

ALL FENCE U RENT PTY LTD – TERMS AND CONDITIONS OF HIRE

THIS AGREEMENT IS MADE BETWEEN

All Fence U Rent Pty Ltd of 80 Collingwood St, Osborne Park Western Australia (ABN 40 129 017 992) (“the Owner”) **AND** the entity set out in the Quote under the heading “Customer” (“the Hirer”).

1 CONTRACT

- 1.1 In consideration of payment of the Rates, the Owner shall supply to the Hirer the Equipment in accordance with the terms and conditions herein (‘Terms and Conditions’).
- 1.2 The Contract consists of the Quote, these Terms and Conditions and the Credit Application. In the event of any inconsistency, the Quote prevails.
- 1.3 The Quote is an offer from the Hirer to the Owner and is not binding on the Owner until formally signed by the Owner after which, the Hirer is deemed to agree to hire the Equipment from the Owner and the Owner agrees to make available the Equipment to the Hirer on the terms and conditions herein.
- 1.4 If the Rates are paid by the Hirer in full or in part, the Hirer is deemed to have accepted the terms of the Contract.
- 1.5 If the Equipment is Delivered to the Hirer, then the Owner and Hirer are deemed to have accepted these Terms and Conditions and the Contract is binding on all parties.
- 1.6 The Equipment shall at all times remain the property of the Owner and no person shall be entitled to use, dispose of or otherwise deal with the Equipment in any way which is inconsistent with the Owners rights set out in the Contract. The Hirer has no legal or equitable interest in the Equipment or any part thereof. The relationship between the Owner and the Hirer is limited to a relationship of owner and bailee in respect of the Equipment.
- 1.7 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.

2 PAYMENT OF FEES

- 2.1 The Hirer shall pay the Owner the Rates and other charges for the Period of Hire set out in the Quote, or if not specified then upon Delivery of the Equipment into the Hirer’s possession until return of the Equipment into the Owner’s possession.
- 2.2 Where Delivery of the Equipment or any part thereof is delayed at the Hirer’s request, the Owner is entitled to hire charges from original Delivery in respect of all the Equipment notwithstanding any partial or delayed Delivery.

- 2.3 Unless otherwise agreed, when Equipment is to be delivered to the Hirer, the hire charges will commence from the time the Equipment arrives at the Site. When Equipment is to be collected by the Hirer from the Owner’s Yard, the hire will commence from the time the Equipment leaves the Owner’s Yard.
- 2.4 Should the Hirer default in making the payment of any monies due to the Owner then the Owner shall be entitled to charge interest on all outstanding monies at a rate up to but not exceeding 10% per annum calculated daily from the due date for payment until the date the Owner receives payment.
- 2.5 If the Hirer retains possession of the Equipment after the end date of the Period of Hire specified in the Quote, the Owner is entitled to Re-Hire charges for further rental periods at a rate of \$3.30 per meter, per month or part month, subject to a discretionary minimum rehire charge of \$50.00. The Hirer will pay the further charges upon receipt of an invoice from the Owner unless credit terms are agreed and approved prior.
- 2.6 If the Hirer has paid the Owner for the Period of Hire and the Equipment is returned before the expiry of the Period of Hire, the Hirer is not entitled to a refund or part refund of the Contract Price.
- 2.7 The Hirer will pay an Administration Fee of \$50.00 on all invoices relating to additional Equipment, re-hire charges, damage or replacement or Equipment where an automatic debit or Credit system has not been established.

3. DELIVERY, INSTALLATION OR REMOVAL (‘LABOUR SERVICES’) AND RISK

- 3.1 The Hirer shall pay the below Rates to the Owner, unless specified otherwise in the Quote;
 - (a) Standard Delivery charge in the Perth metro area: \$250.00.
 - (b) Extra Site visit charge: \$250.00.
 - (c) Labour Services: \$120.00 per man per hour.
- 3.2 The Owner shall use its best endeavours to provide the Labour Services on the requested date for Delivery, installation or removal, but shall not be liable for any failure to do so.
- 3.3 Delivery shall be deemed to occur:
 - (a) If the Quote specifies delivery at the Owner’s Yard, when the Equipment is made available for loading onto the Hirer’s transportation; or
 - (b) If the Quote specifies delivery at the Site, when the Equipment is unloaded from the Owner’s transportation at the Hirer’s Site.

