

1 Definitions and Interpretation

- 1.1 In these terms and conditions:
- (1) **ATF** means Australian Temporary Fencing Pty Limited ("ATF") ABN 54 060 402 048.
 - (2) **Business hours** are 9.00am to 3.00pm on week days on other than public holidays.
 - (3) **Delivery** of the Equipment is deemed to have occurred when it is collected by the Hirer or transported to a location at the request of the Hirer and **delivered** has a corresponding meaning.
 - (4) **Depot** means from the depot or other location from which the Equipment delivered to the Hirer,
 - (5) **Equipment** means the goods hired by ATF to the Hire subject to these terms and conditions
 - (6) **Hirer** means the person, company or other legal entity hiring the Equipment from ATF. It includes its employees and contractors.
 - (7) **Rates** means the hire rates notified by ATF to the Hirer from time to time.
 - (8) **Return** of the Equipment is deemed to have occurred when:
 - (a) the Equipment is returned to the Depot during Business Hours; and
 - (b) the Hirer is issued with an "off hire" number by ATF, confirming that the Equipment has been returned; and **returned** has a corresponding meaning.
- 1.2 (1) Every provision of these Terms and Conditions is independent of the others. Any provision which is prohibited or unenforceable in any jurisdiction will be deemed removed to the extent of the prohibition or unenforceability without invalidating the remaining provisions.
- (2) This agreement will be governed by the laws of Australia and ATF and the Hirer submits to the jurisdiction of its courts.
 - (3) These Terms and Conditions supersede all previously issued Terms and Conditions.
 - (4) Nothing in these Terms and Conditions restrict or modify any remedy available by law (including under any State or Federal legislation) where that law precludes any restriction or modification being made.
- ## 2 Rates and Rental Period
- 2.1 The rental period starts when the Equipment is delivered and terminates when the Equipment is returned.
- 2.2 (1) During the rental period the Hirer must pay ATF a hire fee calculated in accordance with the Rates.
- (2) The hire fee must be paid in the manner specified on any invoice issued by ATF or otherwise notified to the Hirer from time to time.
- 2.3 (1) Not receiving an invoice will in no way relieve the Hirer of its responsibility for the payment of amounts due. Failure to pay amounts due within seven (7) days of a debt becoming due for payment or such term otherwise agreed to in writing by ATF will be considered a breach of this agreement.
- (2) The Hirer must pay ATF on demand on a full indemnity basis, all costs incurred in recovering any amount owed to ATF by the Hirer.
- 2.4 The Hirer agrees to pay ATF a service charge on all past due balances at the rate of 2.5% per month or part of it.
- 2.5 (1) To secure payment of all monies which may become payable by the Hirer to ATF the Hirer charges in favour of ATF all of the Hirer's estate and interest in any land and in any other assets, whether tangible or intangible, in which the Hirer now has any legal or beneficial interest or in which the Hirer later acquires.
- (2) The Hirer consents to the lodging by ATF of a caveat or caveats which note ATF's interest in that real property.
- ## 3 Delivery, Pick up, Installation and Removal
- 3.1 If the Hirer retains ATF to deliver, pick up, install, or remove the Equipment, ATF will do so as the agent of the Hirer. All hire rates assume collection by the Hirer from the Depot. Delivery and pickup charges are extra and will be quoted upon request.
- 3.2 If ATF is delayed from delivering or removing the Equipment from any location for any reason beyond its reasonable control, it may charge the Hirer additional delivery charges. The additional delivery charges will be calculated for every period of 15 minutes (or part) waiting time at the rate published on ATF's website www.atfservices.com.au from time to time.
- 3.3 The Hirer is liable for all damages or loss (including consequential loss) which may arise as a direct or indirect result of the delivery, pick up, installation or removal of the Equipment by ATF as agent for the Hirer, and whether caused by the Hirer, ATF, or any other person.
- ## 4 Receipt of Equipment
- 4.1 The Hirer must satisfy, (and acknowledges that it has satisfied) itself that,
- (1) it has received the Equipment in good condition in the quantity ordered,
 - (2) it, and any employee or contractor using the Equipment, has been fully instructed in the use of the Equipment and understands its proper use and means of installation and removal, and
 - (3) the Equipment is suitable and fit for the purpose for which the Hirer intends to use it and acknowledges that it does not rely on any actual or implied representation by ATF as to the suitability or fitness of the Equipment for any particular purpose.
- 4.2 The Hirer acknowledges that it is responsible for properly securing the Equipment for the purpose of transportation so as to ensure its safe removal to and from the location where the Equipment will be used by the Hirer.
- ## 5 Use of the Equipment
- 5.1 The Hirer must ensure that the Equipment is only used strictly in accordance with ATF's instructions and any procedures recommended by ATF from time to time.
- 5.2 The Hirer must not, without the prior consent in writing of ATF,
- (1) alter or make additions to the Equipment,
 - (2) deface, remove or conceal any,
 - (a) ATF logo,
 - (b) identifying mark or number on the Equipment or any part of it, or
 - (c) indication of ownership of the Equipment by ATF.

