

TERMS AND CONDITIONS OF HIRE

1 AGREEMENT TO HIRE

- 1.1 The Company agrees to hire the Equipment to the Customer on and subject to the terms and conditions of this Agreement.
- 1.2 The Customer agrees to be bound by the terms and conditions of this Agreement.
- 1.3 This Agreement will comprise the provisions of:
 - (a) these Hire Terms;
 - (b) the Hire Order;
 - (c) the Company's credit terms (if applicable);
 - (d) the Damage Waiver Conditions (if applicable);and
 - (e) any other terms and conditions agreed in writing by the Company.
- 1.4 The Company is not required to and may, at its complete discretion, withhold delivery of the Equipment until the Company has received a duly completed and signed copy of the Company's hire quote form and has received payment of the Total Cost of Hire as required under clause 3.
- 1.5 The Customer may only change the Hire Period with the Company's prior consent.
- 1.6 The Company may assign or transfer this Agreement to another party without the consent of the Customer. The Customer agrees to perform its remaining obligations under this Agreement for the assignee or transferee.
- 1.7 During the Hire Period, the Customer shall not create or attempt to create a Security Interest in the Equipment nor sell, sub-hire, assign, transfer, or part with possession of the Equipment, without the prior written consent of the Company.

2 DEFINITIONS

In this Agreement:

Agreement means the agreement formed between the Customer and the Company when the Company accepts a Hire Order from the Customer for the hire of Equipment and includes the terms and conditions described in clause 1.3.

Account Customers means those Customers that have a credit account with the Company.

Claim includes any claim, proceeding, cause of action, demand or suit, arising:

- (a) under, or in any way in connection with, this Agreement; or
- (b) otherwise at law or in equity including:
 - (i) by statute;
 - (ii) in tort for negligence or otherwise, including negligent misrepresentation; or

- (iii) for quantum meruit or restitution, including restitution based on unjust enrichment.

Collection Date means the collection date for the Equipment as agreed between the parties.

Company means Canberra Hire Pty Ltd ABN 53 075 534 566 and includes its subsidiaries, and their directors, agents, subcontractors and employees.

Customer means the customer of this Agreement and includes its subsidiaries, and their directors, agents, subcontractors and employees.

Damage Waiver means the waiver of the Company's rights to claim for loss, theft or damage to the Equipment in certain circumstances as outlined in the Company's Damage Waiver current at the date the Hire Order is accepted.

Damage Waiver Conditions means the conditions relating to Damage Waiver determined by the Company from time to time.

Damage Waiver Fee means the amount stated in the Hire Quote Form or an amount equal to 12% of the Hire Fee or the amount determined by the Company from time to time.

Delivery Date means the delivery date for the Equipment as agreed between the parties.

Delivery Fee means the cost to deliver and collect the Equipment, which includes delivery, collection, and installation charges and applicable service and labour charges.

Equipment means the equipment, tools, machinery, scaffolding, vehicles, portable toilets or other structures, accessories and parts and any other goods or material specified in the Hire Order.

Hire Fee means the hire fee advised by the Company in respect of the Equipment.

Hire Order means the order for Equipment received from the Customer from time to time in whatever form, which may include an order given orally and:

- (a) the Company's hire quote form (however described) given by the Customer to the Company whether signed or not;
- (b) a purchase order from the Customer.

Hire Period means the period commencing when the Equipment leaves the Company's premises on the Delivery Date and ending when the Equipment is returned to the Company's premises.

PPSA means the *Personal Property Securities Act 2009* (Cth)

PPS Lease means a PPS lease as defined under the *Personal Property Securities Act 2009* (Cth).

Proceeds means the proceeds of the Equipment as defined under the *Personal Property Securities Act 2009* (Cth).

Purchase Money Security Interest means a purchase money security interest as defined under the *Personal Property Securities Act 2009* (Cth).

Portable Toilet means portable toilet products however described such as single portable toilets or toilet blocks.

Right of Access means the right to access and enter the Site granted by the Customer to the Company.

Security Interest means a security interest as defined under the *Personal Property Securities Act 2009* (Cth).

Site means the location as specified by the Customer for the intended use of the Equipment, or other location where the Equipment is to be delivered or located.

Total Cost of Hire means the total cost of hire being the sum of the Hire Fee, Delivery Fee and any applicable GST.

3 OBLIGATIONS OF THE CUSTOMER

3.1 The Customer shall be responsible for obtaining and maintaining all necessary government/statutory body approvals and/or licences for the use of the Site for the Equipment during the Hire Period.

