

Pillingers Hiring Service Pty Ltd – Terms & Conditions of Hire

<p>1 Definitions</p> <p>1.1 "Supplier" shall mean Pillingers Hiring Service Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Pillingers Hiring Service Pty Ltd.</p> <p>1.2 "Customer" shall mean the Customer or any person acting on behalf of and with the authority of the Customer.</p> <p>1.3 "Guarantor" means that person (or persons), or entity who agrees herein to be liable for the debts of the Customer on a principal debtor basis.</p> <p>1.4 "Equipment" shall mean Equipment supplied on hire by the Supplier to the Customer (and where the context so permits shall include any supply of services) and is as described on the invoices, quotation, authority to hire, or any other work authorisation forms as provided by the Supplier to the Customer.</p> <p>1.5 "Minimum Hire Period" shall mean the Minimum Hire Period as described on the invoices, quotation, authority to hire, or any other forms as provided by the Supplier to the Customer.</p> <p>1.6 "Price" shall mean the cost of the hire of the Equipment as agreed between the Supplier and the Customer subject to clause 3 of this contract.</p> <p>2 Acceptance</p> <p>2.1 Any instructions received by the Supplier from the Customer for the hire of Equipment and/or the Customer's acceptance of Equipment supplied on hire by the Supplier shall constitute acceptance of the terms and conditions contained herein.</p> <p>2.2 Where more than one Customer has entered into this agreement, the Customers shall be jointly and severally liable for all payments of the Price.</p> <p>2.3 Upon acceptance of these terms and conditions by the Customer the terms and conditions are irrevocable and can only be amended with the written consent of the Supplier.</p> <p>2.4 The Customer undertakes to give the Supplier at least fourteen (14) days notice of any change in the Customer's name, address and/or any other change in the Customer's details.</p> <p>3 Price And Payment</p> <p>3.1 At the Supplier's sole discretion the Price shall be either:</p> <p>(a) as indicated on invoices provided by the Supplier to the Customer in respect of Equipment supplied on hire; or</p> <p>(b) the Supplier's current Price, at the date of delivery of the Equipment, according to the Supplier's current Price list; or</p> <p>(c) the Supplier's quoted Price (subject to clause 3.2) which shall be binding upon the Supplier provided that the Customer shall accept in writing the Supplier's quotation within thirty (30) days.</p> <p>3.2 The Supplier reserves the right to change the Price in the event of a variation to the Supplier's quotation.</p> <p>3.3 At the Supplier's sole discretion a bond may be required. The bond will be refunded to the Customer once all Equipment is returned to the Supplier and checked less any amount to cover cleaning or loss to the Supplier due to negligence or theft.</p> <p>3.4 At the Supplier's sole discretion a bond may be required which shall be refunded upon return of the Equipment in a condition acceptable to the Supplier.</p> <p>3.5 Time for payment for the Equipment shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due seven (7) days following the date of the invoice.</p> <p>3.6 At the Supplier's sole discretion:</p> <p>(a) payment shall be due on delivery of the Equipment; or</p> <p>(b) payment shall be due before delivery of the Equipment; or</p> <p>(c) payment for approved Customer's shall be due on thirty (30) days following the end of the month in which a statement is posted to the Customer's address or address for notices.</p> <p>3.7 The date upon which the Customer advises of termination shall in all cases be treated as a full day's hire.</p> <p>3.8 Payment will be made by cash, or by cheque, or by bank cheque, or by credit card (plus a surcharge of up to two percent (2%) of the Price), or by direct credit, or by any other method as agreed to between the Customer and the Supplier.</p> <p>3.9 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.</p> <p>4 Damage Waiver</p> <p>4.1 The Customer shall be charged a damage waiver to cover accidental damage and general wear and tear to all Equipment. It also covers accidental breakages to crockery and glassware, as well as accidental damages to all linen. All broken and damaged Equipment must be returned to the Supplier otherwise it will be deemed to be missing items and a replacement fee will be charged.</p> <p>5 Hire Period</p> <p>5.1 For Equipment in which a timing device is installed the hire period shall be the number of hours or part thereof recorded on the timing device whilst the Equipment is in the Customer's possession.