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- 3.4 Delivery on return shall be deemed to occur:
- (a) If the Quote specifies return to the Owner's Yard, when the Equipment is unloaded from the Hirer's transportation; or
 - (b) If the Quote specifies return at Hirer's Site, when the Equipment is loaded onto the Owner's transportation.
- 3.5 If the Quote specifies Delivery, installation or removal at the Site:
- (a) The Owner shall organise transport and the Hirer shall pay the Transportation Fee;
 - (b) The Hirer shall ensure that the Site is safe, dry, firm, stable and suitable for unloading and loading the Equipment.
 - (c) The Hirer acknowledges that the Owner may rely on contractors to deliver the Equipment and the Owner is not liable for any delay in delivering the Equipment where such delay is due to the failure or breach of a contractor.
- 3.6 If the Quote specifies Delivery from the Owner's Yard then the Hirer shall organise freight of the Equipment at the Hirer's cost.
- 3.7 The Hirer shall have a representative attend Delivery on return of the equipment to supervise the count of the Equipment and sign them out. When the Hirer does not provide a representative to supervise the count of Equipment then the Hirer is deemed to accept all counts taken by the Owner.
- 3.8 The Equipment is at the Owner's risk until Delivery to the Hirer and at the Hirer's risk until Delivery on return to the Owner. While the Equipment is at the Hirer's risk, the Hirer is liable for all accidental damage to the Equipment, and all loss or damage to the Equipment occasioned by theft, malicious damage, or other unlawful act, except to the extent caused by the Owner. The Hirer shall take out and maintain insurance for the Hirer's risk in the Equipment for the full insurable value of the Equipment.
- 3.9 Unless already specified in the Quote, additional charges shall apply where: (a) The Labour Services are required outside of the Owner's normal business hours being 6:30am to 3:00pm Monday to Friday; (b) The Site is outside of the Perth metro area; (c) The Labour Services are hindered or slowed due to Site access or Equipment installation difficulties or issues; and (d) The
- Owner is delayed or prevented from providing the Labour Services for any reason beyond its reasonable control
- 3.10 Unless specified otherwise, the Labour Services are quoted on the basis of the Owner providing 2 men to install or remove the Equipment at a minimum rate of 100m per hour. The Hirer will pay for any additional time required pursuant to clauses 3.9(c) and (d).
- 3.11 The Owner's liability for Labour Services are set out in clause 5. In providing the Labour Services, the Owner will make every reasonable effort to ensure the correct installation of the Equipment but the Hirer acknowledges that the Owner is not liable for any damage caused by the Equipment.
- 4 EQUIPMENT CONDITION, MAINTENANCE, DAMAGE**
- 4.1 Within 24 hours of Delivery, the Hirer shall inspect the Equipment to determine whether the Equipment is complete, in accordance with the Contract and is in good order and working condition. If not, the Hirer shall notify the Owner in writing immediately, otherwise on completion of the inspection the Equipment is deemed to be suitable, fit for purpose, safe, in good order and working condition capable of meeting all the requirements of the Hirer. The Hirer's failure to do so shall constitute an acceptance of the Equipment 'as is' and deemed acknowledgement that the Equipment is in good repair and condition, is safe, fit for purpose and usable.
- 4.2 From the time of Delivery of the Equipment, at the Hirer's cost, the Hirer shall at all times during the Period of Hire:
- (a) Exercise all necessary care and diligence in the use and installation of the Equipment;
 - (b) Maintain the Equipment in accordance the directions of the Owner;
 - (c) Notify the Owner immediately of any significant defect, damage or theft to the Equipment.
 - (d) Keep the Equipment safe;
 - (e) Not remove or deface any label, manufacturer's serial numbers or other identification marks identifying the Equipment or the Owner's ownership of the Equipment, or in any manner interfere with the Equipment;
 - (f) Not modify the Equipment in any way, including the addition of shade cloth, hessian, weed mats or the like unless expressly authorised by the Owner in writing.

