

## MAXED OUT AXE THROWING - WAIVER AND TERMS

*This document contains terms of use of Maxed Out Axe Throwing, release of liability, waiver of claims, and assumption of risks (hereinafter referred to as the "Terms"). By signing this document you will waive or give up certain legal rights, including any right to sue or claim compensation following an accident. Please read this Agreement carefully.*

### DEFINITIONS

1 In these Terms:

1.1 **"Customer"** means \_\_\_\_\_ (insert name of customer) entering into an Agreement with Gray, including the company's successors and assigns;

1.2 **"Agreement"** refers to any contract or agreement, whether formal or informal, written oral, or partly written and partly oral, formed between the Customer and Gray for the Customer to use, be a potential user of, or be at Maxed Out Axe Throwing;

1.3 **"Axe Throwing"** means use of any part of, or being at, Maxed Out Axe Throwing, including but not limited to throwing axes, spectating, volunteering, and participating in an event at Maxed Out Axe Throwing;

1.4 **"Claims"** means any action, application, appeal, arbitration, cause of action, claim, complaint, cost, debt due, demand, determination, inquiry, judgment, suit, or verdict: 1.4.1 at law; 1.4.2 in equity; 1.4.3 arising under any statute, regulation, or other legislative instrument; or 1.4.4 arising under any contract, deed, or any other instrument made or approved under any law;

1.5 **"Gray"** means Simon Shane Gray of 23 Turner Parkway, Carramar, 6031 trading as Maxed Out Axe Throwing, and all of Simon Shane Gray's successors, assigns, affiliates, subsidiaries, employees, and representatives;

1.6 **"Maxed Out Axe Throwing"** means Maxed Out Axe Throwing, 4/57 Buckingham Drive, Wanneroo, Western Australia 6065 and all equipment, goods, and machinery whatsoever at 4/57 Buckingham Drive, Wanneroo, Western Australia 6065.

### OPERATION

2 Any Agreement shall be upon these Terms and these shall operate to the exclusion of any terms and conditions to the contrary effect expressed in any other documentation and shall supersede all prior agreements.

3 The continued operation of these Terms shall not be affected by any repudiation of any Agreement or transaction relating to the Customer's use of, or presence at, Maxed Out Axe Throwing.

### CUSTOMER'S WARRANTIES, ACKNOWLEDGMENTS, AND AGREEMENTS

4 I the Customer warrant, acknowledge and agree that:

4.1 The operation of Maxed Out Axe Throwing may be affected by weather conditions or maintenance activities;

4.2 I, my guests, or any third parties may be banned from Axe Throwing, or refused entry to, or removed from, Maxed Out Axe Throwing, in Gray's and the staff's sole discretion and for any reason whatsoever including, but not limited to, any failure to follow safety instructions, offensive behaviour, dangerous or hazardous behaviour, theft, vandalism, being under the influence of drugs, alcohol, or a substance, or failure to comply with these Terms of entry;

4.3 I will not bring any alcohol, drugs, glassware or sharp objects on to Maxed Out Axe Throwing's premises;

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4.4 I must wear covered footwear at all times at Maxed Out Axe Throwing;

4.5 I must not display or say anything that contains obscene, foul, profane, illegal or socially unacceptable language, images, symbols, or phrases at all times at Maxed Out Axe Throwing;

4.6 Any vehicle parked at Maxed Out Axe Throwing is parked at my own risk and Maxed Out Axe Throwing will not be responsible for loss of, or damage to any vehicle, accessory or contents in, or on any vehicle;

4.7 All persons must be aged 13 years or older to enter Maxed Out Axe Throwing;

4.8 Persons under the age of 18 must be accompanied and supervised at all times by an adult or legal guardian over the age of 18 at all times at Maxed Out Axe Throwing. Staff at Maxed Out Axe Throwing will not supervise any persons under the age of 18;

4.9 I am 13 years or older, and if I am under 18 I will be accompanied and supervised by an adult or legal guardian at all times at Maxed Out Axe Throwing;