</p> <p>5.2 Where the Equipment does not have a timing device installed hire Charges shall commence from the time the Equipment is collected by the Customer from the Supplier's premises and will continue until the return of the Equipment to the Supplier's premises, and/or until the expiry of the Minimum Hire Period, whichever last occurs.</p> <p>5.3 The maximum hire period is thirty (30) days unless otherwise mutually agreed between the Customer and Supplier before the initial maximum hire period expires.</p> <p>5.4 If the Supplier agrees with the Customer to deliver and/or collect the Equipment, hire charges shall commence from the time the Equipment leaves the Supplier's premises and continue until the Customer notifies the Supplier that the Equipment is available for collection until the expiry of the Minimum Hire Period, whichever last occurs.</p> <p>5.5 No allowance whatever can be made for time during which the Equipment is not in use for any reason, unless the Supplier confirms special prior arrangements in writing. In the event of Equipment breakdown provided the Customer notifies the Supplier immediately, hiring charges will not be payable during the time the Equipment is not working, unless the condition is due to negligence or misuse on the part of or attributable to the Customer.</p> <p>6 Delivery Of Equipment</p> <p>6.1 At the Supplier's sole discretion delivery of the Equipment shall take place when:</p> <p>(a) the Customer takes possession of the Equipment at the Supplier's address; or</p> <p>(b) the Customer takes possession of the Equipment at the Customer's address; or</p> <p>(c) the Supplier's nominated carrier takes possession of the Equipment in which event the carrier shall be deemed to be the Supplier's agent and risk for the Equipment does not pass until the Customer takes possession of the Equipment at the Customer's address; or</p> <p>(d) the Customer's nominated carrier takes possession of the Equipment in which event the carrier shall be deemed to be the Customer's agent.</p> <p>6.2 At the Supplier's sole discretion the costs of Delivery are:</p> <p>(a) included in the Price; or</p> <p>(b) are in addition to the Price.</p> <p>6.3 The Customer shall make all arrangements necessary to take delivery of the Equipment whenever it is tendered for delivery. In the event that the Customer is unable to take delivery of the Equipment as arranged then the Supplier shall be entitled to charge a reasonable fee for redelivery.</p> <p>6.4 The Supplier may deliver the Equipment by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the terms and conditions.</p> <p>6.5 Delivery of the Equipment to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this agreement.</p> <p>6.6 The Customer shall be responsible for free access by the Supplier to the site on which the Equipment is located. If there are any delays due to free access not being available then the Customer shall be responsible and shall reimburse the Supplier for all lost hire fees associated with the Equipment being unavailable. The Customer shall also be responsible for all other expenses and costs incurred by the Supplier due to delays in access to the Equipment. The off-hire receipt will be issued when the Equipment is picked up by the Supplier or returned to the Supplier's premises.</p> <p>6.7 The failure of the Supplier to deliver shall not entitle either party to treat this contract as repudiated.</p> <p>6.8 The Supplier shall not be liable for any loss or damage whatever due to failure by the Supplier to deliver the Equipment (or any of them) promptly or at all.</p> <p>7 Risk</p> <p>7.1 The Supplier retains property of the Equipment nonetheless all risk for the Equipment passes to the Customer on delivery.</p> <p>7.2 The Customer accepts full responsibility for the safekeeping of the Equipment and indemnifies the Supplier for all loss theft or damage to the Equipment howsoever caused and without limiting the generality of the foregoing whether or not such loss theft or damage is attributable to any negligence failure or omission of the Customer.</p> <p>7.3 The Customer will insure, or self insure, the Supplier's interest in the Equipment against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will effect adequate Public Liability Insurance covering any loss, damage or injury to property arising out of the Equipment. Further the Customer will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.</p> <p>7.4 The Customer's responsibility for and shall keep the Supplier indemnified against all liability in respect of all actions, proceedings, claims, damages, costs and expenses in respect of any injury to persons or damage to property arising out of the use of the Equipment during the hire period however arising and whether or not arising from any negligence, failure or omission of the Customer or any other persons.