

AFT HIRE PTY LTD TERMS AND CONDITIONS OF HIRE AGREEMENT

Definitions

- In this document the following definitions apply.
 - "Agreement"** means the contract made between the Company and the Hirer relating to the hire of Equipment, including these Terms and Conditions, the credit application form and any quotation(s) provided by the Company.
 - "Company"** means **AFT HIRE Pty Ltd (ACN 006 749 908)** and where applicable any subsidiaries or related companies as defined in the Corporations Act 2001 (Cth) and their servants or agents.
 - "Equipment"** means any of the Company's fencing, portable toilets, crowd control barriers, crossovers, rubbish cages and other equipment (including any associated or attached tools, accessories and parts) that are hired to the Hirer under these Terms and Conditions.
 - "Hirer"** means any person, firm, corporation, government, semi-government or local government department or authority, its successors, assignees, trustees, administrators or liquidators and where the context permits, its contractors or employees, to whom or to which Equipment is hired.
 - "Indemnity"** whenever it is herein provided that the Hirer shall indemnify the Company, then this means that the indemnity to be provided shall be a full and complete indemnity from and against liability in respect of all claims, demands, action, suits, proceeds and costs.

Payment and Credit Terms

- Payment terms for hire of Equipment are cash on delivery unless the Hirer has been approved by the Company for a credit account.
- If the Hirer has been approved by the Company for a credit account, payment terms for all credit accounts shall be on invoice terms of 14 days from date of delivery or 30 days from end of month or as otherwise agreed, subject to authorisation or agreement provided by the Company.
- Payment may be made by credit card (visa or mastercard only), by bank cheque, by cheque, by electronic transfer, by cash or as otherwise authorised or agreed to by the Company.
- During the hire period, the Hirer must pay to the Company all fees, charges and rates charged by the Company for the hire of the Equipment.
- The Company reserves the right to amend fees, charges or rates and/or terms and conditions from time to time without prior notice to the Hirer.
- The Company may at any time without notice, terminate or suspend the Hirer's right to hire Equipment or acquire services from the Company on credit and shall not be liable for any damages, costs, penalties or charges incurred by the Hirer or any third party as a result of the non-supply of Equipment or services by the Company.
- All invoices shall immediately become due and payable in the event of default on payment by the Hirer of any invoice or account, regardless of whether or not some invoices may otherwise have become due for payment.
- Any amount that remains unpaid for 60 days from the date of invoice shall incur interest at the rate of 1.5% per month or part thereof as an administration charge. The Hirer agrees that this is a fair and reasonable charge and is directly relevant to the likely damage that the Company might suffer as a result of non-payment by the Hirer. Interest will be calculated on all outstanding amounts from the date of issue of the invoice.
- Any unpaid amounts that may from time to time be overdue and any interest charged shall be recoverable forthwith from the Hirer as a liquidated debt.
- Payment shall be made by the Hirer to the Company without any set off or deduction against any other amount whatsoever.
- The Hirer hereby gives the Company authority to make enquiries as to the credit and financial responsibilities of the Hirer and/or its Directors and/or Shareholders in order to suitably qualify the Hirer's capacity to incur debt and repay any amounts to the Company. These enquiries shall include but not be limited to obtaining reports from credit reporting agencies and references from current and/or past providers of credit to the Hirer.
- In the event of default on payment by the Hirer, the Hirer will be liable for all losses, liabilities, costs and expenses (including but not limited to debt recovery and legal expenses and including commission charged by debt recovery agents and solicitor's costs) on a full indemnity basis or on a solicitor and own client basis whichever is the higher, incurred by the Company in seeking to recover the default amount.
- The Hirer hereby charges its interest in any and all land registered in its name as security for payment of monies it owes to the Company.
- In accordance with s.18E(8)(c) of the Privacy Act 1988, the Hirer acknowledges that the Company has informed it that certain items of personal information about the Hirer contained in or relating to the Hirer's credit application and permitted to be kept on a credit information file might be disclosed to a credit reporting agency. Furthermore, the Hirer agrees, in accordance with s.18H(3), s.18K(1)(b), s.18K(1)(c), s.18K(1)(h) and s.18N(1)(b) of the Privacy Act 1988 that use by the Company of the relevant information referred to in those sections may occur for the purpose of assessing the Hirer's credit application.

Jurisdiction

- This Agreement is deemed to have been entered into in the State of Victoria. Any legal action arising out of, or in respect of the Agreement and/or the interpretation thereof shall be brought only in the State of Victoria. The parties further agree to issue any proceedings in the Melbourne registry of the appropriate Court having monetary jurisdiction over the matter.

