and no 'administration charge' will be made to the 'artist' if a replacement artist of similar value can be arranged by Alakazam Clowns and agreed by the 'client'. However, should a replacement artist charge a much lower fee, the client will be refunded a proportionate amount of their booking deposit and the replacement artist will be due their usual fee. Where possible, the 'client' and 'artist' will be contacted to agree this in advance.

If a replacement artist is required last minute and the 'client' is not happy to

not allow the replacement artist to perform. If the replacement artist is allowed to perform, their full fee will be due.

Any payment outstanding from the 'artist' outside of these terms will be referred to our recovery company and will be subject to a surcharge of 15% plus VAT to cover collection costs incurred. This surcharge together with all other charges and legal fees incurred will be the responsibility of the 'artist' and will be legally enforceable.

6. Late payment of deposit

Failure by the 'client' to pay the booking deposit within the terms specified will result in 'client' being in default of contract. The booking may be cancelled and the 'client' will be bound by the cancellation clauses in part 5 of these terms and conditions.

7. Late payment of the balance

Failure by the 'client' to pay the 'artist' within the terms specified will result in interest being charged on the balance due. The 'artist' reserves the right to claim statutory interest at 8% above the Bank of England reference rate in force on the date the debt becomes overdue and at any subsequent rate where the reference rate changes and the debt remains unpaid in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 as amended and supplemented by the Late Payment of Commercial Debts Regulations 2002.

Non-payment of the balance will result in legal action and any payment outstanding from the 'client' outside of these terms will be referred to our recovery company 'Daniels Silverman Limited' and will be subject to a surcharge of 15% plus VAT to cover collection costs incurred. This surcharge together with all other charges and legal fees incurred will be the responsibility of the 'client' and will be legally enforceable.

8. Complaints

If through their own fault the 'artist' is unable to fulfil part of the event schedule or breaks the terms of this contract and the 'client' would like to claim a reduction on the 'artist's' fee, a complaint must be made in writing to Alakazam Clowns no more than 30 days after the event.

Full payment must still be made to the 'artist' as agreed in the contract. Withholding payment is illegal. Failure to pay the 'artist' within the terms of this contract will incur charges outlined in clause 7 (see above) and may render the 'client' subject to prosecution.

Whilst Alakazam Clowns cannot be held responsible for the actions or failures of either the 'client' or 'artist' we will make every effort to settle disputes without the need for either party to take legal action against each other. Once the 'client' has made a written complaint, Alakazam Clowns will contact the 'artist' to discuss the complaint and request a written statement detailing their version of

events. Alakazam Clowns will act as mediator between 'client' and 'artist' in order to come to an amicable agreement over any refund or expense which may be due. If Alakazam Clowns cannot settle the dispute to the mutual satisfaction of both 'client' and 'artist', both parties must settle the matter directly via their own legal representatives.

Any dispute between the 'client' and the 'artist' based on changes to the contract/performance that were agreed by both the 'client' and the 'artist', but not confirmed by Alakazam Clowns in writing, must be settled between the 'client' and the 'artist' directly. Alakazam Clowns will not be able to mediate over these agreements or changes.

9. Changes on the day

Where possible, changes to the contract schedule, which are unavoidable on the day of the event, should first be discussed & agreed with your Alakazam Clowns agent. Should this not be possible, changes are to be agreed between the 'client' and the 'artist' prior to performance.

Any changes will be subject to these terms and conditions.

If changes negotiated between the 'client' and the 'artist' on the day of the event are agreed to incur additional costs to the 'client', the 'artist' accepts full responsibility for arranging the collection of additional fees and agrees that these fees will be subject to Alakazam Clowns standard rate of commission.

10. Delayed event schedules and late finish fees

If due to the late running of or alterations to the event schedule which is no fault of the 'artist', the 'artist' is not able to perform their full performance time within the schedule outlined in this contract, there will be no reduction in the 'artists' fee.

If the event runs late and the 'artist' is asked and agrees to finish later than the finish time in the booking contract, and the 'artist' does not agree an additional surcharge, then the following standard 'late finish' fees will be charged:

10% of the total balance due per ½ hour over run, payable on the day of the event by the 'client' to the 'artist' in cash or by cheque.

The 'artist' has the right to refuse to finish later than the contracted finish time without penalty.

11. Extended performance fees

If the event schedule is changed on the day and the 'artist' is required and agrees to perform for longer than the 'Performance times' agreed in this contract, and no additional surcharge is agreed by the 'artist' on the day of the event, the following standard 'Extended performance fees' will be charged:

25% of the total balance for every 25% that the originally agreed performance times are extended, payable by the 'client' to the 'artist' in cash or by cheque on the day of the event.

The 'artist' has the right to refuse to extend their performance times without penalty.

12. Re-engagement of the 'artist'

The 'client' agrees to negotiate all future bookings of the 'artist' with Alakazam Clowns and not with the 'artist' directly, for the period covering the issue date of this contract until 18 months after the event date on this contract.

The 'artist' agrees not to hand out business cards or any promotional materials bearing their personal telephone number and/or address, or any other contact details other than those of Alakazam Clowns, to the 'client', their guests, staff, venue or contractors. If approached, the 'artist' must inform the person/s concerned to contact Alakazam Clowns. Any other action will contravene the terms of this contract, and if you are found to have done this you will cease to be used by Alakazam Clowns.

