



## 1.0 HIRING AGREEMENT- GENERAL

### 1.1 Definitions

"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).

"ACL" means Australian Consumer Law.

"Amount Owning" means all amounts owing by the Hirer to the Owner pursuant to the agreement.

"Buildings" means site sheds and other related products hired to the Hirer pursuant to the Hire 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, fencing, panels, crowd control barriers, mesh, braces, ground bars, extensions, scrim, gate wheels, shade cloth/weed mat, star pickets, barb wire, dog proofing, corflute, handrails, event flooring, gates, water barriers, portable toilets, site sheds and other accessories hired to the Hirer.

"Fencing" means all fencing including mesh fencing, hoarding, prestige fencing and other fencing accessories hired to the Hirer pursuant to the Hire Agreement.

"Hire Agreement" means the contractual agreement between the Owner and the Hirer in relation to the hire of equipment and includes the Hirer's Credit Application, any Guarantee, any variations and these Terms and Conditions.

"Hire Period" means the term of hire of the equipment as stipulated in the clause. It includes weekends and Public Holidays.

"Hirer" means the individual, business, company or other legal entity (including any employees or agents) that hires equipment from the Owner pursuant to the Hire Agreement. 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.

"PPSA" means the Personal Property Securities Act 2009 (Cth) and regulations.

"Site" means the premises provided by the Hirer as the delivery address for the equipment to be installed, delivered or works address supplied.

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

### 1.2 Acknowledgement

The Hirer acknowledges that he is not relying upon the skill or judgement of, or any representation made by, or on behalf of the Owner, in respect to the equipment or its performances. The Hirer acknowledges that he was under no duress or coercion nor offered any inducement to enter into the Hire Agreement.

## 2.0 TERMS OF TRADE & DEFAULTS

2.1 Payment terms for hire of the equipment are cash on delivery (COD) unless the Hirer has obtained an approved account with the Owner (ABN holders only). If the Hirer is paying COD by cash or cheque, 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 or the equipment CANNOT be hired. By accepting the hire of the equipment pursuant to these terms and conditions, the Hirer expressly authorises the Owner to debit from the credit/debit card all monies due and payable but not paid which relate to the hire of the equipment. The authority granted by the Hirer to directly debit the Hirer's credit/debit card pursuant to this clause shall remain in force from the date of this Agreement until the date this Agreement is terminated or the hire of the equipment is complete. If the Hirer's credit/debit card details change throughout the hire period 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 is applicable.

2.2: Payment terms for hire of the equipment for event customers only are by the Hirer obtaining an approved 7 day event account (including the directors guarantee) with the owner OR by paying 50% up-front costs prior to commencing any work on site and the remaining 50% costs plus any further amounts for any additional stock at the completion of the on site event installation.

2.3 Upon receipt of an invoice, the Hirer must object to any incorrect charges within 24 hours or is deemed to accept the amount charged without further recourse.

2.4 If the Hirer fails to pay the account within the terms of trade specified in this hire agreement, the Owner reserves the right to charge a late payment fee for each invoice from the date of default to the date of payment at a flat rate of \$16.50 including GST per month. The owner reserves the right to change this fee at any time without further notice. Further, interest on the overdue amount will, at the Owner's discretion, be charged at the relevant court's prescribed rate of interest per month until the full amount is paid. Once a matter is referred to a debt collection service the Hirer will be liable for an additional fee of \$165.00 including GST payable on demand.

### 3.0 TERM OF EQUIPMENT HIRE

3.1 The full costs of the original hire period will be charged upon commencement of the hire and will be due and payable as per the account terms in clauses 2.1- 2.4.

3.2 The Hirer agrees and acknowledges that at all times the equipment is and remains the property of the Owner and in all circumstances the Owner retains title to the Equipment (even if the Hirer goes into liquidation or becomes bankrupt during the Hire Period). At no time will the equipment be deemed to be a fixture. During the period of hire, the Hirer shall not sell, lease, pledge, assign, transfer, part with possession of or deal with the equipment in a manner which may affect, directly or indirectly, the Owner's Ownership of the equipment.

3.3 Once the original hire period on this contract has expired it will be deemed to still be on hire and a new rehire account for a minimum of 1 month will be issued until the Hirer notifies the Owner in writing to terminate the contract. Rehire rates are subject to change without notice. The equipment remains the responsibility of the Hirer until removed from site by the Owner.

### 4.0 EQUIPMENT HIRE

4.1 The Hirer warrants that at all times it will use the Owner's equipment properly and in a safe, lawful and skilful manner strictly in accordance with all laws, only for its intended use. The Hirer further warrants to obtain all permits required to satisfy all legislation including but not limited to planning, environmental, health and safety laws. Failure to comply with clause 4.1 will result in additional charges. The Hirer indemnifies the Owner against all claims for loss and damage at all times.