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- (g) Not permit any person to improperly use the Equipment;
 - (h) Not part with possession of the Equipment or in any way deal with the Equipment in a manner inconsistent with the rights of the Owner as owner; and
 - (i) Deliver the Equipment on return to the Owner clean and in good order and working condition.
 - 4.3 If the Equipment or any part of the Equipment is lost, stolen, damaged, or destroyed, the Hirer shall immediately notify the Owner, in writing, and the Hirer shall be liable for the cost and expenses of the repair or replacement of lost, damaged or stolen Equipment, or at the Owner's discretion for the replacement of Equipment which is damaged beyond repair and for the costs and expenses of repairing or re-instating damaged Equipment. The Hirer acknowledges that any payment to the Owner for loss, theft or damage to the Equipment is not consideration for the purchase of the Equipment. In the event that the Equipment is later found or retrieved after payment has been made, the Owner retains full ownership in the Equipment and the Hirer has no legal or equitable interest in the Equipment or any part thereof.
 - 4.4 The Hirer acknowledges that the Hirer shall be liable for any insurance excess, expenses or costs incurred by the Owner as a result of any loss, theft, damage or destruction of the Equipment.
 - 4.5 Subject to the Damage Waiver (if applicable), all costs and expenses of any damage or loss of Equipment shall be borne by the Hirer. The amount payable by the Hirer to the Owner for damage or loss of the Equipment shall include, with limitation, hire charges for the time until the Equipment is repaired or replaced and in the case of replacement not less than the rates specified on the Owner's website at www.allfenceurent.com.au Damage Waiver
 - 4.6 The Hirer may pay a Damage Waiver to the Owner for damage and loss arising from ordinary wear and tear and accidental damage only.
 - 4.7 If the Damage Waiver has been paid by the Hirer prior to any damage or loss of Equipment occurring the Damage Waiver is accepted by the Owner in full and final satisfaction for all liability, loss or damage caused to the Equipment or the Owner arising from incidents of wear and tear or accidental damage only, subject to:
 - (a) The Hirer paying an \$1,000 excess to the Owner per damage event; and
 - (b) The Hirer has used the Equipment in accordance with the Contract; and
 - (c) The Hirer is not in breach of any other terms of the Contract.
 - 4.8 The Hirer shall Deliver back the Equipment to the Owner in a clean condition and consistent with its obligations under this Contract. If the Equipment is not Delivered back to the Owner in a clean condition, the Hirer shall pay a cleaning fee of \$90 per hour.
 - 4.9 The Owner is not responsible for the repair, re-installation, resetting of the Equipment caused by severe weather or high winds. If the Hirer requests the repair, re-installation or resetting of the Equipment, additional charges shall be payable by the Hirer pursuant to these Terms and Conditions.
- ### 5 WARRANTIES AND EXCLUSIONS
- 5.1 The Owner shall not be liable for loss, claim, damage or expense, including without limitation any consequential, indirect or other loss or damage, loss of profit, breach of the Contract, or breach of any other law. The Owner's liability for any negligence, breach of the Contract, or breach of any other law, is limited to the repair or replacement of the Equipment or an amount equivalent to twice the Equipment hire Rates, whichever is the greater.
 - 5.2 Except as stated in the Contract, the Owner does not warrant that the Equipment or Labour Services are fit for any purpose made known by the Hirer or any purpose, and all other rights or warranties implied by statute, at law or in equity are excluded, but where the Hirer is entitled to a statutory right (including under the ACL) that may not be excluded but may be limited, then the Owner's liability is limited to the cost of providing such Equipment again, the cost of obtaining equivalent Equipment to provide, or the cost of repairing the Equipment, or supplying the Labour Services again, at the Owner's discretion provided that in all such cases freight costs and costs of re-supply shall be borne by the Hirer.
 - 5.3 Without limiting clauses 5.1 and 5.2, the Owner is not liable for any representation, warranty, condition or term whether express or implied or written or verbal unless it is specified in the Contract.
 - 5.4 The Owner is not liable to the Hirer for any loss or damage which the Hirer might incur because the Hirer orders the wrong Equipment or where the Equipment is hired for a purpose which is outside of the Equipment's specifications.
 - 5.5 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

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directly or indirectly out of the use of Equipment whilst in the possession of the Hirer, which indemnity shall extend to include all costs and expenses incurred by the Owner in investigating and/or defending any such claim

