

TERMS AND CONDITIONS OF HIRE

1. DEFINITIONS

- 1.1. **Company** means MNR Constructions Pty Ltd - trading as Peacock Retail
- 1.2. **Customer** means the entity or person identified as the customer in the Order.
- 1.3. **Equipment** means the Equipment to be hired by the Customer by the Company as specified in the Order.
- 1.4. **GST** has the same meaning as in the A New Tax System (Goods and Services Tax) Act 1999 (Cth), as amended or superseded.
- 1.5. **Hire Fee** means the fee charged by the Company to hire the Equipment.
- 1.6. **Hire Period** means the duration of the hire of the Equipment set out in the Order or otherwise as agreed between the Company and Customer in writing in accordance with these Terms and Conditions.
- 1.7. **Holding Over Basis** means each day (or part thereof) following expiry of the Term that the Customer retains possession, control or is otherwise utilising the Equipment.
- 1.8. **Order** means the order submitted via the online order form.
- 1.9. **Services** means the services provided by the Company to the Customer as set out in the Order or as otherwise agreed between the Company and the Customer in writing.
Terms and Conditions means these terms and conditions of hire including any variations and additions made in accordance with these Terms and Conditions.

2. APPLICATION OF TERMS AND CONDITIONS

- 2.1. These Terms and Conditions apply to all hires by the Company to each Customer unless the Customer is otherwise notified in writing. No variation or cancellation of any of these Terms and Conditions will be binding on the Company unless agreed to by a responsible officer of the Company in writing.
- 2.2. None of the Company's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by an authorised representative of the Company in writing nor is the Company bound by any such unauthorised statements.
- 2.3. By submitting the Order, Customer warrants that it has read and agrees to these Terms and Conditions.

3. DEPOSIT, HIRE FEE AND PAYMENT TERMS

- 3.1. In consideration of the use of the Equipment and receipt of the Services, the Customers agrees to pay to the Company the Hire Fee plus any applicable GST.
- 3.2. The estimated costs for the hire of any equipment and provision of any services is set out on the Company's website and catalogue. The actual Hire Fee unique to the Equipment and Services provided to the Customer is set out in the Order. The Customer must pay 100% of the cost of the Order immediately upon placement of the Order for the Company to proceed with the Order. At the time of placement, the Order is subject to acceptance and approval by the Company. If the company, prior to acceptance of the Order, is unable to fulfil or accommodate the Order, the Company will refund the cost of the Order paid by the Customer.
- 3.3. The Customer is liable for all payments and additional damages incurred by the Company. If the Customer is placing an Order on behalf of another person or entity, they accept full liability on behalf of the third party and all associated charges.
- 3.4. Payments must be made by credit card (Visa and Mastercard) online or other payment options as may be offered by the Company from time to time.
- 3.5. Hire Fee is for the use of the Equipment for the Hire Period only and for the provision of the Services only. The Customer agrees that all charges for hire loss, hire extension, damage and repair will be paid and that all collection fees, legal fees or any expenses involved in the collection of these charges will be borne by the Customer.
- 3.6. A continuing Hire Fee for all Equipment not returned to the Company when it is due back will be charged to the Customer, at the standard daily rate set out in the Order or Hire Period, until the Equipment has been returned to the Company. The Customer shall give appropriate notice in

writing to the Company if any extension or termination of the Hire period is requested. No refunds will be issued for the early return of Equipment.

4. HIRE PERIOD

- 4.1. The Customer is granted a licence to use the Equipment for the duration of the Hire Period unless the Hire Period is determined earlier pursuant to these Terms and Conditions.
- 4.2. Where the Equipment is not returned on or by the expiry of the Hire Period, these Terms and Conditions shall continue to apply on a Holding Over basis until such time as the Equipment is returned.
- 4.3. Where the Customer fails to return the Equipment at the end of the Hire Period the Customer will be liable for payment of an additional daily hire charge. The Company will invoice the Customer for the additional charges together with any amount of loss and damage or additional costs incurred or suffered by the Company associated with or incidental to the Order and the Customer must immediately pay this invoice of the date of that invoice.
- 4.4. The Customer irrevocably and unconditionally authorises the Company to enter the Customer's premises to recover possession of the Equipment if it is not returned to the Company at the end of the Hire Period.

