



## TERMS AND CONDITIONS OF HIRE

### 1.1 GENERAL

The Terms and Conditions of Hire contained herein shall apply to the **exclusion** of all other terms and conditions which may purport to be imposed or

imported into the Agreement by the Hirer in any Purchase Order, Order Confirmation or any other documentation provided by the Hirer, unless such additional terms have been expressly agreed to in writing by the Owner.

### 1.2 DEFINITIONS

“**ACL**” means Australian Consumer Law.

“**Agreement**” means the contractual agreement between the Owner and the Hirer in relation to the hire of Equipment and includes these Terms and Conditions, the Hirer’s Credit Application, any Guarantee, and any variations and alterations to these Terms and Conditions.

“**Amount Owing**” means all amounts owing by the Hirer to the Owner pursuant to this Agreement.

“**Bins**” means the skip bins, caged bins or related products hired to the Hirer pursuant to the Hire Agreement

“**Buildings**” means demountable buildings, site sheds and other related products hired to the Hirer pursuant to this Agreement.

“**Claims**” means any claim for loss, damages, personal injuries, death and expenses (including legal fees on a solicitor and own client basis) arising from any breach or liability.

“**Consumer**” means the definition as defined in section 3 of the Australian Consumer Law (hereafter referred to as “**ACL**”) pursuant to the Competition and Consumer Act 2010.

“**Equipment**” means the Equipment specified in the Hire Contract including, but not limited to, Buildings, Fencing, Bins, panels, concrete bases/blocks and clamps, crowd control barriers, mesh, braces, ground bars, extensions, scrim, gate wheels, shade cloth/weed mats, barb wire, dog proofing, corflute, handrails, event flooring, gates, water barriers, portable toilets, site sheds and other accessories hired to the Hirer.

“**Event Customer**” means a customer who requires Equipment for a fixed short term period for a party, festival or similar event with a pre-determined dismantle and removal date.

“**Fencing**” means all fencing including mesh fencing, hoarding, pool fencing, prestige fencing and other fencing accessories hired to the Hirer pursuant to this Agreement.

“**Hire Term**” means the total term of hire of the Equipment, including both the Initial Hire Period and any Rehire Period, and commences from the date of delivery and installation of the Equipment and ends on either the date the Equipment is collected by the Owner, or such earlier Off Hire Date.

“**Hirer**” means the individual, business, Owner or other legal entity (including any employees or agents) that hires Equipment from the Owner pursuant to this Agreement as described in the signature block at the end of this Agreement and as described on the accompanying Installation Docket. This person or entity is referred to as the Applicant in their Credit Application (if any). The Hirer may be referred to as he, she or it but all of those references mean the Hirer.

“**Initial Hire Period**” means the initial agreed term of hire of the Equipment as requested by the Hirer.

“**Off Hire Code**” means a unique identifier code provided to the Hirer as evidence of the Off Hire Date.

“**Off Hire Date**” is the date on which the Hirer notifies the Owner in writing that the Hirer no longer requires the Equipment and wishes to end the Hire Term on this date.

“**Owner**” means Pink Fence Pty Ltd ACN 148 994 370 as trustee for the Pink Fence Hire Trust ABN 59 520 067 124, the owner of the Equipment and referred to as the Supplier in the Credit Application, if any.

“**Rates**” means the fees and charges payable by the Hirer for the use of the Equipment pursuant to this Agreement, whether as contained in the written quote or otherwise.

“**Rehire Period**” means that part of the Hire Term that automatically commences upon the end of the Initial Hire Period, unless the Hirer notifies the Owner that it wishes to cease its hire of the Equipment at or before the end of the Initial Hire Period.

“**Site**” means the premises provided by the Hirer as the delivery address for the Equipment to be installed, delivered or ex works address supplied.

“**Toilet**” means all portable toilets and related products hired to the Hirer pursuant to the Hire Agreement.

### 1.3 TITLE AND OWNERSHIP

(a) Ownership in and title to the Equipment remains with the Owner at all times and under all circumstances (even if the Hirer goes into liquidation or becomes bankrupt during the Hire Term).

