

Terms and Conditions

The following Terms and Conditions shall apply to each Contract for the hire of Equipment and/or Services:-

1. Interpretation and Definitions

Unless qualified by or inconsistent with the context:-

- 1.1. A reference to one gender includes the other genders; reference to a person includes an incorporated or unincorporated body or other association of persons or a governmental agency and vice versa; the singular includes the plural and vice versa.
- 1.2. References to any statutory enactment mean references to that enactment as amended, modified and re-enacted from time to time.
- 1.3. Headings are for convenience of reference & will not affect the interpretation of the Terms.
- 1.4. The Terms are written in plain English as far as possible. The Terms are to be interpreted so as to give effect to the parties' agreement. No rule will apply to resolve a doubt as to the interpretation of a provision in these Terms against the party that prepared these Terms or that particular provision. The specific provisions will not limit the interpretation of general provisions.
- 1.5. The use of "including" or any similar words is not to be read as limiting the application of a provision.
- 1.6. In these Terms where a word or phrase is given a particular meaning other parts of speech or grammatical forms of that word or phrase have corresponding meanings.
- 1.7. A reference to writing is to be construed as including a reference to any mode of representing or reproducing words, figures or symbols in a visible form.
- 1.8. All references to money are references to Australian dollars.
- 1.9. If a payment or notice falls due on a day which is not a Business Day, that payment or notice must be given on the previous Business Day.
- 1.10. "JAKS" means Jaks Hire and Events Pty Ltd, its directors, employees, agents, successors and assigns.
- 1.11. "The Hirer" means the person, firm or corporation, including its employees or agents, hiring Equipment or Services from JAKS.
- 1.12. "Business Day" means Monday through to Friday, except a day that is proclaimed as a public holiday in South Australia.
- 1.13. "Contract" means these Terms and Conditions, the invoice/quote attached hereto, and any written variation.
- 1.14. "Day" means a period of twenty-four (24) hours.
- 1.15. "Equipment" means all goods and accessories supplied or to be supplied to the Hirer, including any Equipment not owned by JAKS but which JAKS has hired or leased from a third party.
- 1.16. "Hire Period" means the period for which the Equipment is hired by the Hirer as specified in the invoice/quote attached hereto.
- 1.17. "Price" means the total amount payable by the Hirer to JAKS as set out in the invoice attached hereto and any further sums payable pursuant to the Contract, including any GST which is payable.
- 1.18. "Security Interest" means a security interest as defined by section 12 of the *Personal Property and Securities Act 2009* (Cth).
- 1.19. "Services" means the provision of labour by JAKS to the Hirer and includes installation and any other services described on any quotation, invoice, purchase order, email or any other documents.
- 1.20. "Site" means the designated place, venue or location at which the Equipment will be delivered and used by the Hirer in accordance with the terms of the Contract.
- 1.21. "Terms" means these written Terms and Conditions.

2. Offer and Acceptance

- 2.1. The Hirer agrees to hire the Equipment and/or purchase the Services for the Hire Period and Price as set out in the invoice/quote attached hereto.
- 2.2. Payment by the Hirer of any amount due and payable to JAKS for the supply of Equipment and/or Services shall constitute acceptance of these Terms and Conditions.
- 2.3. Where payment by the Hirer for the supply of Equipment and/or Services is not made prior to the supply of Equipment and/or Services, whether because of a credit arrangement with JAKS or otherwise, acceptance of delivery of the Equipment and/or Services by the Hirer shall constitute acceptance of these Terms.
- 2.4. Where more than one Hirer has entered into an agreement with JAKS for supply of Equipment & Services, all Hirers shall be jointly & severally liable for payment of the Price.
- 2.5. These Terms contain the complete & final Agreement between the Hirer & JAKS & are the only terms on which Equipment and/or Services will be supplied by JAKS to the Hirer.
- 2.6. Any negotiations, agreements, arrangements, representations, understandings, correspondence, terms or conditions (whether contained in the Hirer's purchase order or any other documentation) either prior to or subsequent to the provision of these Terms to the Hirer are superseded by these Terms and these Terms will solely govern the agreement between the Hirer and JAKS.
- 2.7. Acceptance of delivery of the Equipment and/or Services by the Hirer will constitute acknowledgement by the Hirer that these Terms prevail over any other terms and conditions (whether they be written or oral, express or implied, prior to or subsequent to these Terms).
- 2.8. These Terms become binding upon acceptance, and may thereafter only be altered or revoked by agreement of the parties in writing.
- 2.9. The Hirer acknowledges that none of JAKS's employees, agents or contractors may vary or add to these Terms nor make any representations about the performance, specifications or fitness for purpose of the Equipment and/or Services provided by JAKS and no such purported variation or addition of these Terms or other representation made will bind JAKS unless such variation or addition is made in writing by a duly authorised employee, agent or contractor.