</p> <p>8 Title</p> <p>8.1 The Equipment is and will at all time remain the absolute property of the Supplier.</p> <p>8.2 If the Customer fails to return the Equipment to the Supplier then the Supplier or the Supplier's agent may enter upon and into land and premises owned, occupied or used by the Customer, or any premises where the Equipment is situated as the invitee of the Customer and take possession of the Equipment, without being responsible for any damage thereby caused.</p> <p>8.3 The Customer is not authorised to pledge the Supplier's credit for repairs to the Equipment or to create a lien over the Equipment in respect of any repairs.</p> <p>9 Defects</p> <p>9.1 The Customer shall inspect the Equipment on delivery and shall within twenty four (24) hours notify the Supplier of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford the Supplier an opportunity to inspect the Equipment within a reasonable time following delivery if the Customer believes the Equipment is defective in any way. If the Customer shall fail to comply with these provisions the Equipment shall be presumed to be free from any defect or damage. For defective Equipment, which the Supplier has agreed in writing that the Customer is entitled to reject, the Supplier's liability is limited to either repairing or replacing the Equipment, except where the Customer has hired Equipment as a consumer within the meaning of the Trade Practices Act 1974 (Cwth) or the Fair Trading Acts of the relevant state or territories of Australia, and is therefore also entitled, at the consumer's discretion either a refund of the hire price of the Equipment, or repair of the Equipment, or replacement of the Equipment.</p> <p>10 The Commonwealth Trade Practices Act 1974 ("TPA") and Fair Trading Acts ("FTA")</p> <p>10.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the TPA or the FTA in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.</p> <p>11 Warranty</p> <p>11.1 No Warranty is provided by the Supplier in respect of the condition of the Equipment or its fitness for any particular purpose. The Customer shall indemnify and hold harmless the Supplier in respect of all claims arising out of use of the Equipment.</p> <p>12 Customer's Disclaimer</p> <p>12.1 The Customer hereby disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any misrepresentation made to the Customer by the Supplier and the Customer acknowledges that the Equipment is hired relying solely upon the Customer's skill and judgement.</p>	<p>13 Customer's Responsibilities</p> <p>13.1 The Customer shall:</p> <p>(a) notify the Supplier immediately by telephone of the full circumstances of any mechanical breakdown or accident. The Customer is not absolved from the requirements to safeguard the Equipment by giving such notification;</p> <p>(b) satisfy itself at Commencement that the Equipment is suitable for its purposes;</p> <p>(c) operate the Equipment safely, strictly in accordance with the law, only for its intended use, and in accordance with any manufacturer's instruction whether supplied by the Supplier or posted on the Equipment;</p> <p>(d) ensure that all persons operating or erecting the Equipment are suitably instructed in its safe and proper use and where necessary hold a current Certificate of Competency and/or are fully licensed to operate the Equipment and shall provide evidence of the same to the Supplier upon request;</p> <p>(e) comply with all occupational health and safety laws relating to the Equipment and its operation;</p> <p>(f) on termination of the hire, the Customer shall deliver the Equipment complete with all parts and accessories clean and in good order as delivered, fair wear and tear accepted, to the Supplier;</p> <p>(g) keep the Equipment in their own possession and control and shall not assign the benefit of the hire contract nor be entitled to lien over the Equipment ;</p> <p>(h) not alter or make any additions to the Equipment including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment;</p> <p>(i) employ the Equipment solely in its own work and shall not permit the Equipment of any part thereof to be used by any other party for any other work;</p> <p>(j) not fix any of the Equipment in such a manner as to make it legally a fixture forming part of any freehold.