(b) The Equipment shall at all times, be taken to be personal property of the Owner and not fixtures, despite having been connected to an electricity point, gas supply outlet, plumbing connection or another appliance or otherwise affixed to land owned or occupied by the Hirer or a third party.

(c) The Hirer’s right to use the Equipment is as a bailee only.

(d) The Hirer is not entitled to offer, sell, assign, sub-let, charge, mortgage, pledge or create any form of security interest over or otherwise deal in any way with any of the Equipment.

(e) Unless otherwise agreed by the Owner, the Hirer must identify and store the Equipment in a manner that clearly shows that it is the property of the Owner.

### 2.0 HIRE RATES AND PAYMENT

2.1 The Rates for the applicable Hire Term shall be as set out on the quote provided to the Hirer, or if no quote is provided, the applicable Rates shall be set out on the Installation Docket provided to the Hirer at the time of delivery and install of the Equipment.

2.2 The Rates for the use of the Equipment for the Initial Hire Period will be charged upon delivery and installation of the Equipment and will be due and payable by the Hirer in accordance with the agreed payment terms. Additional Rates may apply upon dismantle and removal of the Equipment.

2.3 Payment terms for hire of the Equipment are strictly cash on delivery (COD) unless the Hirer has obtained an approved thirty (30) day credit account with the Owner.

2.4 If the Hirer is a COD customer, the Hirer MUST provide the Owner with the details of a valid credit/debit card (that the Hirer is authorised to use) including the number, name of holder, expiry and security code and valid photo identification, otherwise the Equipment CANNOT be hired.

2.5 By accepting these terms and conditions of hire, the Hirer expressly authorises the Owner to debit from the credit/debit card all fees validly charged by the Owner to the Hirer under this Agreement.

2.6 The authority granted by the Hirer to directly debit the Hirer’s credit/debit card pursuant to this clause shall remain in force until all Equipment is returned to the Owner, all damaged and missing Equipment is accounted for, and all the Rates and other valid charges imposed on the Hirer pursuant to this Agreement are paid. If the Hirer’s credit/debit card details change throughout the Hire Term, the Hirer must notify the Owner of the new details and continues to authorise the Owner to debit any monies from the new credit/debit card. A 2% credit card surcharge may apply.

### 2.7 Event Customers Only

Payment terms for hire of the Equipment for Event Customers only are either:

(a) by the Hirer obtaining a pre-approved 7 day event account, plus director(s) guarantees for corporate customers; **OR**

(b) by payment of 50% of the estimated total hire fees up front prior to commencing any work on site and payment of the remaining 50% of hire fees plus any additional charges incurred strictly within seven (7) days of completion of the event.

2.8 The Hirer may object to any incorrect charges, by notice in writing to the Owner within 48 hours of the date of invoice, or otherwise the Hirer shall be deemed to have accepted the amounts invoiced and charged without further recourse. All invoices will be sent to the last known address (postal and/or email address) nominated by the Hirer and the invoice shall be deemed to be validly received by the Hirer once they arrive at those addresses.

2.9 If the Hirer fails to pay any validly issued invoice within the terms of trade specified on the invoice or this Agreement, then the Hirer’s total account balance shall become immediately due and owing by the Hirer. In such instances, the Owner reserves the right to:

(a) Remove all the Equipment from all of the Owner’s sites and in such event, the Hirer hereby grants the Owner authority to access and enter the Site for this specific purpose; and

(b) Charge a late payment fee for each invoice from the date of default to the date of payment at a rate of 1.5% per month until all amounts owed to the Owner have been paid.

2.10 Once an outstanding account is referred to an external debt collection service provider, the Hirer may be charged additional fees equal to the Owners outlays for fees payable to external debt collectors.

2.11 If the Hirer fails to pay any outstanding debt to the Owner, the Hirer acknowledges and agrees that the Owner may report any outstanding debt owed to a credit reporting agency and this default listing will remain, even if the debt is subsequently paid.