3. Equipment and Services

- 3.1. The Hirer is responsible for obtaining all necessary approvals, permits, consents, and/or permissions prior to JAKS providing the Equipment and/or Services the subject of the Contract.
- 3.2. The Hirer acknowledges that JAKS may be dependent upon other contractors preparing the Site for the Equipment or its installation and JAKS shall not be liable for any delay in installing the Equipment or providing the Services where such delay is the consequence of any act or omission of the Hirer or any external party or contractor.
- 3.3. Where JAKS provides Equipment or Services to a Hirer at a Site it is an essential Term of the Contract that the Hirer must:-
 - 3.3.1. Ensure that where the Equipment is being installed on any structure or held in place by any structure that the structure is capable of holding the weight of the Equipment and that the structure is properly erected so as to be safe and so as to take the anticipated loads involved in holding the Equipment.
 - 3.3.2. Ensure that the Site is safe for JAKS (including its directors, employees, agents, successors and assigns) to carry out the Services required of JAKS under the Contract.

4. Hirer's Obligations

- 4.1. The Hirer agrees that:-
 - 4.1.1. It hires the Equipment at its own risk and bears responsibility for the Equipment from the time of delivery to the Site until collection by or return to JAKS.
 - 4.1.2. It is the Hirer's responsibility to provide safe and proper access to the Site.
 - 4.1.3. It cannot, without the prior written consent of JAKS, remove the Equipment from the Site, or allow another party to have possession of the Equipment.
 - 4.1.4. It is responsible for ensuring all Equipment is clean, dry and properly packaged at the time of collection or return.
 - 4.1.5. It is responsible for ensuring that the Equipment is readily accessible for pick-up if JAKS is to collect such Equipment at the end of the Hire Period.
 - 4.1.6. It will pay for all cleaning costs if the Equipment is not dried, cleaned or packaged in accordance with clause 4.1.4.
 - 4.1.7. It is responsible for the Equipment and is liable for any damage to the Equipment.
 - 4.1.8. Should clause 21 of these Terms apply, the Hirer accepts that it cannot create, attempt to create, agree to or permit the existence of a Security Interest over the Equipment other than a Security Interest to which JAKS gives written consent.
 - 4.1.9. If, notwithstanding clause 4.1.8., the Hirer is permitted by a law to create or allow another Security Interest, the Hirer will notify JAKS at least fourteen (14) Business Days prior to creating such an interest.
 - 4.1.10. Clauses 4.1.8. and 4.1.9. are essential terms of the Contract.
 - 4.1.11. In the event of damage to any Equipment in the Hirer's possession, the Hirer is responsible for the repair costs or replacement costs at the sole discretion of JAKS.
 - 4.1.12. Acknowledges that the Equipment is to be used for its intended purpose only, and accepts responsibility for any damage or loss caused by the misuse of any Equipment.

5. Insurance

- 5.1. The Hirer must at the request of JAKS obtain:-
 - 5.1.1. Public liability insurance with an authorised Australian Insurer to a minimum value of twenty million dollars (AUD) (\$20 million) or such other amount as notified by JAKS, naming JAKS as an insured under such policy in relation to the supply of goods or services by JAKS pursuant to this Agreement.
 - 5.1.2. Insurance with an authorised Australian Insurer for the full replacement value of all goods provided to the Customer under this Contract, including as a minimum, cover against fire, accident, theft, storm and water damage. The Hirer will name JAKS as an insured under such a policy.
 - 5.1.3. The Hirer must on demand by JAKS provide satisfactory evidence of the insurances required in clause 5.1 within twenty four (24) hours of a request being made. Time is of the essence in relation to this clause 5.2.