4.10 Published times of any Axe Throwing sessions at Maxed Out Axe Throwing may be varied at Gray's sole and absolute discretion;

4.11 Staff may inspect bags at any time for security reasons at Maxed Out Axe Throwing;

4.12 Any photograph, video or audio recording I take at Maxed Out Axe Throwing must be for personal use only. I must not use, reuse or reproduce any photograph, video or audio recording I take at Maxed Out Axe Throwing for any commercial purposes without the prior express written consent of Gray;

4.13 I consent to photographs and video recordings being taken of me at Maxed Out Axe Throwing at any time by staff and Gray for security, promotional and commercial purposes. I agree that Gray may use such photographs, video recordings and my likeness for security, promotional or commercial purposes without any compensation or payment to me whatsoever;

4.14 I will not use any image or audio recording device in any bathroom at Maxed Out Axe Throwing;

4.15 I will report to any incidents, accidents, and hazards at Maxed Out Axe Throwing to staff immediately; and

4.16 In the event that I am injured at Maxed Out Axe Throwing (for example, throwing an axe, walking, spectating, volunteering, or participating in an event) I acknowledge and accept that Maxed Out Axe Throwing

will provide limited first aid support. In the event that Gray or Maxed Out Axe Throwing staff determine that an ambulance is deemed necessary, one will be called, at my cost. It will be my responsibility to ensure that I have the requisite level of health cover for medical costs and ambulance cover while using or being present at Maxed Out Axe Throwing;

4.17 I will obey all reasonable written and verbal instructions and warnings given by Gray or Maxed Out Axe Throwing, without objection;

4.18 I will not participate in Axe Throwing at Maxed Out Axe Throwing if I have any of the following conditions, unless I have prior written approval to do so from a qualified medical practitioner:

4.18.1 All heart or cardiovascular conditions, including but not limited to high or low blood pressure;

4.18.2 Injuries or conditions relating to my back, limb, or joints that may impact throwing ability;

4.18.3 Visual impairment;

4.18.4 Pregnancy; or

4.18.5 Any other medical condition or health concern which may affect my fitness, strength or ability to participate in Axe Throwing safely and independently.

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### **ASSUMPTION OF RISKS**

5 I, the Customer, acknowledge and I am aware that:

5.1 Axe Throwing is an extreme sport and involves many inherent risks, dangers, and hazards, and injuries may be a common and expected part of Axe Throwing;

5.2 Axe Throwing will expose me to many risks, dangers, and hazards;

5.3 Accidents may occur while I am Axe Throwing;

5.4 Inherent risks of Axe Throwing include but are not limited to getting hit by an axe, cuts, scrapes, splinters, muscle strains, and slipping over.

### **NO LIABILITY FOR ADVICE**

6 Gray or Maxed Out Axe Throwing are only liable for expert advice which is:

6.1 within the scope of the Agreement; 6.2 in writing; and 6.3 accompanied by a written confirmation stating Gray or Maxed Out Axe Throwing is qualified to give the advice.

7 The Customer acknowledges that Gray and Maxed Out Axe Throwing are not able to provide expert advice outside the scope of the Agreement.

8 Gray and Maxed Out Axe Throwing are not liable for any technical advice or assistance given in good faith, but which it is not contractually bound to provide.

## **NO LIABILITY**

9 As a user or a potential user of Maxed Out Axe Throwing, I the Customer acknowledge and accept that:

9.1 Usage of Maxed Out Axe Throwing or Axe Throwing is a recreational activity that may constitute a dangerous recreational activity pursuant to the *Civil Liability Act 2002* (WA) as amended and that participation in the activity involves a significant risk of physical harm or personal injury; 9.2 Any injury may result not only from my actions but also from the action, omission, or negligence of others, including but not limited to Gray, the representatives, servants, agents, employees and contractors of Gray, and the representatives, servants, agents, employees and contractors of Maxed Out Axe Throwing.

