

Terms and Conditions

1. Definitions

In this Agreement:

- Business owner means JR & PM Hall (partnership) ABN 41 973 530 613 trading as JH Portables and Fencing;
- Customer means the Customer named in the Schedule
- Equipment & Services means all equipment including but not limited to toilets, containers, sheds and temporary fencing supplied to the Customer.
- Business Premises means 151-199 Whitehorse Road, Leopold, Victoria 3224
- Customer's Premises means the location where equipment is to be delivered and remain for the duration of the hire period.

2. Hire

The Customer hires the Equipment from the Business Owner.

The hire period will be 24 hours a day each day commencing from the date of delivery until the date recorded in this form as the date the equipment is to be returned or collected by the Business or such other date is agreed in writing between the parties.

3. Inspection and Warranty

The Customer acknowledges that they have inspected the Equipment.

The Customer is satisfied that the Equipment is in clean condition and in good and substantial order, repair and condition.

The Customer is aware of the proper use for which the Equipment is designed.

The Customer acknowledges that no warranty or condition express or implied is given by the Business Owner as to the condition of the Equipment or as to the suitability or fitness of the Equipment for any purpose.

4. Charges and Terms

The Customer must pay the hire charges, including but not limited to charges for loss, damage and repairs or any tax, GST, duty and other expenses paid by or payable by the Business Owner, at the rate and in the manner specified from the commencement date of the hire until the Equipment is returned to the premises of the Business Owner.

All Equipment must be returned by the Customer in a clean condition, in good and substantial working order and repair as suitable for rehire. If the Equipment is not returned in this condition, then the hire shall continue until the Equipment is restored, compensation being in accordance with Clause 7.

In the event of the Customer requesting the Business Owner to transport the Equipment to or from the Customer's premises the Customer must advise the Business Owner and further pay the Business Owner all charges and expenses it may incur in addition to the hire charges arising from damage of the Equipment or collection from a different location. Hire charges, delivery and collection charges or other charges where applicable are payable on a strictly net cash base unless otherwise specified.

The hiring is personal and exclusive to the Customer on the terms set out in the Purchase Order and the rights of the Customer are not assignable to any other person or persons or Business Owner.

If there is any inconsistency these terms prevail the Purchase Order and the Customer acknowledges that it must at all times remain in possession and control of the Equipment. The Customer must not sub-hire the Equipment on any basis.

Where the Customer changes, alters seeks to amend the delivery requirements, the Customer is liable for all additional costs incurred by the Business Owner.

The Business Owner may charge interest on all amounts not paid by the Customer by the due date at the rate of 12% per annum.

5. Maintenance and Breakdown

The Customer will use the Equipment in a skilful and proper manner and for the purpose for which such Equipment was designed and will comply at their own expense with all notices, directions and legal requirements, including obtaining all necessary permits for operation of the Equipment from all government authorities and regulations in any way relating to the Equipment. The Customer warrants that they are fully aware of the correct procedures for the use of the Equipment and is satisfied that the Equipment is adequate for its intended use and acknowledges receipt of safety instructions for the operation of the Equipment.

The Customer will and agrees to:

- Hire the Equipment at its own risk is responsible at all times from the time the Equipment is delivered into its possession until the Equipment is collected by or returned to the Business Owner.
- Satisfy itself upon delivery and collection or return of the Equipment of its condition, and suitability and fitness for purpose of which the Equipment is required.
- Keep and maintain the Equipment in a clean condition and good substantial working order and repair
- Maintain the Equipment at its own expense, in a skilful and proper manner and supply all oil and grease necessary for service and maintenance
- Supply at its own expense all fuel necessary for the operation of the Equipment
- Give the Business Owner access to the Equipment for inspection at any reasonable time and without the Business Owner giving prior notice in that regard.

In the event of any breakdown or failure of the Equipment the Customer will not have any repairs effected to the Equipment by any person other than an employee of the Business Owner or such person as the Business Owner may nominate.

In the event of a breakdown or failure which in the opinion of the Business Owner is caused by fair wear and tear the Business Owner will at its own expense restore the Equipment to working order as quickly as is reasonably possible.

6. Loss Damage and Cleaning

If upon return of the Equipment it is found not to be in a clean condition and/or not in good and substantial order and repair the Customer must pay the Business Owner the cost and expenses of restoring the Equipment to clean condition and/or good and substantial order and repair

The Customer accepts full responsibility to compensate the Business Owner for the value of the Equipment or any part of it which may become lost or stolen from the time of commencement of the hire until the Equipment is returned to the Business Owner's premises or collected by the Business Owner. The Business Owner will not be responsible for delays in deliveries and pick ups. This right shall not be prejudiced by or prejudice any other right under this agreement.

7. Removal and Returns

Compensation to the Business Owner for Equipment not returned in the condition specified in Clause 3 shall be calculated at

- The replacement cost of such Equipment or
- The cost of labour and material necessary to restore the Equipment to a clean condition and good and substantial repair and working order and repair as suitable for rehire at the election of the Business Owner.