General Terms of Rental

- All Equipment hired to the Hirer remains the property of the Company and title to the Equipment hired remains with the Company in all circumstances (even in the event that the Hirer goes into liquidation or becomes bankrupt during the hire period). During the hire period, the Hirer shall not sell, let, assign, offer,

sub-let, charge, mortgage, transfer, create or attempt to create any security interest in or otherwise encumber or deal with the Equipment.

- The Hirer shall not be entitled to damages or compensation from the Company for any loss suffered by reason of late delivery of the Equipment or if the Company determines that the Equipment or the capacity of the Equipment is reduced or impaired by the condition of the site at which it is used.
- The Equipment is hired to the delivery address provided by the Hirer. Should the Hirer wish to move the Equipment, it may only do so upon receipt of approval in writing from the Company. Furthermore, if the Company grants approval, the Hirer moves the Equipment at its own risk and it indemnifies the Company against all claims for any loss or damage, howsoever arising, as a result of its moving the Equipment.
- The Hirer shall inspect the Equipment within 72 hours of installation or delivery and must immediately, within this 72 hour period, notify the Company of any defect in the Equipment. Failure to do so is deemed to be an acknowledgment that the Equipment is in good condition.
- The Hirer must, at its own expense, obtain and maintain any insurance, permit or license that may be required under any law or by any statutory, local or other authority for the use of the Equipment, including its installation or removal.
- The Company shall not be responsible for and excludes any liability in contract, tort or otherwise for any claims, damage, loss, costs or expenses in respect of injury to persons, loss or damage to property or fatality caused by the Equipment or arising out of the use of the Equipment, during the hire period.
- The Hirer shall accept full responsibility for and indemnify the Company against all liability, claims, damage, loss, costs or expenses in respect of injury to persons, loss or damage to property or fatality caused by the Equipment or arising directly or indirectly out of the hire or use of the Equipment, during the hire period.
- The Company gives no warranty condition or representation express or implied as to the capacity or fitness of the Equipment for any particular purpose, unless that particular purpose had been specified by the Hirer at the time of hiring.
- The Hirer irrevocably authorises, permits and consents to the Company entering any premises to retrieve and recover possession of any Equipment which the Company may have hired to the Hirer or any other such Equipment to which the Company has the title or the right to exclusive or sole possession. This irrevocable authority allows the Company to use such force as is reasonably required to open doors or any other entrances even if the use of such force would damage the door or entrance. The Hirer agrees that the presence of the Company or its agents or servants at the premises and the use of such force and the occasioning of damages will not vest the Hirer with any cause of action whatsoever against the Company and the Company may refer to this clause should any right or entitlement of the Company be called into question.

Equipment Maintenance and Use

- The Hirer agrees that only suitably trained, qualified and licenced personnel shall use Equipment whilst in the Hirer's possession.
 - The Hirer agrees that it is responsible for all cleaning, adjustments and maintenance of Equipment and for any damage incurred during the hire period.
 - The Hirer agrees to maintain the Equipment in proper working order at his own expense, and pay all costs for replacements and/or repair required due to fire, theft, accident, loss, destruction, damage or otherwise during the hire period, unless otherwise authorised or agreed by the Company in writing and except damage which is caused by reasonable wear and tear.
 - If any theft, damage, loss or destruction of the Equipment occurs during the hire period, whether or not the Hirer was responsible, the Hirer must immediately notify the Company and provide full details of the theft, damage loss or destruction.
 - The Hirer is responsible for any theft, damage, loss of or destruction of the Equipment which occurs during the hire period, except damage which is caused by reasonable wear and tear and is responsible for the cost of replacement or repair of the Equipment, unless otherwise authorised or agreed by the Company in writing.
 - Any and all missing or damaged Equipment remains the property of the Company and the Company reserves the right to charge continued re-hire amounts to the Hirer for such missing or damaged Equipment until such time as the Hirer has replaced or paid for the missing or damaged Equipment in full.
- ## Hire Period
- All hire periods commence from the time the Equipment leaves the Company's depot and until its return to the Company's depot.
 - All hire periods are for the period initially agreed between the Hirer and the Company together with and subject to automatic rollover/extension periods as provided for under these terms and conditions.
 - For hire of fencing and related products, once the initially agreed hire period has expired, the hire period is automatically extended for a period of one month from the date of expiry and will continue to extend on a rolling monthly basis thereafter until the Hirer instructs the Company to pick up the Equipment, the Equipment is returned by the Hirer to the Company or the Company decides to terminate the hire.
 - For hire of portable toilets and related products and all other products hired by the Company, once the initially agreed hire period has expired, the hire period is automatically extended for a period of one week from the date of expiry and will continue to extend on a rolling weekly basis thereafter until the Hirer instructs the Company to pick up the Equipment, the Equipment is returned by the Hirer to the Company or the Company decides to terminate the hire.