6. Variations

- 6.1. The Hirer may request a variation to the scope of Equipment or Services provided, or the duration of the Hire Period.
- 6.2. A request for a variation may be made orally, but must be confirmed in writing as soon as possible.
- 6.3. JAKS is not obligated to perform the variation until such variation is confirmed in writing.
- 6.4. JAKS may adjust the Price depending on the variation.
- 6.5. Where JAKS has relied on advice, descriptions or instructions by the Hirer as to the provision of Equipment or Services, and such information is wrong, misleading or inaccurate, JAKS may charge as a variation any additional labour, Equipment or accessories necessary for JAKS to comply with its obligations under the Contract.

7. Delivery

- 7.1. Any amount quoted by JAKS to the Hirer is for delivery on street level of the Site within a reasonable distance of the delivery vehicle. Extra charges may apply for delivery or collection requiring additional time and/or labour due to different access to the Site, out of standard work hours, or any similar factor affecting delivery.
- 7.2. The Hirer shall be responsible for making all necessary arrangements to collect or take delivery of the Equipment, including preparation of the Site.
- 7.3. Delivery of the Equipment to, or collection by, any third party nominated by the Hirer (including carriers) is deemed to be delivery to the Hirer.

8. Terms of Payment

- 8.1. Payment of the invoice/quote attached hereto must be made prior to delivery of the Equipment in accordance with clause 8.2. unless otherwise specified on the quote/invoice.
- 8.2. The Price, except for orders made under clause 8.4., must be paid as follows:-
 - 8.2.1. A thirty percent (30%) deposit is required upon confirmation of the order; and
 - 8.2.2. An additional fifty percent (50%) of the Price must be paid and cleared funds received by JAKS twenty one (21) days prior to the delivery date; and
 - 8.2.3. The remaining balance (20%) or such other amount as varied under clause 6 must be paid and cleared funds received by JAKS seven (7) days prior to the delivery date.
- 8.3. Orders placed within seven (7) days of the delivery date require full payment (100%) be made to confirm the booking.
- 8.4. Orders for custom-made Equipment must be paid in their entirety (100%) upon confirmation of the order and is non-refundable.
- 8.5. JAKS may charge interest on all amounts not paid by the Hirer in accordance with these Terms, or the terms otherwise specified in the quote/invoice provided. Interest will be charged at JAKS's bank's highest current overdraft interest rate and will be calculated daily from the due date for payment until payment is received.
- 8.6. The Hirer agrees to pay all collection charges, including all debt collectors' expenses and/or solicitors' charges (and any associated expenses) incurred in collecting any debt from the Hirer on a complete indemnity basis.
- 8.7. The Hirer may not deduct from the Price any set off, counterclaim or other sum unless JAKS agrees in writing.
- 8.8. Payment is not deemed to be made until JAKS is in receipt of the full Price (including GST and delivery charges) in cleared funds.

9. Cancellation

- 9.1. The Hirer is liable for payment of the Price as follows if the Hirer cancels the hiring of Equipment or the provision of Services as follows:-
 - 9.1.1. Orders cancelled thirty (30) days prior to the delivery date will receive a refund of any amounts paid in excess of the initial deposit (30%).
 - 9.1.2. Orders cancelled within twenty-one (21) days of the delivery date require payment of seventy percent (70%) of the Price, and amounts paid by the Hirer in excess of that amount will be refunded.
 - 9.1.3. No refund will be provided for orders cancelled within seven (7) days of the delivery date and the Hirer remains liable for payment of the Price in full.
- 9.2. The parties acknowledge that clause 9.1 represents a genuine estimate of damages to JAKS resulting from the cancellation of the contract by the Hirer.

10. Postponement

- 10.1. In the event that a confirmed booking in accordance with clause 8.2.1 is postponed, that:-
 - 10.1.1. If the postponement is within twelve (12) months of the contract date, any payments made pursuant to the contract shall be held in consideration of the performance of the contract on a mutually agreed future date.
 - 10.1.2. In the event that the postponed contract is subsequently cancelled, the 30% deposit is non-refundable, subject to the operative effect of clause 9.1.2 and 9.1.3.
- 10.2. The parties acknowledge that clause 10.1.1 and 10.1.2 represent a genuine estimate of damages suffered by JAKS as a result of the cancellation of the contract by the Hirer.