### 3.0 PERIOD OF HIRE

3.1 The Owner agrees to hire the Equipment to the Hirer for its exclusive use for the Hire Term.

3.2 If the Hirer wants to extend the Hire Term beyond the Initial Hire Period, the Hirer must contact the Owner in writing (fax or email) requesting an extension of hire for a fixed period of time, being a minimum of an additional two (2) months (“**Extended Hire Period**”). The Owner shall provide the Hirer with a written quote for the Rates applicable for the Extended Hire Period. The Hirer must accept the Rates quoted for the Extended Hire Period within 48 hours of being sent the quote, otherwise the offer will lapse and the Hire Term will automatically extend into the periodic Rehire Period in accordance with Clause 3.3 below.

3.3 Unless the Hirer notifies the Owner in writing no less than seven (7) days prior to the end of the Initial Hire Period, that it wishes to either:

(a) cease hire of the Equipment at the end of the Initial Hire Period; or

(b) extend the Hire Term for the Extended Hire Period pursuant to Clause 3.2, then the Hire Term shall be automatically extended for the Rehire Period and additional rehire Rates for use of the Equipment in the Rehire Period will be charged.

**3.4** The standard Rehire Period will be for minimum of two (2) weeks for COD customers and a minimum of four (4) weeks for credit account customers (unless otherwise agreed).

**3.5** The Rehire Period will continue indefinitely, until the Hirer notifies the Owner in writing to pick up the Equipment, it is returned by the Hirer to the Owner, or the Owner decides to terminate this Agreement.

**3.6** Rates for the Rehire Period may be different to those charged for the Initial Hire Period and are subject to change by notice to the Hirer.

#### **4A FENCING & RELATED PRODUCTS**

**4.A.1 Wind Region Ratings** - The Rates are based on the region that the Equipment will be supplied and installed to meet the requirements of AS4687-2007 and the Owner's Engineering Specifications for the applicable general wind region as per AS 1170.2-2011. The Owner accepts no responsibility and shall not be liable for any failure or malfunction of the Equipment if the Hirer's site has a different wind rating, unless the Owner is notified in writing of the specific wind rating for the Hirer's site prior to the Equipment being delivered. It is the Hirer's sole responsibility to ensure that their site undergoes a specific wind rating assessment by a qualified engineer (if required) and that the Owner is notified of that wind rating, prior to delivery of the Equipment. In such instances, the Owner reserves the right to amend its quote based on the additional materials and labour to supply and install the Equipment to comply with the specific wind rating of the Hirer's site.

**4.A.2 Signage** - The Owner reserves the right to have its signs placed on a minimum of every third panel for insurance and advertising purposes. These signs are not to be damaged or defaced. The Hirer must not remove or conceal the signs as it must remain evident at all times that the Equipment belongs to the Owner. The Hirer shall be responsible for the costs of cleaning, repairing or replacing lost or damaged signs.

##### **4.A.3 Damage Waiver Fee**

A compulsory non refundable damage waiver fee applies to all fencing products with mesh infill and is charged at 10% of the Rates applicable for the fence (subject to change). The Damage Waiver covers the Hirer for liability for all costs incurred in repairing or replacing mesh infill only.

The Damage Waiver Fee is not charged for the following types of Hirers (who shall remain liable for all damage):

- Event Customers/Event Sites
- Demolition Companies/Demolition Sites
- Mining Companies/Mining Sites
- Approved Hirers

The Hirer shall be liable for all loss and damage to Equipment not covered by the Damage Waiver (including fence panels, frames and bases), in accordance with Clause 5 below.

**4.A.4** Any modification and/or addition to the Equipment by the Hirer must be suitably braced and authorised in writing by the Owner, prior to being attached to any of the Owner's products.

**4.A.5** The Hirer acknowledges that they or their representative have received fencing installation instructions. Upon collection fencing must be in the original installation position and accessible, or appropriate charges will apply.

**4.A.6** Upon completion of the hire, if the Equipment is not returned in good, clean workable order, then the Hirer shall be liable for the costs of cleaning and repairs.