36. Rehire rates are subject to change by the Company without notice and the Equipment remains the responsibility of the Hirer until either removed from the site by the Company or returned to the Company's depot by the Hirer.

37. In the event that the Hirer wishes to return the Equipment before the end of the hire period initially agreed with the Company, the Hirer remains liable for all charges or rates due for the agreed hire period, unless otherwise authorised or agreed by the Company.

Duties and Charges

38. The Hirer acknowledges that the rate for hire of the Equipment does not include any provision for insurance cover on behalf of the Hirer.

PPSA

39. This clause applies to the extent that this Agreement provides for a 'security interest' for the purposes of the Personal Property Securities Act 2009 (Cth) ("PPS Law").

40. The Company is at liberty to register its security interest as a purchase money security interest under the PPS Law ("PMSI"). The Hirer must do anything (such as obtaining consents and signing documents) which the Company requires for the purposes of:

- ensuring that the Company's security interest is enforceable, perfected and otherwise effective under the PPS Law;
- enabling the Company to gain first priority (or any other priority agreed to be the Company in writing) for its security interest; and
- enabling the Company to exercise rights in connection with the security interest.

41. The Hirer agrees that, "the Company" shall, if there is default by the Hirer, have the right to seize, purchase, take possession or apparent possession, retain, deal with or dispose of any equipment, not only under those sections but also, as additional and independent rights, under this document and the Hirer agrees that the Company may do so in any manner it sees fit, including (in respect of dealing and disposal) by private or public sale, lease or licence.

42. The Hirer waives its rights to receive a verification statement in relation to registration events in respect of commercial property under section 157 of the PPS Law.

43. The Company and the Hirer agree not to disclose information of the kind that can be requested under section 275(1) of the PPS Law. The Hirer must do everything necessary on its part to ensure that section 275(6)(a) of the PPS Law continues to apply to it. The Agreement in this sub-clause is made solely for the purposes of allowing the Company the benefit of section 275(6)(a) and the Company shall not be liable to pay damages or any other compensation or be subject to injunction if the Company breaches this sub-clause.

Security interests and sub-hire

- The Hirer must not create, purport to create or permit to be created any 'security interest' (as defined in PPS Law) in the Equipment other than with the express written consent of the Company.
- The Hirer must not lease, hire, bail or give possession ('sub-hire') of the Equipment to anyone else unless the Company (in its absolute discretion) first consents in writing. Any such sub-hire must be in writing in a form acceptable to the Company and must be expressed to be subject to the rights of the Company under this Agreement. The Hirer may not vary a sub-hire without the prior written consent of the Company (in its absolute discretion).
- The Hirer must ensure that the Company is provided at all times with up-to-date information about the sub-hire including the identity of the sub-Hirer, the terms of and state of accounts and payment under the sub-hire and the location and condition of the Equipment.
- The Hirer must take all steps including registration under PPS Law as may be required to:
 - ensure that any security interest arising under or in respect of the sub-hire is enforceable, perfected and otherwise effective under the PPS Law;
 - enabling the Hirer to gain (subject always to the rights of the Company) first priority (or any other priority agreed to by the Company in writing) for the security interest; and
 - enabling the Company and Hirer to exercise their respective rights in connection with the security interest.
- The Company may recover from the Hirer the cost of doing anything under this clause, including registration fees.

Delivery

- Unless otherwise authorised by or agreed to the Company, the Company or its carrier will deliver the Equipment to the Hirer and the cost of delivery may be included in the hire rate agreed between the parties.
- Delivery and/or pick up charges are subject to additional charges at the Company's discretion and shall be quoted upon request from the Hirer.
- Any permits and/or licence fees and toll charges incurred by the Company shall be charged to the Hirer's account.

52. The Hirer agrees to ensure that Equipment is returned to or collected by the Company at conclusion of the hire period— if return delivery service is required, it is the Hirer's responsibility to contact the Company and advise that the hire period is terminated and the Equipment is available for collection. Waiting time for delivery vehicles may be charged in this respect.