</p> <p>13.2 Immediately on request by the Supplier the Customer will pay:</p> <p>(a) the new list price of any Equipment that is for whatever reason destroyed, written off or not returned to Supplier;</p> <p>(b) all costs incurred in cleaning the Equipment;</p> <p>(c) all costs of repairing any damage caused by the ordinary use of the Equipment up to an amount equal to 10% of the new list price of the Equipment;</p> <p>(d) the cost of repairing any damage to the Equipment caused by the negligence of the Customer or the Customer's agent;</p> <p>(e) the cost of repairing any damage to the Equipment caused by vandalism, or (in the Supplier's reasonable opinion) in any way whatsoever other than by the ordinary use of the Equipment by the Customer;</p> <p>(f) the cost of fuels and consumables provided by Supplier and used by the Customer.</p> <p>14 Cancellation</p> <p>14.1 The Supplier may cancel these terms and conditions or cancel delivery of Equipment at any time before the Equipment is delivered by giving written notice. On giving such notice the Supplier shall repay to the Customer any sums paid in respect of the Price. The Supplier shall not be liable for any loss or damage whatever arising from such cancellation.</p> <p>14.2 In the event that the Customer cancels delivery of the Equipment more than 14 Days prior to the event, the deposit and/or cancellation fee of 25% is non-refundable or payable. This may be transferred to cover another reasonable date. Less than 14 days yet more than 48 hours – 50% of the total is payable. Cancellation within 48 hours – total charges apply.</p> <p>14.3 In the event where a Public Health Order has been issued and the Customer is acting on these orders to cancel / modify their scheduled event, the following conditions will apply:</p> <p>(a) Cancellation more than 7 Days prior to delivery, standard cancellation terms apply.</p> <p>(b) Cancellation more than 48 hours and less than 7 Days prior to delivery, the deposit and/or cancellation fee of 15% is non-refundable or payable.</p> <p>(c) Cancellation more than 24 hours and less than 48 hours prior to delivery, the deposit and/or cancellation fee of 25% is non-refundable or payable.</p> <p>(d) Cancellation within a 24 hour period prior to delivery, or whilst goods are loaded and/or in transit the deposit and/or cancellation fee of 50% is non-refundable or payable.</p> <p>(e) If orders has been delivered - full charges apply.</p> <p>(f) Orders postponed outside 48 hours of delivery and placed within 90 days of the original delivery date – 15% is non-refundable or payable with the remaining 10% applied to the new event date.</p> <p>(g) Notice of orders postponed within a 48 hour period of delivery – clauses (c) (d) or (e) will apply.</p> <p>(h) Notice of orders postponed and placed in excess of 90 days of the original event date – clauses (a) (b) (c) (d) (e) will apply.</p> <p>15 Default & Consequences Of Default</p> <p>15.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% per calendar month and such interest shall compound monthly at such a rate after as well as before any judgement.</p> <p>15.2 If the Customer defaults in payment of any invoice when due, the Customer shall indemnify the Supplier from and against all costs and disbursements incurred by the Supplier in pursuing the debt including legal costs on a solicitor and own client basis and the Supplier's collection agency costs.</p> <p>15.3 Without prejudice to any other remedies the Supplier may have, if at any time the Customer is in breach of any obligation (including those relating to payment), the Supplier may suspend or terminate the supply of Equipment to the Customer and any of its other obligations under the terms and conditions. The Supplier will not be liable to the Customer for any loss or damage the Customer suffers because the Supplier has exercised its rights under this clause.</p> <p>15.4 If any account remains overdue after thirty (30) days then an amount of the greater of \$20.00 or 10.00% of the amount overdue (up to a maximum of \$200) shall be levied for administration fees which sum shall become immediately due and payable.</p> <p>15.5 Without prejudice to the Supplier's other remedies at law the Supplier shall be entitled to cancel all or any part of any order of the Customer which remains unperformed in addition to and without prejudice to any other remedies the Supplier may have and all amounts owing to the Supplier shall, whether or not due for payment, become immediately payable in the event that:</p> <p>(a) any money payable to the Supplier becomes overdue, or in the Supplier's opinion the Customer will be unable to meet its payments as they fall due; or</p> <p>(b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or</p> <p>(c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.