#### **4B TOILETS & RELATED PRODUCTS**

**4.B.1** The Hirer acknowledges that they or their representative have received instructions on the use of the toilet.

**4.B.2** Toilets will be serviced on a fortnightly basis, unless alternate service intervals are required by applicable legislation or specifically requested by the Hirer. The Hirer must ensure the Owner has access to the Equipment for servicing and maintenance at all times. Should the toilet not be accessible for service or additional services are requested, an additional charge will be applicable at a rate determined by the Owner.

**4.B.3** Toilets are to remain in the original installation position at all times. If the toilet is to be repositioned on the site, this shall only be carried out by the Owner at the Hirer's cost. The Equipment is not to be moved by any other person.

**4.B.4** If the toilet is damaged, then the Hirer must notify the Owner immediately and cease usage of the toilet until the Owner has repaired the damage. All toilets must be serviced and emptied prior to being moved, transported or returned.

**4.B.5** Upon completion of hire, if the Equipment is not returned in good, clean workable order, then the Hirer shall be liable for the costs of cleaning and repairs.

**4.B.6** Any toilets knocked over on Site or graffiti, paint splatter or concrete splatter on the toilet will result in an additional cleaning fee payable by Hirer.

#### **4.C TEMPORARY BUILDINGS/SITE SHEDS**

##### **4.C.1 Delivery and Installation**

The Hirer shall ensure the Site is level, clear, defined and accessible prior to delivery. The Hirer shall be responsible for connection of all services to the Building (if required) and for any specific wind tie down requirements for the site. Delivery and collection of the Building may be undertaken by the Owner's agent on their behalf

##### **4.C.2 Liability and Insurance**

**a)** The Hirer is liable for all loss, theft or damage to the Building however caused for the duration of the Hire Period. It is the responsibility of the Hirer to insure the Buildings against loss, theft or damage of any kind for the duration of the Hire Period.

##### **b) Notification of accident or damage**

In the event of any damage occurring to the Building or any accident occurring, in which the Building is involved, the Hirer shall immediately notify the Owner by telephone and in writing (fax or email).

##### **4.C3 Cleaning and Maintenance**

**a)** The Hirer shall at their own expense, keep the same in good and substantial state of cleanliness, repair and condition (except for reasonable wear and tear) throughout the Hire Period.

**b)** At commencement of hire, a Building Condition Report noting the general condition and particulars of existing damage to the Building (i.e. scratches, dents, abrasions, etc.) will be provided placed inside the building.

**c)** It is the Hirer's responsibility to notify the Owner of any discrepancies in the Building Condition Report, within 48 hours of delivery.

##### **4.C5 Relocating Building**

**a)** The Hirer must first obtain the written consent of the Owner for any relocation of any Building. The Hirer shall be responsible for any damage caused to the Building in relocating.

**b)** If the Building is relocated at any time after original delivery, the Hirer shall be responsible for any additional charges incurred in recovery of the Building.

**c)** Subject to obtaining consent, as aforementioned, the Hirer shall, only lift the Building with a suitable spreader bar, and nylon slings, unless the Building is fitted with top lifting facilities. Failure to do so will incur the Hirer to liability for any damage or injury sustained in the removal of the Building.

##### **4.C.6 Cleaning and Resealing Floors**

Buildings are hired out in clean condition and should be returned to the Owner in similar condition. The reasonable cost of cleaning and resurfacing floors (if damaged beyond reasonable wear and tear) incurred by the Owner on the return of the Building is to be paid for by the Hirer. Graffiti removal will be charged separately at an hourly rate.

##### **4.D.1 SKIP BINS**

The Hirer hereby agrees:

**(a)** That the delivery, placement and pickup of the Bins is undertaken by the Owner under the direct orders and control of the Hirer, and the Hirer indemnifies the Owner against any loss, damage or injury as a result of the Owner following those directions, including but not limited to damages caused to any person, property, driveway, pavement kerbing or other surfaces, pipe, pit, cover or underground services.

**(b)** To pay any extra costs, caused to the Owner, as a result of overloading or incorrect loading of the Bin by the Hirer, their agent or other person(s) whilst the Bin is at the Hirer's premises.

**(c)** To pay the Owner for any extra costs incurred as a result of the Owner or Hirer being ordered to remove the Bin by a statutory or other authority prior to the end of the Hire Period.