10 Gray and Maxed Out Axe Throwing shall not be liable to me, the Customer, or any third party in contract, tort, warranty, strict liability, statute or any other legal theory for any direct, indirect, consequential, incidental, punitive or exemplary damages, or for any claim for loss of profits. I, the Customer, expressly acknowledge that, to the maximum extent permitted by law, the entire risk arising out of my use of, or being at, Maxed Out Axe Throwing and participating in Axe Throwing remains with me. Gray and Maxed Out Axe Throwing are not liable for any loss or damage whatsoever suffered by me, the Customer, or any other third party.

11 I, the Customer, accept any and all liability for any loss, damage, expense, or injury, including death, that I may suffer as a result of using or being at Maxed Out Axe Throwing, due to any cause whatsoever, including but not limited to negligence, breach of contract, or breach of any statutory or other duty of care, including any duty of care owed under the *Civil Liability Act 2002* (WA) on the part of Gray or Maxed Out Axe Throwing.

I, the Customer, understand that negligence includes failure on the part of Gray or Maxed Out Axe Throwing to take reasonable steps to safeguard or protect me from the risks, dangers, and hazards of using, or being at, Maxed Out Axe Throwing.

12 I, the Customer, agree to waive any and all claims and to release Gray and Maxed Out Axe Throwing from any and all liability for any loss, damage, expense, or injury, including death, that I may suffer as a result of using or being at Maxed Out Axe Throwing, due to any cause whatsoever, including but not limited to negligence, breach of contract, or breach of any statutory or other duty

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of care, including any duty of care owed under the *Civil Liability Act 2002* (WA) on the part of Gray or Maxed Out Axe Throwing.

## **NO WARRANTY**

13 Gray and Maxed Out Axe Throwing makes no express warranties to the Customer, except those expressly set out in these Conditions.

14 Gray and Maxed Out Axe Throwing will not be liable in any circumstances for any loss or damage whatsoever allegedly incurred and arising out of any: 14.1 conditions, warranties, and terms implied by statute or general law or custom except any implied condition or warranty the exclusion of which would contravene any statute or cause this clause to be void ("Non-Excludable Condition");

14.2 alleged liability to the Customer in contract for consequential or indirect damages arising out of or in connection with these Terms even if Gray or Maxed Out Axe Throwing knew they were possible or they were otherwise unforeseeable, including, without limitation, lost profits and damages suffered as a result of claims by a third party;

14.3 Claims by the Customer in negligence for acts or omissions of Gray or Maxed Out Axe Throwing or its employees, agents, or contractors arising out of or in connection with these Terms.

## **INDEMNITY**

15 I, the Customer, indemnify and hold harmless and shall continue to indemnify and hold harmless Gray and Maxed Out Axe Throwing for any and all losses, claims, liabilities, damages, costs, and expenses (including all reasonable legal fees and costs and any other legal or other expenses incurred by it in investigating or defending any action or threatened actions) relating to my use of, or being at, Maxed Out Axe Throwing or participating in Axe Throwing.

16 I agree that Gray and/or Maxed Out Axe Throwing may plead these Terms as a bar to any relevant Claims.

## **LIABILITY FOR GOODS MANUFACTURED BY THIRD PARTIES**

17 The Customer acknowledges that the goods supplied by Gray and Maxed Out Axe Throwing are manufactured by third parties, and as such, Gray and Maxed Out Axe Throwing is not liable for any defects attributable to their manufacture.

18 The Customer shall be entitled to any benefit of any manufacturer's warranty in respect of such goods. Warranty of all goods sold is strictly limited to the manufacturer's warranty.

19 Gray and Maxed Out Axe Throwing accepts no responsibility for any manufacturer's warranty or claim arising from the use of the goods, whether singularly or in combination with other Goods.

## **NO LIABILITY FOR SERVICES PROVIDED BY THIRD PARTIES**

20 The Customer acknowledges that Gray and Maxed Out Axe Throwing are not liable for any damage or defects attributable to the provision of services by a third party.