13. Rider

This contract may be subject to a 'rider' containing the 'artists' requirements for food, accommodation, dressing rooms, technical specifications etc (please see full 'artist rider' on the front of this contract)

The 'rider' forms an integral part of this contract and MUST be provided by the 'client' at their own expense.

14. Expenses

If the 'client' has agreed on the front of this contract to cover additional expenses incurred by the 'artist' (such as taxi's, food, rehearsal time, hotel, flights etc) the 'artist' must provide receipts and an invoice to the 'client' within 60 days after the event.

The 'client' must reimburse all expenses to the 'artist' within 28 days of invoice.

15. Artist service guarantee

The 'artist' agrees to provide a performance that is to the best of their ability, and reflects fully the likeness of the 'artists' show, as known to Alakazam Clowns and as advertised to the 'client' via distribution of the 'artists' demo CD's, promotional materials, profiles, pictures, videos, web page or verbal description etc. The artist will make every effort to ensure their performance is outstanding, adhere to the client's wishes within all reasonableness, be polite and courteous with the client, their guests and all venue staff and contractors.

The 'artist' agrees to provide all equipment required to undertake this performance, unless the equipment has been contractually agreed to be provided by the 'client' or a third party. It is the 'artists' responsibility to ensure the good working

order & safety of their own equipment, and to obtain all necessary insurances & certification.

The 'artist' agrees that their fee is inclusive of all expenses (except those that have been itemised or accounted for separately on the front of this contract), including holiday entitlements, travelling expenses to and from the venue, VAT, tax, N.I. etc and covers any payments whatsoever due to other members of the band.

The 'artist' will refrain from excessive drinking before, during and after the performance at all times when the 'client' or their guests are present.

The 'artist' will not under any circumstances partake of any illegal drug use on the day of the event, or whilst at the event 'venue', or whilst in the presence of the client, their guests, venue staff or other associated suppliers or artists.

The 'artist' will not smoke in restricted areas or park their vehicles in restricted areas at the performance venue.

The 'artist' will not display any other conduct deemed anti-social, illegal, nor reflecting badly upon themselves, Alakazam Clowns, or the 'client'.

The 'artist' at the time of agreeing to or signing this contract shall not be under any contract to a third party that might preclude him/her from fulfilling the engagement.

The 'artist' agrees not to hand out business cards or any promotional materials bearing their personal telephone number and/or address. The 'artist' must inform the person/s concerned to contact Alakazam Clowns. Any other action will contravene the terms of this contract, and if you are found to have done this you will cease to be used by Alakazam Clowns.

The 'artist' shall be suitably and tidily dressed during their performance except with the consent of the client or where the

wearing other attire is deemed to be a necessary part of their act.

The 'artist' is not employed by Alakazam Clowns and they are responsible for their own accounting and payment of TAX, VAT & National Insurance contributions.

The 'artist' accepts full responsibility for maintaining their own Public Liability Insurance (which should be to a minimum of £1,000,000 cover), their own equipment insurance, vehicle insurance and for carrying out the P.A.T. testing of their equipment where applicable.

15.1 - Sound limiters & volume

The adjustment of the volume and sound level of any equipment shall be as the 'client' reasonably requires.

However, it is understood that the 'artist' cannot guarantee the quality of their performance should their volume be reduced below the level of the unamplified drum kit & backline instruments.

Furthermore, it is understood that the 'artist' cannot be held responsible for non-performance in circumstances where a sound limiter is set so low that live music performance is not possible for an artist of their type.

16. 'Artist' equipment

It is agreed by the 'client' and the 'artist' that the equipment and instruments of the 'artist' are not available for use by other performers or persons except by specific permission of the 'artist'.

17. Use of 'dep' performers with regards to musical performances only

A 'dep' performer will mean a person or persons who stand in for one or more of the 'artists' standard group of performers should they be unable to perform due to prior commitments or illness.

The 'artist' will perform using their standard group of performers as advertised to Alakazam Clowns and the 'client' unless otherwise agreed by

Alakazam Clowns and the 'client' in advance, or in cases of emergency. The 'artist' agrees that any 'dep' performers used will be of the same standard and professional competence as the performer who is to be replaced, and that the 'dep' will have a good knowledge of the 'artists' repertoire, and represent the 'artist' to the same high standard that is known by Alakazam Clowns and expected by the 'client'.

The 'artist' agrees that if a usual group member is ill and a suitable 'dep' performer is available, and this performer can satisfy the conditions of competence outlined above, the 'artist' will use the services of the 'dep' performer rather than cancel the booking under the terms of 'Force Majeure' (see clause 18 below.)

There will be no reduction in the 'artists' fee if a 'dep' performer is used, although, if in advance of the event the 'client' is able to listen to a recording of the proposed 'dep' performer and is not happy with the replacement, they have the right to cancel the booking without penalty and the 'artist' will be liable for the cancellation under the terms of clause 5 unless 'Force Majeure' may be applied.

A 'dep' performer may not be used to replace an 'artist' whose individual name is used as the star attraction to promote the 'artist' (EG: 'The Dave Tate' show would not be able to 'dep' another performer for 'Dave Tate'.)

18. Force Majeure

In cases of 'Force Majeure' (which shall be known as war, fire, death, illness or other capacity certified by a properly qualified medical practitioner, epidemic, accident, civil commotion, national calamity, order of Government or Local Authority having jurisdiction in the matter, changes in law, foreign government policy, act of God), which are not attributable to any act or failure to take preventive action by the 'artist' or 'client', then the 'artist' or 'client' may cancel this booking without penalty other than loss of deposit.

Alakazam Clowns

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