6 TERMINATION BY OWNER

- 6.1 The Owner notwithstanding the specified Period of Hire and notwithstanding any waiver of the same may forthwith terminate the Contract and repossess the Equipment in any of following events:
- (a) If the Hirer shall do 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 enter into voluntary administration, liquidation or may any arrangement or composition with its creditors, or in the case of a Hirer being a company an order being made or a resolution passed for the winding up of the company; and
 - (c) If the Hirer commits any breach of this agreement or fail to pay any monies when monies are due.
- 6.2 Upon termination, the Owner may enter the Site or any premises where the Owner believes the Equipment to be stored or located, to retake possession without previous notice to the Hirer or any other person including any Liquidator or Administrator, and the Hirer, Liquidator or Administrator shall not make any claim or bring any action against the Owner as a result of the re-possession of the Equipment. This right is in addition to and without limitation of any of the Owner's other rights either under this Contract or at law.
- 6.3 The Hirer shall indemnify the Owner and keep the Owner indemnified against any loss, liability, expense or cost which is incurred by the Owner in entering upon the premises or Site and taking possession of the Equipment or any item thereof. Such indemnity covers any liability to any third party for trespass or for damage to the premises occasioned through the entry upon the premises, the re-possession of the Equipment or the removal of the Equipment from the premises

7 CREDIT APPLICATION

- 7.1 Upon the Hirer signing the Owner's Credit Application, the Hirer makes a credit application to the Owner for the extension of credit terms by the Owner to enable the Hirer to hire the Equipment or be provided the Labour Services from the Owner

and the Hirer agrees to be bound by these Terms and Conditions.

- 7.2 The Owner may accept or deny the Hirer's credit application, and amend or withdraw any grant of credit at any time in the Owner's absolute discretion and shall not be liable to the Hirer for any loss, damage, cost or claim arising out of any withdrawal of credit, or variation of terms by the Owner.
- 7.3 The Hirer agrees to pay all accounts, Rates and other charges as advised by the Owner at the time of approval of the credit application ('Approved Trading Terms'), or varied from time to time and grants the Owner permission to charge any credit card provided by the Hirer to the Owner for any amounts payable under this Contract.
- 7.4 If the Hirer fails to pay all accounts in accordance with the Approved Trading Terms, then the Owner may take any of the following action:
- (a) Withdraw any and all credit facilities operated by the Hirer;
 - (b) Remove all Equipment from any Site without notice; and
 - (c) Cancel or suspend the provision of any of the Labour Services.
- 7.5 The Hirer warrants to the Owner that:
- (a) It is able to pay all debts as and when they become due and payable;
 - (b) There are no current or threatened actions against the Hirer for non-payment of debt or the imposition of any bankruptcy or liquidation proceedings.
- 7.6 Where the Hirer is applying for credit as a trustee of a trust, the trustee warrants that:
- (a) It is currently and validly appointed in that capacity as trustee;
 - (b) It has a right of indemnity against the assets of the trust; and
 - (c) It has the authority to enter into this Contract.
- 7.6 If the Owner considers it relevant to assess an application by the Hirer for commercial credit, the Hirer consents to the Owner obtaining from a credit reporting agency a credit report containing information about the Hirer's personal credit worthiness and activities
- 7.7 The Owner may obtain a consumer credit report about the Hirer from a credit reporting agency for the purpose of collecting overdue payments relating to commercial credit owed.
- 7.8 The Owner may give to and seek from any credit providers as the Owner may choose information about the Hirer's credit arrangements including any information about the Hirer's credit worthiness and

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activities, that credit providers are allowed to exchange under the Privacy Act 1988.

7.9 The Hirer acknowledges the information obtained in the credit application may be used for the following purposes:

- (a) To assess an application by the Hirer for credit;
- (b) The fact that the Hirer has applied for credit and the amount;
- (c) To pay any outstanding amount owing under this Contract;
- (d) To exchange information with other credit providers as to the status of this credit facility where I am/we are in default with other credit providers; and
- (e) To assess the Hirer's creditworthiness.

8 PPSA

8.1 The Hirer acknowledges that under the Personal Property Securities Act 2009 (Cth) (PPSA) clause 8 of these Terms and Conditions of Hire creates a security interest in the Equipment that is registrable under the PPSA and that the Owner intend to register its security interest on the Personal Property Security Register. The Owner may exercise its rights under the PPSA.

8.2 This Contract is a security agreement for the purposes of the PPSA.

8.3 The Hirer consents to the Owner doing such things as required by the Owner and as required by the PPSA, for the purpose of the Owner registering its security interest in the Equipment on the Personal Property Securities Register.