**(d)** To ensure that any Bin, is adequately covered to avoid material being dislodged, removed or blown out of the Bin and will indemnify the Owner against any loss, damages or costs which may occur or be granted against the Owner as a result.

**(e)** The delivery and placement of the Bin in accordance with the Hirer's verbal or written instructions, at the time of placement or his or her order, will constitute the Hirer's acceptance of this Agreement should the Hirer be absent from the premises at the time of delivery of the Bin and is unavailable to sign the delivery docket.

##### **4.D.2 – Prohibited Items, Weight Limits and Overloading**

**(a)** The following items are NOT to be placed in the Bins: Asbestos, paints, oil/liquids, batteries, car/truck tyres, food and regulated waste are permitted.

**(b)** The Maximum weight limits for each size bin are as follows: 2m-2t, 3m-3t, 4m-4t, 6m-6t, 8m-6t, 10m-6t.

**(c)** Overweight / Overloaded bins will **NOT** be collected or transported and the Hirer will be required to remove the excess load at its own expense prior to being collected.

#### **USE OF EQUIPMENT AND DAMAGED OR MISSING EQUIPMENT**

**5.1** The Hirer shall at all times keep the Equipment in good working order and condition and will not in any way, repair or alter the Equipment without the prior written consent of the Owner. The Equipment must at all times, only be used in a safe, lawful and skilful manner, strictly accordance with its intended use and all applicable laws and regulations.

**5.2** The Hirer further warrants to obtain all permits required to satisfy all legislation including but not limited to planning, environmental, health and safety laws.

**5.3** The Hirer shall be responsible for any and all loss, damage or theft to the Equipment for any reason whatsoever, including liability to pay the costs for the repair or replacement of that Equipment, except damage which in the Owner's sole and absolute discretion, is caused by reasonable wear and tear.

**5.4** Any Equipment which is not able to be safely collected by the Owner from the Site (for example due to site being overgrown with vegetation) or which is not returned by the Hirer to the Owner at the end of the Hire Term, shall be deemed missing. The Owner reserves the right to report all missing Equipment to the police for further investigation.

**5.5** If the Equipment is returned or collected in a condition which in the reasonable opinion of the Owner renders it unusable for hire, or if the Equipment is stolen or missing, the Hirer must pay to the Owner on demand, the full retail cost of replacement or repair of the Equipment as nominated by the Owner.

**5.6** Any missing or damaged Equipment will remain the property of the Owner at all times and under no circumstances will title to the Equipment or any part of it pass to Hirer, notwithstanding payment of the above damaged/missing charges.

**5.7** In the event that missing Equipment is subsequently returned to the Owner, the Hirer will be charged the applicable Rehire Rates for the additional period between the off hire date and the date the Equipment is returned and the charges for the missing Equipment will be reduced and adjusted accordingly.

**5.8** If the Equipment is, or is at risk of, being exposed to hazardous substances then the Hirer must notify the Owner immediately and shall be liable for the costs of decontaminating the Equipment. If the Equipment cannot be decontaminated then the Hirer shall be responsible for the costs of replacing the Equipment.

#### **5.9 Additional Charges**

The Owner reserves the right to charge the Hirer additional labour charges for the following items:

- a. Excessive wait times by the Owner representatives (ie. in excess of 15 minutes) after arriving at Site before being able to commence install or dismantle of the Equipment;
- b. When the Owner is unreasonably prevented by either the Hirer or a third party from attending the Site to install or dismantle the Equipment.

#### **6.0 DELIVERY, INSTALLATION AND REMOVAL**

**6.1** The Equipment is hired to the delivery address advised by the Hirer and is not transferable to any other site or Hirer. The Hirer shall be required to inspect the Equipment as soon as practicable after it is delivered and to immediately notify the Owner (by facsimile or email) of any objection to or defect in the quantity or the type of Equipment supplied within twenty-four (24) hours of the Owner attending the Hirer's site. The Hirer's failure to report any discrepancies in the quantity or type of Equipment supplied or the condition of the Equipment, shall constitute deemed acceptance that the quantity and type and condition of the Equipment has been supplied in accordance with the Owner's Installation Docket and shall be conclusive and irrefutable evidence of the information recorded therein and may be produced by the Owner as evidence in order to enforce its rights under this Agreement.