3.2 The Customer warrants that:

- (a) the Equipment is to be properly used under normal conditions; and
- (b) the Customer shall at all times keep the Equipment in good working order and condition;

3.3 If Equipment is damaged, the Customer must report this to the Company without delay and comply strictly with Company's directions and must not repair or alter the Equipment without the prior written consent of the Company.

3.4 The Customer is not permitted to reposition the Equipment or move the Equipment to another location once delivered and installed by the Company. If the Customer requires the Equipment to be repositioned or moved to another location, they must arrange it with the Company. The Company may charge a service charge at hourly rates to reposition or move the Equipment.

3.5 The Customer shall return the Equipment at the end of the Hire Period to the Company in good working order and condition. Normal wear and tear of the Equipment resulting from proper use will be accepted by the Company.

4 PRICE AND PAYMENT

4.1 The Customer will pay the Total Cost of Hire upfront to secure and confirm the hire of the Equipment under this Agreement, unless otherwise expressly agreed by the Company and unless the Customer is an Account Customer, in which case the Customer will pay in accordance with the Company's credit terms.

4.2 To avoid doubt, if the Customer does not return the Equipment by the return date required under the Hire Order, the Customer will continue to be charged for and will pay the Hire Fee and other charges until the Equipment is returned to the Company.

4.3 The Company reserves the right to charge a cancellation fee should the hire order be cancelled by the Customer prior to the Delivery Date. The applicable cancellation fee under this Agreement is as follows:

- (a) If the hire order is cancelled 7 days or less prior to the Delivery Date – 100% of the Hire Fee is payable.
- (b) If the hire order is cancelled 7 – 28 days prior to the Delivery Date – 50% of the Hire Fee is payable.
- (c) If the hire order is cancelled 28 days or more prior to the Delivery Date – No charge.

(These cancellation fees are subject to change).

4.4 The Customer will pay the Company the interest on any amount not paid on the due date at the rate of 12% per annum or at such other rate as is notified by the Company from time to time, which interest shall accrue daily until all outstanding amounts are paid in full.

4.5 The Customer will also pay all legal and debt collection fees and expenses (on an indemnity basis) which are reasonably incurred by the Company as a result of default by the Customer.

5 OTHER CHARGES

5.1 In addition to the Total Cost of Hire, the Customer agrees that the Customer will be required to pay:

- (a) for any consumables, fuel or trade material the Company supplies to the Customer;
- (b) if the Customer does not return the Equipment in clean and good working condition, charges for the cleaning and repair of the Equipment;
- (c) any stamp duty or GST arising out of this Agreement;
- (d) any other applicable levies, fines, penalties and any other government charges arising out of the Customer's use of the Equipment;
- (e) charges for payment made by credit card, as detailed in the Hire Order;
- (f) an environmental charge in relation to any item of Equipment, as detailed in the Hire Order; and
- (g) if the Customer requests operational guidance or training on the use of the Equipment and the Company's staff are available to provide this, the cost for the provisions of these services at rates agreed with the Company.

6 DELIVERY AND COLLECTION

6.1 The Customer must ensure that:

- (a) there is safe and adequate access to the Site during normal working hours or at the agreed time on the Delivery Date for the Company to deliver and install the Equipment;
- (b) there is sufficient access to service utilities, such as water, electricity, sewer and waste services, for the Equipment on the Site (if required);
- (c) the Equipment is installed in a location that is accessible to the Company for the purposes of servicing, repair and maintenance of the Equipment, including sufficient access to service the Equipment (if applicable); and
- (d) all work health and safety requirements are met in relation to the delivery and handling of the Equipment.

6.2 The Company will deliver and install the Equipment as close to the location specified by the Customer as practicable. Should the specified location be inaccessible or not suitable, the Company will deliver and install the Equipment at the nearest suitable location. The Customer is not entitled to claim a reduction in the Total Cost of Hire on this basis.

6.3 The Company will use its best endeavours to deliver the Equipment on the Delivery Date and collect the Equipment on the Collection Date, at the times specified in the Hire Order or at the times otherwise agreed between the parties. However the Company will not be responsible for any loss or damage incurred by the Customer or any other person or entity as a result of early, late or non-delivery.

6.4 Upon collection by the Company, the Equipment must be in the original installation position and accessible or appropriate charges will apply. The Company reserves the right to charge a labour charge, or other fee incurred by the Company, should the Equipment be inaccessible.

6.5 An additional fee will be charged for a staged delivery or collection of the Equipment at the request of the Customer.