11. Hirer's Warranties

- 11.1. The Hirer warrants that it can pay debts as and when they fall due.
- 11.2. The Hirer warrants that this is not an insolvent transaction.

12. Sub-Hire

- 12.1. Should JAKS enters into a sub-hire agreement with a third party, the Hirer agrees that:-
 - 12.1.1. JAKS is acting as an agent for the Hirer (the principal);
 - 12.1.2. It is liable for any obligations owing under the sub-hire agreement; and
 - 12.1.3. It will indemnify JAKS in the event of a breach of the sub-hire agreement.

13. Identifying Ownership

- 13.1. The Hirer shall not remove, deface or cover up, or cause or allow the removal, defacement or cover-up, of any marks, signs, notices or symbols identifying the ownership of the Equipment supplied by JAKS.

14. Intellectual Property

- 14.1. Where any designs or specifications have been supplied by the Hirer for manufacture by JAKS, the Hirer warrants that the use of those designs or specifications for the manufacture, assembly or supply shall not infringe the rights of any third party.
- 14.2. Where JAKS produces any design, pattern, or specification during the supply or manufacture of Equipment, intellectual property in them remains with JAKS, and may only be reproduced or copied with the written consent of JAKS.

15. Warranties

- 15.1. JAKS makes no representations, guarantees or warranties express or implied in respect of the Equipment and/or Services, except in accordance with this written Contract.
- 15.2. Nothing in these Terms excludes, restricts or modifies any condition, warranty, guarantee or liability implied by the Australian Competition and Consumer Act (2010) or any other applicable law if such restriction, exclusion or modification is illegal or would render any provision of these Terms void ("Non-Excludable Warranties").
- 15.3. Subject to clause 14.2 herein, JAKS expressly negates and excludes all express and implied conditions, guarantees and warranties implied by custom, common law, by virtue of any Statute or Statutory Regulations or otherwise.

16. Release

- 16.1. Unless prohibited by statute, the Hirer agrees to release and forever discharge JAKS from all actions, suits, causes of action, proceedings, claims, accounts, demands, costs and expenses whatsoever (including in negligence) arising out of, or in connection with, the provision of Equipment and/or Services, which the Hirer at any time hereafter may otherwise have had against JAKS but for the execution of this Contract.

17. Indemnity

- 17.1. The Hirer shall be liable for and shall indemnify JAKS against any demand, suit, action, liability, loss, claim or proceeding whatsoever arising under any statute or at common law (including in negligence) or in equity arising out of or in connection with the provision of Equipment and/or Services by JAKS pursuant to the Contract or the use of the Equipment by the Hirer or any other person, and for any costs and expenses that may be incurred in connection with such demand, suit, action, liability, loss, claim or proceeding.

18. Limitation of Liability

- 18.1. The Hirer acknowledges that they hire the Equipment and Services relying solely upon their own skill and judgement.
- 18.2. The Hirer agrees that JAKS will not be liable for any damages or loss of any kind whatsoever, (including, without limiting the foregoing, liability for any property damage, personal injury, consequential loss, incidental damages, loss of profits or any like claims) caused by, related to, or arising out of in any way whatsoever the provision of the Equipment or Services, including any liability in negligence.
- 18.3. JAKS is not liable for any damage or loss to the Hirer's property (including real property) which occurs while delivering or collecting the Equipment, or during the provision of Services, including liability in negligence.
- 18.4. The Hirer is liable for all injury, loss or damage suffered by JAKS (its directors, employees, agents, successors and assigns) while on Site arising out of the condition of the premises or any fixtures or fittings contained thereon.
- 18.5. The liability of JAKS to the Hirer for any reason related or in any way arising out of the provision of Equipment or Services, including any liability arising in negligence and (to the extent permitted by the *Australian Competition and Consumer Act* or any other relevant statute) any Non-Excludable Warranties, shall be limited to (at JAKS's discretion):-
 - 18.5.1. the amount paid or payable by the Hirer to JAKS for such Equipment or Services; or
 - 18.5.2. the cost of resupplying the Equipment and Services.