5. CANCELLATION OF ORDERS

- 5.1. Where a Customer cancels an Order more than fourteen (14) days prior to the first date of the Hire Period, the Company will refund 90% of any Hire Fee paid, the Customer authorises the Company to retain the remaining 10% and agrees this represents a genuine pre-estimate of the likely losses and damages to suffered by the Company in the event that the Customer cancels the Order within this timeframe.
- 5.2. Where a Customer cancels an Order within fourteen (14) days from the first date of the Hire Period, the Customer will only be provided with a refund of any applicable delivery fee or labour charges included in the Hire Fee and will otherwise be liable for payment of the Hire Fee and will forfeit any money paid in this regard.. The Customer agrees that payment of this amount is a good faith, genuine pre-estimate of the likely losses and damages to suffered by the Company in the event that the Customer cancels the Order.
- 5.3. The Company will permit the Customer to postpone an Order on one (1) occasion. Where a Customer seeks to postpone a Booking a second time, it will be deemed a cancellation and clause 5.2 will apply.
- 5.4. The Company may, at its sole and absolute discretion, refuse to accept or cancel and Order if it experiences a technical difficulty or issue with its website, or any aspect of its online ordering system. If the Company cancels or refuses to accept and Order in accordance with this clause, the Company will not be liable to the Customer for any loss or damage suffered by the Customer, including with respect to any direct or indirect or consequential loss or damage.

6. REMOVAL OF ITEMS FROM CONFIRMED ORDER

- 6.1. Once an Order is placed the booking can be adjusted until 14 days prior to the event, excluding custom elements, graphics, branding and/or subcontracted equipment which are charged at 100% of the cost to the Company for attending to that change. The Company will, prior to attending to such changes, issue the Customer with a quotation or invoice for the work which must be accepted, approved and paid for by the Customer before the Company is required to attend to making any changes to the Order. An administration fee of up to 20% of the value of the items removed may be charged, with a minimum of \$150 administration fee.

7. POSSESSION AND SURRENDER OF EQUIPMENT

- 7.1. The Equipment is, and shall remain, the exclusive property of the Company. At no time shall the Equipment be considered the property of the Customer and at all times the Customer will hold the Equipment as bailee of the Company.
- 7.2. The Customer shall be entitled to possession of the Equipment for the Hire Period.
- 7.3. The Customer:
 - 7.3.1. must, at the Customers sole expense, keep and maintain the Equipment in clean and good working order and repair during the Hire Period and ensure that any repairs are

- only undertaken by the Company or a person/entity approved by the Company in writing;
- 7.3.2. must, at the Customer's sole expense, properly protect and store the Equipment. Storage must be a manner that clearly shows that the Equipment is the property of the Company;
 - 7.3.3. must not sell, assign, charge or otherwise encumber or grant any right or interest in the Equipment;
 - 7.3.4. must not move or connect any device to the Equipment or attach or affix the Equipment to any other property,
 - 7.3.5. must not tamper with, deface, modify or deinstall any part of the Equipment including any plaques or safety instructions of the Equipment; and
 - 7.3.6. must immediately advise the Customer of any breach by the Customer of this clause 8.
- 7.4. The Customer irrevocably authorises the Company to enter any premises where the Equipment is stored at any time to enable the Company to inspect the Equipment or take possession of the Equipment if the Customer is in default under this Deed.
- 7.5. On or before the end of the Hire Period, the Customer shall surrender the Equipment to the Company by delivering the Equipment to the Company in good condition and working order, ordinary wear and tear excepted, as it was upon the Customer taking possession of the Equipment or otherwise on the first day of the Hire Period.
- 7.6. Where Equipment is not returned to the Company on or before the expiry of the Hire Period, the Customer will be liable to pay an additional Hire Fee and fully indemnify the Company for any other direct or indirect or consequential loss or damage suffered by the Company including (but not limited to) loss of opportunity.

8. USE OF EQUIPMENT

- 8.1. The Customer warrants that it will, at all times, strictly adhere to and follow all instructions and guidelines with respect to the use and care of the equipment and all safety instructions as communicated (whether verbally or in writing) by the Company.
- 8.2. The Customer warrants that it will otherwise use due care and diligence and only use the Equipment for its intended use in accordance with any manufacturers or the Company's instructions and recommendations.
- 8.3. The Customer must not misuse or abuse the Equipment and ensure that the Equipment is not overloaded, does not exceed rated capacity.
- 8.4. The Customer warrants that it will comply with all applicable laws and rules with respect to the hiring and use of the Equipment.
- 8.5. The Customer must not allow persons under the age of 18 years use the Equipment without reasonable adult supervision.
- 8.6. The Customer acknowledges and agrees that they have received adequate instruction on the correct use of the Equipment, which includes video demonstration or in-person demonstration or verbal or written or instructions.