6.6 The Company is entitled to charge a surcharge for delivery or collection of the Equipment on a Saturday, Sunday, Public Holiday, or outside normal working hours.

6.7 The Company may charge and the Customer will pay for any cleaning or repair costs if the Equipment is not in the same clean condition and good working order on collection as when it was delivered.

7 RIGHT OF ACCESS

7.1 The Customer agrees to do everything necessary to provide the Company with the Right of Access to the Site at all times, including but not limited to the following purposes:

- (a) to deliver the Equipment at the commencement of the Hire Period;

- (b) to collect the Equipment at the end of the Hire Period;
- (c) to perform servicing, maintenance or repair work in relation to the Equipment; and
- (d) to inspect and observe the use of the Equipment.

7.2 In the event that the Customer defaults in the payment of any monies due under this Agreement, the Company shall have the right to enter without notice upon the Site to repossess the Equipment. For this purpose, the Customer will ensure that the Company has Right of Access and the Company shall be entitled to do all things required to secure possession and remove the Equipment.

8 OPERATION OF THE EQUIPMENT

8.1 The Customer must comply with all work health and safety requirements and operations and in particular, must:

- (a) operate the Equipment safely, strictly in accordance with all laws, only for its intended use and in accordance with the manufacturer's instructions;
- (b) ensure persons operation or erecting the Equipment are suitably trained on its safe and proper use, qualified to use the Equipment and where necessary, hold a current Licence to Perform High Risk Work;
- (c) wear suitable clothing and protective equipment when operating the Equipment as required or recommended by the manufacturer;
- (d) ensure that no persons operating the Equipment are under the influence of drugs or alcohol;
- (e) conduct a job safety analysis prior to using the Equipment;
- (f) ensure that no persons carry illegal, prohibited or dangerous substances in or on the Equipment; and
- (g) display all safety signs and instructions (as required by law) and ensure that all instructions and signs are observed by operators of the Equipment.

8.2 The Customer is responsible for the Equipment during the Hire Period and where appropriate must:

- (a) clean, fuel, lubricate and keep the Equipment in good condition and in accordance with the manufacturer's and the Company's instructions at the Customer's own cost;
- (b) not in any way alter, modify, tamper with, damage or repair the Equipment without the Company's prior written consent;
- (c) not deface, remove, vary or erase any identifying marks, plate, number, notices or safety information, on the Equipment;

- (d) store the Equipment safely and securely and protect it from theft, loss or damage.

9 SERVICE AND MAINTENANCE OF THE EQUIPMENT

- 9.1 Where the Equipment is a Portable Toilet or Toilets which are not connected to the sewer:
- (a) For Account Customers, the Company will service the Portable Toilets every 14 days.
 - (b) For other Customers, the Company will service the Portable Toilets at the frequency, and at the times, as agreed between the Customer and the Company. The maximum period between each servicing is 14 days.
 - (c) Servicing includes tank pump-out, cleaning of exposed surfaces, chemical dosing, water top-up and restocking with toilet paper.
 - (d) An additional fee will be charged for any servicing of the Portable Toilet if requested by the Customer outside of the periods set out in sub clauses 9.1(a) or (b).
- 9.2 Subject to clause 8 the Company shall repair and provide maintenance to the Equipment for repairs or damage which arise from normal wear and tear at no additional cost to the Customer.

10 ADDITIONAL ORDERS

- 10.1 Should the Customer require additional Equipment, the Customer may contact the Company to request an additional order (**the Additional Order**).
- 10.2 The Company will negotiate a price for the Additional Order. The Additional Order will be subject to the terms and conditions of this Agreement, unless otherwise agreed.
- 10.3 For the hire of fencing products, the Additional Order is not subject to the minimum order amount for fencing products.
- 10.4 The Customer agrees that it is liable to pay to the Company an additional fee for the delivery of any Additional Order.

11 OWNERSHIP OF THE EQUIPMENT

- 11.1 Property in the Equipment shall remain vested in the Company and shall not pass to the Customer.
- 11.2 Any lost or damaged Equipment shall remain the property of the Company.
- 11.3 The Customer must:
- (a) not cause the Equipment to lose its identifiable character or be intermingled with other equipment in any way by any process of its own or by a third party, except with the Company's prior written consent;
 - (b) store and use the Equipment in a manner so that the Equipment is easily identifiable;
 - (c) provide the Company with Right of Access to the premises or location where the Equipment is stored or used to enable the Company to inspect and/or seize the Equipment; and

- (d) not create any Security Interest in the Equipment in favour of any person other than the Company, without the Company's prior written consent.