**6.2** Cancellation of an order will, at the Owner's discretion, be denied if the Owner has taken specific steps to satisfy that specific order.

**6.3** Prior to the installation, it is the responsibility of the Hirer to inform the Owner about the position of any services or obstacles on the site that may hinder the installation process. However, upon the Owner attending the Hirer's site, the Hirer acknowledges that the Owner may need to alter the position of the Equipment not in accordance with the Hirer's instructions if there are any obstacles e.g. pipes or services not previously disclosed, and in such circumstances additional labour charges may apply.

**6.4** If the Hirer requires the installation of additional Equipment after the initial installation, or the removal of some Equipment prior to the expiration of the Hire Term ('part pickup'), then additional charges may apply.

**6.5** If there is any delay in the delivery or removal of Equipment and such a delay is beyond the control of the Owner, additional charges may apply.

**6.6** The Hirer shall not under any circumstances, move, reposition, modify or tamper with (or attempt to do so) the Equipment, unless the Hirer obtain the prior written approval of the Owner. If the Owner's approval is given, the Owner shall in its discretion, either authorise the Hirer to undertake such relocation or modifications or alternatively, the Owner shall arrange to attend the Hirer's site to undertake such relocation or modification to the Equipment at an additional charge payable by the Hirer.

**6.7** All Equipment installed, serviced and dismantled from site may be photographed as proof of action. The Hirer should be aware that these photographs may be used by Owner as evidence in order to enforce the Owner's contractual and legal rights against the Hirer.

**6.8** Should the conditions of the Site deteriorate or adversely change between the date of installation and the date of dismantle of the Equipment, additional charges may apply for the dismantle and removal of the Equipment.

**6.9** If the Hirer wishes to return the Equipment before the end of the Hire Term, the Owner will provide the Hirer with an Off Hire Code and will arrange for the removal at the earliest opportunity. The Hirer will remain liable for the Rates any other charges payable to the Owner for the entire Hire Term as per

this Agreement. The Equipment shall remain the responsibility of the Hirer until it has been removed from site.

**6.10** As soon as practical after the end of the Hire Term, the Hirer shall be notified by the Owner of the day and approximate time for collection of the Equipment. The Hirer shall be required to have a representative on Site to supervise the collection of all Equipment, for the purpose of supervising the stock count and completing the condition report of the Equipment in conjunction with the Owner's representative, prior to its removal from Site.

**6.11** When the Hirer does not provide a representative to supervise and sign-out the Equipment, the Owner shall send a Dismantle Docket to the Hirer confirming the details of the Equipment dismantled and removed from Site.

**6.12** The Hirer shall have 48 hours after being sent a copy of the Dismantle Docket to dispute the information contained therein, otherwise the Hirer shall be deemed to have accepted all counts of the Equipment removed from the Hirer's site, condition reports and other records taken by the Owner (or the Owner's representative) in regard to the quantity, type and condition of the Equipment collected and removed from the Hirer's site as contained in the Dismantle Docket. Such records shall be conclusive and irrefutable evidence of the information recorded therein and may be produced by the Owner as evidence in order to enforce its rights under this Agreement, including issuing an invoice for damaged or missing Equipment (if any) recorded on the Dismantle Docket.

**6.13** If an Off Hire Code is provided to the Hirer, but the Owner is unable to gain access to the Equipment, the date for the off hire will be extended until such date that the Owner can access the Equipment for removal or dismantle. The Hirer will be liable for rehire charges up to that date.

#### **7.0 EXCLUSION OF WARRANTIES**

**7.1** The Owner acknowledges that the Australian Consumer Law and similar legislation provides certain rights for Consumers that cannot be excluded; and in relation to the supply of goods and services, that in some circumstances the Hirer may be a Consumer.