8.4 The Hirer shall do such further acts and things and sign such further documents as are reasonably necessary to register the Owner's security interest in the Equipment under the PPSA, and the Hirer appoints the Owner as its attorney to sign such further documents as may be so required.

8.5 The parties agree to exclude the operation of ss. 95, 121(4), 130, 132(3)(d), 132(4), 135 and 143 of the PPSA. The Hirer waives its right under s.157 of the PPSA to receive notice of any verification of any registration.

8.6 Words and phrases defined in the PPSA have the same meaning in these Terms and Conditions.

9 FORCE MAJEURE

The Owner is not liable to the Hirer for default or delay in performing its obligations under the Contract caused by any event which could not be avoided by the taking of reasonable precautions including, without limitation, bad weather, fire, strike, industrial

disturbance, riot, war, act of God and governmental order or regulation (whether known to the party at the time of Contract or not), PROVIDED THAT the Owner gives written notice thereof to the Hirer within seven (7) days of the Owner becoming aware of the commencement of that occurrence. The obligations of The Owner are suspended for the period that the Force Majeure event prevents the performance of its obligations under the Contract. If the Force Majeure event continues for more than three (3) months then the Contract comes to an end, then unless otherwise agreed prior to the expiry of the three (3) month period, both parties are relieved from further performance and the Hirer is only obliged to pay for the Equipment which has been delivered.

10. TEMPORARY SWIMMING POOL FENCING

10.1 Where the Equipment is temporary swimming pool fencing:

- (a) If the Hirer requires the Owner to install the Equipment, then the Hirer warrants that the site installation is clear, level and free from obstructions;
- (b) Provided that clause (a) is satisfied, the Owner warrants that the Equipment, at the time of installation, complies with A.S. 1926.1-2007.
- (c) The Hirer acknowledges that any movement, alteration or change in the installation, layout or placement of the Equipment by the Hirer or any of the Hirer's contractors, agents, employees, invitees or by any other person or means whatsoever is at the Hirer's risk and may result in the Equipment not complying with A.S. 1926.1-2007.
- (d) It is the Hirer's responsibility to regularly inspect the Equipment and repair or attend to any movement, alteration or change to the installation, layout or placement of the Equipment.

11 GOODS & SERVICES TAX

11.1 But for this clause 11, all prices and amounts expressed or described in these Terms and Conditions, by the Owner in the Quote, verbally or in writing are exclusive of GST.

11.2 The price for the supply of the Equipment and Labour Services and any other things by the Owner to the Hirer is increased by the amount of the GST liability that the Owner incurs in making the supply and that amount is payable at the same time as the consideration that is payable in respect of that supply before that increase.

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11.3 The Owner will provide the Hirer with a tax invoice at the time the Equipment is delivered under the Contract, or on request.

12 APPLICABLE LAW

This Contract is governed by the law of Western Australia. The parties agree to submit to the non-exclusive jurisdiction of the courts of Western Australia.

13 DEFINITIONS AND INTERPRETATION

“**ACL**” means Schedule 2 of Competition and Consumer Act 2010 (Cth) as applied under Subdivision A of Division 2 of Part XI of that Act.

“**Credit Application**” means the Owner’s Credit Application form.

“**Delivery**” and any variations of this word, is defined in clause 3.

“**Equipment**” means the product or equipment or goods provided by the Owner to the Hirer

“**GST**” means Goods and Services Tax as defined in A New Tax Act (Goods and Services) 1999 (Cth).

“**Owner’s Yard**” means the Owner’s yard or storage facility where the Equipment is available for collection by the Hirer.

“**Period of Hire**” is from the date of Delivery by Owner to the specified date of return to the Owner and where the Hirer fails to return the Equipment then the date of return is extended as set out in clause 2.

“**Site**” means the designated place, venue, or location where the Equipment is to be installed.

“**Labour Services**” means the provision of persons to deliver, install and remove the Equipment.

“**Rates**” means the monetary amount specified in the Quote or these Terms and Conditions payable by the Hirer.

If a provision of this Contract is illegal or unenforceable:

- (a) if the provision would not be illegal or unenforceable if a word or words were omitted, that word or those words are severed; and in any other case, the whole provision is severed, and the remainder of the Contract continues in force.
- (b) in any other case, the whole provision is severed, and the remainder of the Contract continues in force.