- 11.4 The parties agree that in no circumstances will the Equipment become or be deemed to be a fixture.

12 INDEMNITY AND RELEASE

- 12.1 The Customer will indemnify the Company against all Claims which may be made against the Company, in respect of or arising directly or indirectly by or arising directly or indirectly out of the use of the Equipment on hire to the Customer, which indemnity shall extend to and include all costs and expenses incurred by the Company in investigating and or defending any such claim.
- 12.2 The Company shall not be liable for:
- (a) any death or injury arising from or out of any occurrence arising directly or indirectly out of the use of the Equipment.
 - (b) any damage to the Site or any property whatsoever arising directly or indirectly in relation to the delivery, installation, collection or use of the Equipment whatsoever, whether or not such damage results from or is caused by the Company's delivery vehicle.
 - (c) any loss or damage (including consequential loss) arising from delay in delivery or failure to deliver due to circumstances beyond its control.

13 ACKNOWLEDGEMENT AND WARRANTIES

- 13.1 The Company warrants that the Equipment supplied shall be in good working order and condition.
- 13.2 The Customer acknowledges and warrants that the Customer has satisfied itself as to the description and condition of the Equipment and its fitness for the purpose for which the Customer will use it.
- 13.3 To the extent permitted by law, all guarantees, warranties and conditions other than those specified in the Agreement are hereby excluded. To avoid doubt, this clause is not intended to nor does it limit or affect any guarantee under the Australian Consumer Law which cannot be excluded.
- 13.4 Where a guarantee, warranty or condition cannot be excluded by law, the Company's liability is limited (at the Company's election), to the replacement of the Equipment, the supply of equivalent equipment, the repair of the Equipment or payment of the cost of repairing the Equipment or obtaining equivalent equipment. In particular, the Company will not be liable for any indirect or consequentially damages, loss of profit, loss of bargain, liability to any third party or any pecuniary amount arising under any cause of action including negligence.
- 13.5 Under this clause 13 the Company's maximum aggregate liability for any claims relating to this Agreement arising under any cause of action including

negligence is limited to the amount equal to the Hire Fees and any other amounts paid by the Customer to the Company.

14 DAMAGE WAIVER IN RESPECT OF CERTAIN LOSS OR DAMAGE

14.1 The Company offers the protection of the Damage Waiver to the Customer set out in the Company's Damage Waiver Conditions when the Customer has paid the Damage Waiver Fee. The Damage Waiver is not insurance but an agreement between the Company and the Customer to waive the Company's right to Claim against the Customer for loss, theft or damage to the Equipment in certain circumstances.

14.2 The Damage Waiver Fee will be charged to the Customer for each hire of Equipment unless the Customer provides evidence of insurance satisfactory to the Company.

14.3 Provided the Customer has complied with the terms and conditions of this Agreement, and subject to clause 14.4, the Customer shall not be liable for any damage to, or loss of, the Equipment during the Hire Period, to the extent and subject to the conditions set out in the Damage Waiver Conditions.

14.4 Notwithstanding any other term of this Agreement, the Customer shall at all times be liable for the theft of, or any malicious damage to, the Equipment caused by the Customer or any other person(s).

14.5 If the Customer is not covered by the Damage Waiver, the Customer shall be responsible for any damage to, or loss of, the Equipment caused by any reason during the Hire Period, except damage which is caused by normal wear and tear. The cost of repair to, or replacement of, the Equipment will be charged to the Customer so as to reimburse the Company for all repair or replacement costs incurred.

15 TERMINATION

15.1 Notwithstanding the term of the Hire Period, or anything else contained in this Agreement, the Company may (without limiting any of its other rights) terminate this Agreement and repossess the Equipment in any of the following events:

- (a) if the Customer does anything or permits any act, whereby the Company's rights to the Equipment are prejudiced;
- (b) the Customer should become bankrupt or make an arrangement with his or her creditors, or in the case of the Customer being a company, be insolvent or an order is made or a resolution for the winding up of such a company.
- (c) if the Customer breaches this Agreement, including failing to pay any monies when monies are due.

15.2 If the Customer breaches this Agreement, the Company reserves the right to, without the Company having to provide notice to the Customer, remove the Equipment from the Site or any other premises where the

Equipment is known to be stored, regardless of the payment status of the Customer.