It is expressly understood by the Customer that the onus rests with the Customer to ensure that the Equipment is returned to the Business Owner's premises at the expiration of the hire. The Business Owner will not be responsible for delays in deliveries and pick ups.

8. Access & Repossessions

The Customer grants the Business Owner its employees and agents the right to repossess the Equipment at any time without notice and authorises the Customer its employees and agents the right to enter any premises where the equipment is located for these purposes

9. Early termination

This agreement may be terminated by the Business Owner giving the Customer 24 hours notice.

If the Customer defaults in the observance or performance of any of the above terms and conditions the Business Owner may without notice to the Customer determine the hiring and take possession of the Equipment. For that purpose the Customer hereby authorises the Business Owner its servants and agents to enter upon any premises in the occupation of the Customer to search such premises and remove the Equipment there from.

10. Miscellaneous

The person signing the document for and on behalf of the Customer covenants with the Business Owner that he has the authority of the Customer to make this agreement on the Customer's behalf and is empowered by the Customer to bind the Customer to this agreement. The person signing the document indemnifies the Business Owner against all losses and costs incurred by the Business Owner arising out of the person so signing not in fact having such power or authority.

Termination of the hire period shall not affect any of the conditions of hire.

The Customer in accepting the Equipment and hire terms, acknowledges that it has not relied on in any way representations, skill or judgement made by or on behalf of the Business Owner in relation to the condition, purpose and fitness, performance of the Equipment for the Customers requirements.

Time is of the essence of all obligations in this agreement.

11. Privacy

The customer acknowledges that the Business will be required to collect personal information of consumers who order products including but not limited to name, contact details and credit card payment details. The Business warrants that it will only use the information collected for those purposes of securing the orders for the products.

12. Governing Law

This Agreement is governed by and interpreted in accordance with the laws applicable to the State of Victoria, Australia

13. Security Interest

The parties acknowledge that the acceptance of these terms by the Customer create a security interest in favour of the Business Owner in the Equipment pursuant to *the Personal Property Securities Act 2009 (Cth)*.

The Customer undertakes to immediately do all things to provide information to the Business Owner as may be necessary or desirable to enable the Business Owner to perfect any security interest created or provided by in this agreement. Registration shall perfect the security interest as a first priority.

14. Force Majeure

If the Business Owner is unable at any time to perform any of its obligations whether wholly or partly by reason of any cause beyond its control (including but not limited to acts of God, inclement weather, strikes, lockouts, fires, riots, civil commotion or unrest, interference by civil or military authorities or act of war) the Business Owner may give written notice to that effect to the Customer. The notice should detail the particulars of the force majeure in which case the Business Owner obligations under these Terms, shall to the extent that they are affected by the force majeure, be suspended.

The Business Owner shall not be liable for any loss or damage suffered by the Customer as a result of any delates caused by such force majeure circumstances.

15. Credit Reporting

The Customer authorises the Business Owner to:

- obtain and seek from any credit reporting agency and / or financial institution information about the Customer's commercial credit worthiness pursuant to Section 18K(1)(b) *Privacy Act 1988*.

- to seek and obtain any consumer information regarding the Customers Commercial credit activities.

- give to and obtain from any credit provider that may be named in a credit report issued by an authorised credit reporting agency information about the Customer's credit history, arrangements, credit worthiness, and credit capacity, as defined in Section 18N(1)(b) *Privacy Act 1988*.

- use any credit information for the purposes of this agreement and assist the Customer to avoid defaulting on its payment obligations, notifying credit providers of a default and assessing credit worthiness under Section 18L(4) *Privacy Act 1988*.

16. DAMAGE WAIVER AND INDEMNITY

Unless the Customer provides to the satisfaction of the Business Owner evidence of insurance cover for the equipment while it is in the Customer's possession, the Business Owner will take out damage waiver in respect of the Equipment while it is in the Customer's possession at the Customer's cost. Unless notified to the contrary, the cost of damage waiver is 10% of the hire charges.

The Customer acknowledges that any damage waiver taken out by the Business Owner in respect of the Equipment does not extend to cover any loss or damage resulting from the Customer's failure to comply with the obligations contained in clause 4 of this agreement.

The Customer is liable for any excess and other costs associated with any insurance claim in relation to the Equipment and must meet any shortfall in repair or replacement of the Equipment following payment of any amount received under insurance, including any loss suffered by the Business Owner as a result of not being able to hire the Equipment

The Customer acknowledges that:

- The Equipment is at the sole risk of the Customer. The Business Owner is not liable for any amount or loss the Customer may incur or suffer or that may arise from any cause whatsoever including any fault or other defect in the Equipment and
- the Business Owner will not be responsible for and is released from all liability in respect of any such amounts or losses.

The Customer accepts full responsibility for and indemnifies the Business Owner against all amounts, losses and claims in respect of any injury to persons or damage to property arising out of the use of the Equipment by the Customer and whether from negligence of the Customer or the Business Owner or otherwise and (without limiting the foregoing) whether or not the Equipment was being operated or transported by an employee of the Business Owner or any other person for whose acts the Business Owner might reasonably be or is held to be responsible in connection with the operation of the Equipment.