**7.2** Subject to Clause 7.3, the Owner excludes any and all conditions, warranties, terms and consumer guarantees implied by statute, general law or custom (including without limitation the Australian Consumer Law) applicable to any supply of goods (including all Equipment) and services under these Terms and Conditions.

**7.3** The Consumer Guarantees apply to any supply of goods and services where the Hirer is a Consumer, and the liability of the Owner is not limited in accordance with Clause 7.4 below.

**7.4** If the Hirer is a Consumer in relation to the supply of goods and services, and those goods are not of a kind ordinarily acquired for personal, domestic or household use or consumption, then the liability of the Owner in connection with the Consumer Guarantees is limited to one of the following (as selected by the Owner):

In the case of goods: the replacement of the goods or the supply of equivalent goods; the repair of the goods; the payment of the cost of replacing the goods or of acquiring goods equivalent to the goods; or the payment of the cost of having the goods repaired, except where it is not fair and reasonable to limit liability in this way.

In the case of services: the supply of the services again: or the payment of the cost of having the services supplied again.

#### **8.0 LIMITATION OF LIABILITY**

**8.1** Under no circumstances shall the Owner be liable for any loss or damage howsoever caused (including as a result of a breach of contract or negligence of the Owner), including indirect or consequential loss or damage, or any special, punitive or exemplary damages), arising out of, or in connection with the Hirer's possession or use of the Equipment during the Hire Term, including but not limited to, death or personal injury or damages to tangible or intangible property of the Hirer or any third party.

**8.2** The Hirer shall indemnify the Owner against all liability, claims, damage, loss, costs and expenses (including, without limitation, legal fees, costs and disbursements on a full indemnity basis), whether incurred or awarded against the Owner, arising out of or in connection with the Hirer's possession or use of the Equipment during the Hire Term.

**8.3** The indemnity in Clause 8.2 above is a continuing obligation, separate and independent from the other obligations of the parties and survives termination, completion and expiration of the term of hire of the Equipment. It is not necessary for a party to incur an expense or make any payment before enforcing a right of indemnity conferred under this Agreement.

**8.4** The Owner will not be liable to the Hirer for any acts or omissions of any employee or agent or contractor of the Owner where that person is acting under the Hirer's direction or control during the Hire Term relating to the Equipment and the services provided under these Terms & Conditions and the Hirer shall indemnify the Owner against all liability, claims, damages, loss, costs and expenses (including, without limitation, legal fees, costs and disbursements on a full indemnity basis) arising from or incurred in connection with such acts or omissions.

**8.5** Subject to the provisions contained in this clause 8, the Owner will not be responsible for failure or delay in delivery, pickup, installation or removal of the Equipment and will have no liability to the Hirer or any other person for any loss (including any consequential loss) arising out of such failure or delay.

**8.6** Unless otherwise agreed, the Owner does not warrant that the Equipment will not be affected by extreme weather conditions or other factors beyond their control. In the event of extreme weather conditions or an unforeseen event, which causes the Equipment to move from the location it was installed, the Hirer will be charged a reinstallation fee as notified to the Hirer in writing or as published on the Owners website located at [www.pinkfence.com.au](http://www.pinkfence.com.au) from time to time.

#### **9.0 TERMINATION BY THE OWNER**

**9.1** The Owner may terminate this Agreement and repossess the Equipment in any of the following events:

**(a)** If the Hirer shall commit or permit any act or thing whereby the Owner's rights in the Equipment may be prejudiced.

**(b)** If the Hirer should become or be made bankrupt or make arrangement or composition with his creditors, or should an order be made or a resolution for the administration, liquidation or winding up of such Owner.

**(c)** If the Hirer commits any breach of this agreement or fails to pay any monies when monies are due.

**(d)** If a third party makes a claim.

**9.2** On termination, the Owner reserves the right to enter into, or upon any premises where the Equipment may be, without notice and without prejudice to the rights of the Owner:

**(a)** to remove all Equipment belonging to the Owner regardless of payment status; and/or

**(b)** to recover from the Hirer any monies owing under this agreement or for damages for breach.

The Owner is entitled to demand the immediate payment for all outstanding invoices and damages for breach. The Hirer shall indemnify the Owner in respect of all claims, damages or expenses arising from any action taken under this clause. Legal costs will be payable on a solicitor and own client basis.