21 Gray and Maxed Out Axe Throwing accepts no responsibility for any third party's warranty or claim.

22 Clauses 6 to 21 (inclusive) of these Terms survive the termination or natural expiration of the Agreement.

## **FORCE MAJEURE**

23 Gray and Maxed Out Axe Throwing will not be liable for any breach of the Agreement due to any matter or thing beyond Gray's or Maxed Out Axe Throwing's control. Furthermore, Gray and Maxed Out Axe Throwing are excused from performing any term, covenant or condition required by the Agreement during the time and to the extent that

performance is prevented when such

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performance is prevented wholly or in part by circumstances beyond Gray's or Maxed Out Axe Throwing's control.

**VARIATION**

24 Any variation to the Agreement must be in writing and signed by all parties.

**FURTHER ASSURANCES**

25 The parties shall execute such further documents and do any and all such further things, as may be necessary to implement and carry out the intent of these Terms.

**ENTIRE AGREEMENT**

26 Subject to all rights which are provided pursuant to legislation and which cannot be excluded by Agreement, these Terms constitute the entire Agreement between the Customer and Gray and all other terms, conditions and representations are hereby excluded.

**SEVERANCE**

27 If any provision contained in these Terms is held by a court to be unlawful, invalid or unenforceable, the validity and enforceability of the remaining provisions in these Terms are not affected.

**GOVERNING LAW AND JURISDICTION**

28 The Agreement is governed and is to be construed in accordance with the laws in force in the State of Western Australia.

29 The Agreement is subject to the exclusive jurisdiction of the courts of Western Australia.

**WAIVER**

30 Any waiver by Gray or Maxed Out Axe Throwing must be in writing signed by Gray.

31 Failure by Gray or Maxed Out Axe Throwing to enforce any right or remedy is not a waiver of any right or remedy, or a waiver in respect of a continuing breach.

**INTERPRETATION**

32 In these Terms, unless the context otherwise requires:

32.1 the singular includes the plural and vice versa;

32.2 a reference to an individual or person includes a corporation, partnership, joint venture, association, authority, trust, state or government and vice versa;

32.3 a reference to any agreement or document is to that agreement or document (and, where applicable, any of its provisions) as amended, novated, restated or replaced from time to time;

32.4 a reference to a statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws amending, consolidating or replace it, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;

32.5 If a party comprises two or more persons, the covenants and agreements on their part bind and shall be observed and performed by them jointly and each of them severally and may be enforced against any one or any two or more of them;

32.6 no provision of these Terms will be construed adversely to a Party solely on the ground that the Party was responsible for the preparation of these Terms or that provision;

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32.7 where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;

32.8 "including" and similar expressions are not and must not be treated as words of limitation.

### **ACKNOWLEDGEMENT OF THESE TERMS & CONDITIONS**

33 I, the Customer, hereby acknowledge receipt of these Terms, having read and agreed to be bound by them. I, the Customer, accept these Terms in acknowledgement that they are legally binding and presently enforceable. I, the Customer, further acknowledge that I have had the opportunity of obtaining independent legal advice and that I understand the Terms outlined above.

CUSTOMER'S NAME:

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CUSTOMER'S SIGNATURE:

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DATE: \_\_\_\_ / \_\_\_\_ / 20\_\_

**(if Customer is a company)**

CUSTOMER'S NAME:

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\_\_\_\_\_  
Director signature Director\*/secretary\* signature

(\*delete if not applicable)

DATE: \_\_\_\_ / \_\_\_\_ / 20\_\_

**(if Customer is a child)**

*I, (full name of parent/guardian)\_\_\_\_\_*

*the legal parent/guardian (strike out as necessary) of the minor (full name of minor) (“ **the Minor**”) acknowledge that I have read and understood the above waiver and hereby accept full liability for all of the obligations contained herein on behalf of the Minor.*

*Parent/Guardian’s signature: \_\_\_\_\_*

*Parent/Guardian’s address: \_\_\_\_\_*

*Parent/Guardian’s phone number and email: \_\_\_\_\_*

*Parent/Guardian’s Relationship to the Minor: \_\_\_\_\_*