19. Termination

- 19.1. Without otherwise limiting JAKS's entitlement to terminate this contract, JAKS has a right to terminate the Contract if:-
 - 19.1.1. It becomes aware or reasonably suspects Equipment is damaged.
 - 19.1.2. It becomes aware or reasonably suspects Equipment is not being used for its intended purpose.
 - 19.1.3. The Hirer does not provide reasonable access to the site.
 - 19.1.4. The Hirer becomes insolvent or bankrupt.
 - 19.1.5. The Hirer fails to return Equipment on correct date.
 - 19.1.6. The Hirer breaches clause 13.1.
 - 19.1.7. The Hirer fails to pay in accordance with the Contract.
- 19.2. In the event JAKS terminates the Contract, JAKS has an immediate right of collection of Equipment.

20. Notices

- 20.1. Any notice to be given by one party to another must be signed by the party giving the notice or by one of its officers or its duly authorised lawyer or agent and must be hand delivered or sent by prepaid post or electronic mail to the address, or electronic mail address (as the case may be) shown at the commencement of this Contract (or any other address, or electronic mail address that a party may notify to the other) and will be deemed sufficiently given:-
 - 20.1.1. In the case of hand delivery, on the date of delivery.
 - 20.1.2. In the case of prepaid post, two (2) Business Days after being sent by prepaid post.
 - 20.1.3. In the case of electronic mail, on day of transmission provided that the sender can give evidence of transmission and the intended recipient does not give evidence of non-receipt.

21. No Waiver

- 21.1. The Hirer agrees that no waiver by JAKS of any breach of the Contract shall be a waiver of any continuing or recurring breach.

22. Personal Property Securities Act 2009 (Cth) ("PPSA")

- 22.1. Should the Hire Period or any variation to the Hire Period exceed ninety (90) days JAKS will register this agreement in accordance with the relevant provisions of the PPSA.
- 22.2. To the extent permissible by section 115(1), the parties agree that sects. 125, 132(3)(d), 132(4), 125, 142 & 143 of PPSA are excluded.
- 22.3. To the extent permissible by section 115(7), the parties agree that sections 129(2), 132, 133(1)(b) (as it relates to the rights of JAKS), 134(2), 135, 136(3), 136(4), 136(5) & 137 of the PPSA are excluded.

23. Privacy Act 1988 (Cth)

- 23.1. The Hirer agrees that personal information provided may be used and retained by JAKS for the following purposes as agreed between the Hirer and JAKS or required by law from time to time:-
- 23.1.1. Provision of Equipment and/or Services.
- 23.1.2. Marketing of Equipment and/or Services by JAKS.
- 23.1.3. Processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Hirer.
- 23.1.4. Collection of amounts owed to JAKS whether under this Contract or any other agreement and the enforcing of any rights accruing to JAKS under this Contract or at law.

24. Severance

- 24.1. If any Term is found to be unenforceable for reasons of invalidity or illegality, the Term shall be read down to the extent necessary so that it is enforceable, valid and legal.
- 24.2. If any Term cannot be read down it shall be severed and the remaining Terms shall not be affected.

25. Jurisdiction

- 25.1. The Contract shall be governed by and construed in accordance with the laws of the State of South Australia.
- 25.2. The Hirer submits to the jurisdiction of the Courts of the State of South Australia.

26. Force Majeure

- 26.1. This clause will apply if JAKS is unable to perform any of its obligations either wholly or partly due to events beyond its control including, but not limited to, acts of God, war, weather, explosions, strikes, lockouts, epidemics or natural disasters.
- 26.2. If clause 25.1. is triggered, JAKS will give full written notice to the Hirer of the particulars of such force majeure.
- 26.3. The occurrence of a force majeure does not constitute a breach by either party of these Terms.
- 26.4. In the event of a force majeure any payment made to JAKS by the Hirer will be refunded minus the costs already incurred in acquiring and otherwise preparing the Equipment or Services under the Contract.

The Hirer acknowledges having received, read and understood these Terms and Conditions, the invoice/quote attached hereto, and any Variations forming part of this Contract and in requesting JAKS to provide the Equipment and/or Services agrees to be bound exclusively by this Contract.

Quote No. / Tax Invoice No.: _____

Name of Hirer (company): _____

Name of Hirer (person - full name): _____

SIGNATURE

____/____/____
DATE