#### **10.0 PPSA LEGISLATION**

**10.1** This Agreement constitutes a 'Security Agreement' for the purposes of the *Personal Property Securities Act 2009* (Cth) ("*PPSA*") and the Owner's interest in the Equipment constitute a 'security interest' for the purposes of the PPSA. The Owner's security interest in the Equipment secures all amounts owing by the Hirer to the Owner in connection with the hire of the Equipment and all obligations arising under this Agreement.

#### **11.0 VARIATIONS OR WAIVERS**

**11.1** Variations or waivers shall only be effective if written consent is obtained by both parties.

**11.2** A waiver of any provision or breach of this agreement by the Owner must be made by an authorised officer of the Owner in writing. This consent refers to that breach only and does not cover any future breaches of the same, similar or any nature. A waiver of any provision or breach of this agreement by the Hirer must be made by the Hirer's authorised officer in writing.

#### **12.0 SECURITY**

**12.1** The Hirer hereby warrants to sign all necessary documents to secure a registered charge or mortgage or lodge a caveat over their property as security

for payment of overdue fees on demand by the Owner and, should this occur then the Hirer shall be responsible for all costs and charges associated with those transactions.

#### **13.0 NOTICES TO THE OWNER**

**13.1** Any notice required to be given by the Hirer to the Owner pursuant to this Agreement shall be deemed to have been given if sent to either the facsimile number or email address published on the Owner's website at [www.pinkfence.com.au](http://www.pinkfence.com.au) or listed on the Installation Docket, Invoice any other documentation provided by the Owner to the Hirer.

#### **14.0 SEVERABILITY**

**14.1** If any part of this Agreement becomes null and void then that part shall be severed and the remaining parts of the agreement shall continue to operate and bind the parties.

#### **15.0 LAW AND JURISDICTION**

**15.1** This Agreement is governed by the law of Queensland and the Parties submit to the non-exclusive jurisdiction of the courts of Queensland. A Party will not object to that forum for any reason.

#### **16.0 AMENDMENTS**

**16.1** The Owner may amend these Terms & Conditions at any time by notifying the Hirer of the amendments in writing.

**16.2** The amended terms and conditions will apply to any new hire of Equipment after the Hirer is notified of the amendments. This will not affect or alter the validity or enforceability of the Agreement between the Owner and the Hirer in relation to Equipment already on hire.

**16.3** Nothing in this Hire Agreement is intended to exclude, limit, restrict, alter or modify any terms, conditions, warranties or guarantees that cannot be excluded by law. These terms and conditions are incorporated into any quote, invoice, agreement, statement, variation or other written agreement supplied by the Owner to the Hirer. These terms and conditions supersede any other agreements, arrangements or understandings, including any conditions contained in the Hirer's own purchase order or agreement, terms and conditions, applications or correspondence, whether in writing or oral. Any failure by the Owner to enforce any clause of this Agreement will not be construed as a waiver of the owner's rights under this agreement.

#### **17.0 HIRER'S ACCEPTANCE OF THIS AGREEMENT**

##### **17.1 Deemed Acceptance by the Hirer**

If the Hirer places an order with the Owner to hire Equipment (whether by phone, email or providing a purchase order) after having been provided with a written copy of this Agreement (whether by post, fax or email), the Hirer shall be deemed to have agreed to the terms and conditions in this Agreement.

**17.2 Execution:** Any person signing this Agreement on behalf of the Hirer, warrants that they are expressly authorised to sign such an agreement with the Owner on the Hirers behalf thus binding the Hirer, and that if this not the case, then the person signing agrees to indemnify the Owner against all losses as if the signatory were the Hirer.

**17.3 Owner's Reliance:** By the signatory agreeing to this Clause and signing this Agreement and any associated paperwork on behalf of the Hirer, the Owner shall be entitled to rely on the doctrine of implied or ostensible authority to enforce this Contract against the Hirer as the signatory's principal, where the signatory is the apparent or ostensible agent of the principal.