16 PERSONAL PROPERTY SECURITIES ACT 2009 (PPSA)

16.1 The Parties agree that this Agreement:

- (a) constitutes a security agreement for the purposes of the Personal Property Securities Act 2009 (Cth) (PPSA); and
- (b) create a Security Interest in all Equipment previously supplied by the Company to the Customer, all Equipment that will be supplied under this Agreement and all proceeds of the goods (as defined in the PPSA) in relation to the Equipment.

16.2 The Customer agrees that as and when requested by the Company (at its discretion), promptly provide complete, up-to date and accurate information, and sign, deliver and do everything necessary to enable the Company to register a Financing Statement or Financing Change Statement, register any other document required by the PPSA and correct a defect in any Financing Statement or other document on the PPSA Register.

16.3 The Customer hereby appoints and authorises the Company as its attorney to sign in the Customer's name on all documents which the Company reasonably considers necessary to enforce or protect its rights and powers under this Agreement and under the PPSA.

16.4 To the extent permitted by law, the Customer agrees to waive each provision which sections 115(1) or 115(7) permits a Customer to waive under the PPSA.

16.5 To the extent permitted by the law, the Customer agrees that the following sections of the PPSA will not apply;

- (a) Section 142 (redemption of collateral); and
- (b) Section 143 (reinstatement of security agreement).

16.6 The Customer waives its rights under section 157 of the PPSA to receive a notice of Verification Statement.

17 FORCE MAJEURE

The Company will not be liable for any failure to meet any obligations to the extent that such failure is caused by or arises from:

- (a) strikes, lockouts or other industrial disputes, shortage of labour or materials, delay in manufacturing by the Company, its associates or suppliers, civil commotion, fire, flood, drought, loss or delay at sea or otherwise, breakdown or war, or;
- (b) any other cause whether arising from natural causes, human agency or anything beyond the reasonable control of the Company,

and in such event the Company may (at its discretion) elect to terminate this Agreement or extend the time for performance and the Customer will not be relieved of any obligation to accept or pay for the hire of the Equipment by reason of any such delay in delivery.

18 WHOLE AGREEMENT

18.1 This Agreement and any other terms agreed in writing between the parties constitute the entire agreement. Any other representations, warranties or terms or conditions are excluded and do not apply.

19 GOVERNING LAW

19.1 This Agreement will be governed by, and construed in accordance with, the laws for the time being in force in the state or territory where the Agreement is made and the Customer submits to the jurisdiction of the courts of that state or territory.

20 WHERE THE CUSTOMER IS A TRUSTEE OF A TRUST (TRUST)

20.1 The Customer warrants that:

- (a) It is acting in its own right and as trustee of the Trust and is entitled to have access to and be indemnified from the Trust assets for all obligations and liability to the Company under the Trading Terms.
- (b) There will be no change of trustee or change to the terms of the Trust or winding up of the Trust without the prior agreement of the Company.

20.2 The Customer acknowledges that a breach of these warranties will entitle the Company to cease supply of any further materials and/services including any already ordered, and to demand immediate payment of all monies payable by the Customer on any account.

21 SECURITY AND CHARGE

The Customer hereby (in its personal capacity and as trustee if appropriate) charges in favour of the Company all of its interest (legal and beneficial) in all personal property (as defined in the PPSA) and in its present and future real property, as security for payment of all monies payable to the Company on any account and hereby consents to the Company lodging a caveat on any real property owned by it and agrees to sign a mortgage or any other document as requested by the Company, to perfect this security.

22 CERTAIN PROVISIONS EXCLUDED FROM CONSUMER CONTRACTS

22.1 If the Customer is an individual acquiring goods or services wholly or predominantly for personal, domestic or household use or consumption, the following clauses in this Agreement do not apply:

- (a) Clause 3.2(c) Obligations of the Customer – Use of Equipment.
- (b) Clause 16.4, 16.5 and 16.6 Personal Property Securities Act 2009 (PPSA) exclusions.

23 PRIVACY

23.1 The Company agrees to comply with the National Privacy Principles and any modification of those.

23.2 The Company may collect personal information about the Customer including contact details, drivers licence, credit and other financial details. The Customer hereby:

- (a) consents to the Company providing any of their personal information as defined in the Privacy Act 1988 (or any similar applicable legislation) and any credit related information to a credit provider or credit reporting agency;
- (b) consents to the Company obtaining and retaining credit reports and/or any other personal information about them from a credit reporting agency or other credit provider; and
- (c) agrees that the Company may use their personal information for the purpose of assessing the Customer's creditworthiness, the continuation of any credit arrangements and in relation to collection of any monies payable to the Company by the Customer.

23.3 The Company agrees that the Customer may request access to any personal information held by it.