</p> <p>16 Security And Charge</p> <p>16.1 Despite anything to the contrary contained herein or any other rights which the Supplier may have howsoever:</p> <p>(a) where the Customer and/or the Guarantor (if any) is the Supplier of land, realty or any other asset capable of being charged, both the Customer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Supplier or the Supplier's nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Customer and/or the Guarantor acknowledge and agree that the Supplier (or the Supplier's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.</p> <p>(b) should the Supplier elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Customer and/or Guarantor shall indemnify the Supplier from and against all the Supplier's costs and disbursements including legal costs on a solicitor and own client basis.</p> <p>(c) the Customer and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint the Supplier or the Supplier's nominee as the Customer's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 16.1.</p> <p>17 Privacy Act 1988</p> <p>17.1 The Customer and/or the Guarantor/s agree for the Supplier to obtain from a credit reporting agency a credit report containing personal credit information about the Customer and Guarantor/s in relation to credit provided by the Supplier.</p> <p>17.2 The Customer and/or the Guarantor/s agree that the Supplier may exchange information about the Customer and the Guarantor/s with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency for the following purposes:</p> <p>(a) to assess an application by the Customer; and/or</p> <p>(b) to notify other credit providers of a default by the Customer; and/or</p> <p>(c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or</p> <p>(d) to assess the credit worthiness of the Customer and/or Guarantor/s.</p> <p>17.3 The Customer consents to the Supplier being given a consumer credit report to collect overdue payment on commercial credit (Section 18K (1) (b) Privacy Act 1988).</p> <p>17.4 The Customer agrees that personal credit information provided may be used and retained by the Supplier for the following purposes and for other purposes as shall be agreed between the Customer and Supplier or required by law from time to time:</p> <p>(a) the provision of Equipment on hire; and/or</p> <p>(b) marketing of services by the Supplier, its agents or distributors in relation to the Equipment; and/or</p> <p>(c) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to provision of Equipment on hire; and/or</p> <p>(d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Customer; and/or</p> <p>(e) enabling the daily operation of Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the hire of the Equipment.</p> <p>17.5 The Supplier may give information about the Customer to a credit reporting agency for the following purposes:</p> <p>(a) to obtain a consumer credit report about the Customer; and/or</p> <p>(b) allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.</p> <p>18 Photographs</p> <p>18.1 The Customer acknowledges that the Supplier may wish to take photographs of the Equipment whilst it is on hire. These photographs may be used for advertising within the Supplier's brochures or otherwise. The Customer indemnifies claiming for any compensation for this use.</p> <p>19 General</p> <p>19.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.</p> <p>19.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales and are subject to the jurisdiction of the courts of New South Wales.</p> <p>19.3 The Supplier shall be under no liability whatever to the Customer for any indirect loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Supplier of these terms and conditions.</p> <p>19.4 In the event of any breach of this contract by the Supplier the remedies of the Customer shall be limited to damages. Under no circumstances shall the liability of the Supplier exceed the Price.</p> <p>19.5 The Customer shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Customer by the Supplier.</p> <p>19.6 The Supplier may license or sub-contract all or any part of its rights and obligations without the Customer's consent.</p> <p>19.7 The Supplier reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which the Supplier notifies the Customer of such change.</p> <p>19.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.</p> <p>19.9 The failure by the Seller to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Seller's right to subsequently enforce that provision.</p> <p>19.10 We reserve the right at any time to modify these Terms and Conditions to suit the changing business needs. As soon as the changes are posted and visible on the website the amended Terms and Conditions are effective. It is the responsibility of the customers to regularly review the Terms and Conditions outlined on the Website.</p>
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