### 4.2 FENCING & RELATED PRODUCTS

4.2A It is a condition of the Owner that the Owner's signs shall be 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.

4.2B Damage Waiver Insurance is chargeable at 10% of the fence hire costs. This covers mesh infill damage only. All other damaged/missing/stolen equipment will incur a charge determined by the Owner and payable by the Hirer.

4.2C 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.

4.2D 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.

4.2E 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.

### 4.3 TOILETS & RELATED PRODUCTS

4.3A The Hirer acknowledges that they or their representative have received instructions on the use of the toilet.

4.3B Toilets will be serviced on a fortnightly basis. 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.

4.3C Cleaning of a toilet that has been knocked down or over turned incurs an additional fee.

4.3D The toilet is 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.

4.3E 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.

4.3F Any graffiti, paint splatter or concrete splatter on the toilet will result in a cleaning fee determined by the Owner.

4.3G 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.

### 4.4 BUILDINGS & RELATED PRODUCTS

4.4A The Hirer shall:

- Ensure a level, clear, defined and accessible site.
- Arrange connection of any applicable services the Hirer requires.
- Obtain all necessary approvals and clearances from Councils and other Statutory Authorities.
- Comply with all relevant Building Laws, Standards and Practices.
- Arrange tie downs as required – note that tie downs incur extra cost.
- Ensure the owner has access to the equipment for servicing and maintenance at all times.

4.4B The Hirer is responsible for all costs associated with the delivery and return of the Equipment.

4.4C 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.

### 5.0 DAMAGE TO EQUIPMENT & 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 Hirer shall be responsible for any loss or damage to the equipment for any reason whatsoever, except damage which is caused by reasonable wear and tear. It is agreed that during the period of hire, the whole or part of the cost or replacement of, or repair to the equipment will be charged to the Hirer at a rate specified by the Owner.

5.2 Any missing or damaged equipment will remain the property of the Owner at all times. Missing equipment will be deemed as stolen property and a police report may be filed by the Owner.

5.3 Once it has been established by the Owner that there is missing/damaged/stolen equipment, an invoice will be issued for the cost of that equipment or the damage. The Owner will reserve the right to charge on going monthly re-hire amounts for the equipment until such time as the missing/damaged equipment invoice has been paid in full. Any

subsequent recovery of the missing/stolen equipment will not mitigate any prior invoice charged for this missing/ stolen equipment.

5.4 If the hire 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.

5.5 Any person or company found with stolen property will be prosecuted.

### 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 equipment must at all times be used in accordance with applicable laws.

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 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 delivery, 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.

6.4 If the Hirer requests the installation of additional equipment (which will incur additional charges) or the removal of some equipment prior to the expiration of the Hire Period, then there will be a further additional charge for the installation or partial pickup.

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 or at the fault of the Hirer, additional charges may, at the Owners sole discretion be calculated for the duration of the delay.

6.6 If the Hirer wishes to reposition the equipment on the site, they must request this variation in writing providing the Owner with details of the intended location and the Owner shall arrange to attend the premises to move the equipment at an additional cost payable by the Hirer.

6.7 It is a condition of the Owner that all equipment installed, serviced and dismantled from site will be photographed as proof of action. The Hirer should be aware that these photographs may be used at the Owners discretion. If the Hirer has any objection to this clause they must notify the Owner in writing within 24 hours. The Hirer's failure to do so shall constitute an acceptance of this usage.

6.8 Should accessibility to the site be more difficult on dismantle of the equipment as opposed to the installation, a labour charge will be applicable at a rate determined solely by the Owner and a separate invoice will be issued.

6.9 If the Hirer wishes to return the equipment before the end of the Hire Period the Owner will provide the Hirer with an Offhire Code and will arrange for the removal at the earliest opportunity. The Hirer will remain liable for all hire amounts and any other charges payable to the Owner for the entire hire period as per the Hire Agreement. The equipment shall remain the responsibility of the Hirer until it has been removed from the site.

6.10 The Hirer shall have a representative attend upon collection of all equipment, whether at the completion of the Hire Period or by termination of the agreement, to supervise the count of the equipment and sign the same out. When the Hirer does not provide a representative to supervise the collection of the equipment the Hirer must accept all counts taken by the Owner.

6.11 If an Off hire Code is provided but the Owner is unable to gain access to the equipment, the date for the Offhire Code will be extended to the date that the Owner can access the equipment for removal or dismantle. The Hirer will be liable for rehire costs up to that date.