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- 5.3 The Hirer must:
- (1) not deliberately damage, abuse or mistreat or allow Equipment to be deliberately damaged, abused, or mistreated; and
 - (2) use and ensure that the Equipment is used, in a safe manner.
- 5.4 If any damage, loss, theft or destruction of the Equipment occurs, whether the Hirer was responsible or not, the Hirer must,
- (1) immediately notify ATF and provide full details of the damage, loss theft or destruction,
 - (2) if demanded by ATF, pay ATF the cost of replacement or repair of Equipment in accordance with ATF- Damaged & Lost Equipment Rate as outlined on ATF's website www.atfservices.com.au
- 5.5 The Hirer must use the Equipment at all times strictly in accordance with,
- (1) all applicable laws, and
 - (2) any relevant industry usage custom and standards for goods similar to the Equipment.
- 5.6 The Hirer must obtain and maintain, at its own expense, any permit or license that may be required under any law or by any statutory or other authority for the use of the Equipment, including its installation or removal. Without limiting the Hirer's obligations under this clause, the Hirer must obtain any permit required under any relevant planning or health and safety legislation.
- ## 6 Return of Materials and Damage Waiver
- 6.1 At the expiration or sooner termination of the hire period or if demanded by ATF, the Hirer must return the Equipment to the Depot or other location nominated by ATF, during business hours.
- 6.2 If the Hirer does not return the Equipment or returns it in a condition which in the reasonable opinion of ATF renders it unusable for hire, the Hirer must pay ATF on demand the cost of replacement or repair of the Equipment calculated in accordance with ATF- Damaged & Lost Equipment Rate as published on ATF's website, www.atfservices.com.au from time to time. In no circumstances will title to the Equipment or any part of it pass to the Hirer.
- 6.3 In addition to any other obligation the Hirer may have to ATF, the Hirer will be liable for all losses including consequential losses, incurred by ATF arising out of the Equipment not being Returned within business hours. This clause in no way limits any liability the Hirer has to ATF.
- 6.4 (1) Where a waiver charge has been charged to the Hirer ATF agrees to waive its rights to claim for loss or damage to the Equipment caused by theft, burglary, fire, storm, accident or collision if:
- (a) ATF is provided with a police report confirming the circumstances of the Loss and;
 - (b) the Hirer has taken adequate precautions to safeguard the Equipment;
- subject to the Hirer paying an excess being \$500 for accidental loss and \$1000 for accidental damage.
- (2) Expressly excluded from this waiver is loss or damage caused by:
- (a) loss or damage due to misuse, abuse, or use of the Equipment in contravention of the Terms and Conditions of hire;
 - (b) loss or damage to items on which the waiver premium is not charged or where it has been charged but not paid;
 - (c) theft of the Equipment unless reasonably secured, mysterious disappearance or wrongful conversion of the Equipment;
 - (d) loss or damage during transport except where transported by ATF; and
 - (e) incidental costs associated with transport and labour for replacement materials to make good if required.

7 ATF's Rights

- 7.1 ATF may terminate all hire agreements and recover the Equipment at any time without notice to the Hirer.
- 7.2 ATF may enter any premises where the Equipment or any part of it is, or believed to be located for the purpose of,
- (1) inspecting or testing the Equipment,
 - (2) protecting ATF's rights or interest in the Equipment,
 - (3) ensuring compliance with any law, including any law relating to health and safety,
 - (4) exercising its right to take possession or control of the Equipment.
- 7.3 Nothing in this clause 7 limits any rights ATF may have:
- (1) in respect of the Equipment;
 - (2) against the Hirer; or
 - (3) against any other person, at any time.

8 Disclaimer of Warranties

- 8.1 ATF makes no warranties, expressed or implied, as to the fitness of the Equipment for any particular purpose. ATF is not responsible to the Hirer or to any other person for any loss (including consequential loss), damage, or injury, caused by, resulting from or in any way connected with, the Equipment, or any defect in it.
- 8.2 ATF will not be responsible for failure or delay in delivery, pick up, installation or removal due to any causes beyond its reasonable control 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.

9 Liability and Indemnity

- 9.1 The Hirer is liable for all damages or loss (including consequential loss) whether caused by the Hirer or any other third party, arising directly or indirectly out of the use of the Equipment by or on behalf of the Hirer.
- 9.2 The Hirer releases ATF from all liability for any loss or damage it may suffer or arising out of the use, construction, storage, maintenance or transportation of the Equipment, however caused.
- 9.3 The Hirer agrees to indemnify and keep indemnified ATF and ATF's employees, agents and contractors from all damages suits actions claims and demands which they may suffer or incur arising either directly or indirectly arising out of the use, maintenance, transport, installation or operation of the Equipment by the Hirer or any person authorised by it to use the Equipment.

- 9.4 The Hirer must not do or allow to be done any act matter or thing which may invalidate or prejudice any,
- (1) insurance policy effected by ATF,
 - (2) claim made by or against ATF, or
 - (3) right ATF may have against any person, arising directly or indirectly out of the use or possession of the Equipment by the Hirer.
- ## 10 Title & Security
- 10.1 Title to the Equipment remains with ATF at all times. The Hirer must not grant or allow to subsist any security interest over the Equipment, or allow ATF's title to be adversely affected in any way.
- 10.2 The Hirer must not make any representation or do any thing that may tend to induce any person to believe the Equipment is not the property of ATF. If possession of the Equipment is taken by any third party for any reason, the Hirer authorises ATF to take any action it deems necessary to protect its rights in the Equipment, at the cost of the Hirer.
- ## 11 Subletting and Location
- 11.1 The Hirer must expressly inform ATF of the location of the Equipment during the rental period.
- 11.2 The Hirer must not:
- (1) part with possession of the Equipment;
 - (2) permit removal of the Equipment from the location at which the Hirer represented it would be located; without the prior written consent of ATF.
- 11.3 The Hirer must store the Equipment in a safe place, and do all other things necessary to ensure the continued safety and preservation of the Equipment.
- ## 12 Hirer's Warranties
- 12.1 Any person signing any document on behalf of the Hirer in respect of the hire of the Equipment,
- (1) warrants that they have the authority of the Hirer to contract with ATF on the Hirer's behalf,
 - (2) warrants that they have been authorised by the Hirer to bind the Hirer to hire the Equipment under these terms and conditions, and
 - (3) agrees to indemnify ATF against all losses, costs and claims incurred by ATF if that person or persons do not have that authority.
- 12.2 If there is any variation to
- (1) any of the information supplied by the Hirer to ATF including in any account application, or
 - (2) in the legal structure or management of the Hirer, including (but not limited to) change in directors or senior management or change in partnership or conversion to or from a company or to or from a trust,
- the Hirer must notify ATF in writing within 7 days providing details of that change.
- 12.3 Unless notice of variation or change is given and confirmed in writing by ATF that such information has been received and the changes have been agreed by ATF the original Hirer and guarantors on the account application will remain liable to ATF as though any goods or services supplied by ATF were supplied to the original Hirer.
- ## 13 Changes to Terms and Conditions
- 13.1 ATF may amend these Terms and Conditions at any time by publishing the amendments on its website www.atfservices.com.au or otherwise notifying the Hirer.
- 13.2 The amended terms and conditions will apply to any hire of Equipment from the time the amendments are published on ATF's website www.atfservices.com.au or otherwise notified to the Hirer. Any such amendment will not affect the validity or enforceability of the agreement between ATF and the Hirer in any way.
- ## 14 Default
- 14.1 If the Hirer in any way fails to perform, observe or keep any provision of this Agreement, ATF may at its discretion do all or any of the following:
- (1) terminate the hire agreement;
 - (2) declare the entire hire fee immediately due and payable and to commence legal action therefore;
 - (3) retake possession of the Equipment, holding the Hirer fully liable for all hire fee; and
 - (4) pursue any other remedies available to ATF.
- ## 15 General
- 15.1 Any failure of ATF to insist upon strict performance by the Hirer of the conditions and terms of this agreement will not be construed as a waiver of ATF's right to demand strict compliance.
- ## 16 Collection, Storage and Use of Information
- 16.1 (1) The Hirer authorises ATF to collect, store and use information about the Hirer for the purposes related to the provision of services (including whether to allow credit on the Hirer's account) reporting information to any credit agency, marketing ATF's goods and services and enforcing any rights under these terms and conditions and any other terms or conditions relating to the provision of goods and/or services from ATF to the Hirer.
- (2) The Hirer expressly consents to receiving commercial electronic messages from ATF and its agents for the purposes of the Spam Act 2003. The Hirer may withdraw its consent at any time by notifying ATF in writing.
- 16.2 Where personal information is collected, stored or used by ATF, it will be dealt with in accordance with the Privacy Act 1988. In particular, any individual may access personal information held about them (subject to the permissible limitations contained in the Privacy Act 1988), and may request correction of that personal information. Further information about the handling of personal information including requests for access to personal information may be obtained from ATF's Privacy Officer.
- 16.3 ATF and its agents will comply with the Privacy Act 1988 and the National 10 Information Privacy Principles. A copy of ATF's Privacy statement can be obtained by visiting ATF's website www.atfservices.com.au