### 7.0 STATUTORY LIABILITY

7.1 The Hirer shall inspect the equipment within twenty-four (24) hours of installation/delivery and immediately notify the Owner in writing of any objection to or defect in the equipment. The Hirer's failure to do so shall constitute an acceptance of the equipment "as is" and a deemed acknowledgement that the equipment is in good repair and condition, of an acceptable quality, is fit for the purpose of supply, is safe, is durable, is free from defects and the quantity installed is correct. Upon timely receipt of a notice of legitimate objection or defect, the Owner shall be liable to the Hirer if the Hirer is deemed to be a "Consumer" pursuant to section 3 of the ACL in the Competition and Consumer Act 2010 then the equipment is provided with guarantees that cannot be excluded under the Act. The Owner guarantees that the equipment is of an acceptable quality fit for the purpose of supply.

7.2 In no event shall the Owner be responsible for any loss of, or damage to property, or death, or injury to persons caused by the equipment, arising out of the use thereof during the period of hire and the Hirer shall indemnify the Owner from and against all claims which may be made against the Owner for damages or otherwise, in respect of or arising directly or indirectly out of any loss, damage, death or injury whatsoever caused directly or indirectly by or arising directly or indirectly out of the use of any equipment whilst on hire to the Hirer which indemnity shall extend to and include all costs and expenses incurred by the Owner in investigating and / or defending any such claim with all legal fees to be paid on a solicitor and own client basis.

7.3 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, the Hirer will be charged a fee determined by the Owner to relocate or repair the equipment.

### 8.0 TERMINATION BY THE OWNER

8.1 The Owner may notwithstanding the specified period of hire and notwithstanding any waiver of the same previous default forthwith terminate the agreement and repossess the equipment in any of the following events:

- If the Hirer shall commit or permit any act or thing whereby the Owner's rights in the equipment may be prejudiced.
- If the Hirer shall become or be made bankrupt or make arrangement or composition with his creditors, or in the case of a Hirer being a limited company should an order be made or a resolution for the winding up of such company.
- If the Hirer commits any breach of this agreement or fails to pay any monies when monies are due.
- If a third party makes a claim.

8.2 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:

- to remove all equipment belonging to the Owner regardless of payment status; and/or
- 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.

### 9.0 PERSONAL PROPERTY SECURITY ACT

9.1 For the avoidance of any doubt, the security interest(s) created by this agreement in favour of the Owner constitutes security interests pursuant to the *Personal Property Securities Act 2009*.

### 9.2 Waiver

a. 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.

b. The Hirer waives its rights it would otherwise have under the PPSA. Under section:

- 95 to receive notice of intention to remove an accession;
- 118 to receive notice that the Owner intends to enforce its interest in accordance with land law;
- 121(4) to receive a notice of enforcement action against liquid assets;
- 130 to receive a notice to dispose of goods;
- 132(2) to receive a statement of account following disposal of goods;
- 132(4) to receive a statement of account if no disposal of goods for each 6 month period;
- 135 to receive notice of any proposal of the Owner to retain goods;
- 137(2) to object to any proposal of the Owner to retain or dispose of goods;
- 142 to redeem the goods;
- x) 143 to reinstate the security agreement; and
- (xi) 157(1) and 157(3) to receive a notice of any verification statement.

### 10.0 VARIATIONS OR WAIVERS

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

### 11.0 HIRERS WARRANTIES

11.1 **Execution:** Any person signing any document pertaining to (and including) this Hire Agreement including but not limited to any amendments, variations and additional conditions 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.

11.2 **Security:** The Hirer warrants to sign all necessary documents to secure a registered charge or mortgage or lodge a caveat over their property 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.

### 12.0 DISPUTE RESOLUTION

12.1 If there is any dispute between the parties to the Hire Agreement or the Hirer wishes to make a claim, the Hirer must notify the Owner in writing of the dispute in question or details of the claim within 7 days from the date the dispute or claim arose. Once the 7 days has lapsed the Hirer is precluded from bringing an action or making a claim.

12.2 Within 14 days Representatives of the Hirer and the Owner shall meet at the premises of the Owner in an attempt to resolve the dispute.

### 13.0 SEVERABILITY

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.

### 14.0 LAW AND JURISDICTION

14.1 This Agreement is governed by the law of Queensland and the Parties submit to the exclusive jurisdiction of the courts in Brisbane. A Party will not object to that forum for any reason.

14.2 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, 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.

### 15.0 CHANGES TO TERMS & CONDITIONS

15.1 The Owner may amend these Terms & Conditions at any time by publishing the amendments on the website [www.pinkfence.com.au](http://www.pinkfence.com.au) or otherwise notifying the Hirer.

15.2 The amended Terms & Conditions will apply to any hire of equipment from the time the amendment is published. This will not affect the validity or enforceability of the agreement between the Owner and the Hirer.