9. OBLIGATIONS REGARDING THE EQUIPMENT

- 9.1. The Customer will, at Customer's sole expense, keep and maintain the Equipment clean and in good working order and repair during Hire Period. In the event the Equipment is lost, stolen, or damaged beyond repair, the Customer shall pay to Company the replacement cost of the Equipment on demand.
- 9.2. In the event the Equipment is damaged whilst in the possession or control of the Customer, including but not limited to damage caused by the negligence or willful misconduct of the Customer, the Customer agrees to reimburse the Company for the cost of any damage and any resulting or consequential loss (including, but not limited to, any loss of market, loss of profit, loss of contracts or any loss or damage for anticipated or expected opportunity). Such damage will be judged by the Company exercising reasonable judgment.
- 9.3. The Customer agrees to hold the Equipment at the locations where the Customer is using it where the Company determines, at its sole discretion, that the Equipment should be left at that location to avoid further loss or damage.
- 9.4. The Customer must notify the Company as soon as reasonably practicable, in the event the Equipment is involved in damage to any property or the injury or death of any person.

10. DELIVERY AND COLLECTION

- 10.1. The delivery date is not guaranteed and time for delivery shall not be of the essence unless previously agreement between the Company and the Customer in writing. the Company does not provide any warranties or representations that the Equipment will be available to meet an order. Availability of Equipment to meet each order is subject to the timing of that order.
- 10.2. Whilst the Company will use its reasonable endeavours to complete a delivery within the timeframe requested, the Company will not be liable to the Customer for any loss or damage (direct, indirect or consequential) resulting from unavailability of Equipment or delayed delivery.
- 10.3. Delayed deliver does not give rise to a right of cancellation for the Customer.
- 10.4. Where the Equipment is to be delivered, customer must pay the delivery fee quoted at the time of the Booking. The Company will deliver the Equipment to the address specified by the Customer when placing the Order. It is the obligation of the Customer, to make sure that the recipient's full name and full delivery address are correct, the Company accepts no responsibility for an incorrect address when delivering the Order as per the Customer's instructions.
- 10.5. The Customer must ensure an authorised person is available to accept delivery of the Equipment. The Company is under no obligation to confirm the person accepting delivery is authorised to do so. Where there is no authorised person to accept delivery, the Company will not deliver the Equipment and will be in contact with the Customer to arrange an additional delivery date. Should this occur, additional delivery charges may be payable. A the time of delivery, the authorised person of the Customer must check the Equipment and sign any document confirming the condition of the Equipment, quality and/or number and condition of items which the Company may reasonably require at the time.
- 10.6. The Customer must specify at the time of the Booking if the Equipment is to be collected by the Company or will be returned to the Company by the Customer. Where the Company is to collect the Equipment, the Equipment must be ready for collection at the address the Equipment was delivered to on the last day of the Hire Period, at the time agreed between the Company and Customer in writing. In the event that the Equipment is not available to be picked up by the arranged time on the last day of hire or has not been returned to the premises of the Company by close of business on the last day of hire, the Company must be notified immediately and additional daily hire charges may apply.
- 10.7. Delivery of all Equipment is at ground level only. Extra charges on top of the usual delivery charge apply where the delivery of the Equipment is more than 10 metres away from where the Company's vehicle can park. Extra charges also apply for stairs, steep descents and going up levels in buildings. The Customer is responsible for advising via email if the delivery has any of these conditions and charges will be quoted accordingly. Failure to do so will result in extra charges.
- 10.8. It is the Customer's sole responsibility to ensure the correct Equipment is delivered at the time of delivery. The Company will not be liable for the delivery of the incorrect Equipment where it is notified after the Company has left the delivery address.
- 10.9. The Customer is required to ensure all Equipment is returned to the Company and packed as it was supplied and is safe for transit, in the original boxes, pallets, crates, bags, road cases, protective covers and are placed in one central area, ready for collection. In the event the Equipment is not ready for collection, and additional time is required on site, additional fees will apply.
- 10.10. The Customer must ensure the Company has full access to its premises and the premises remains a safe working environment when the Company delivers Equipment to or collects Equipment from the Customer's address. If the premises are subject to access restrictions the Customer will be liable for reasonable associated costs incurred by the Company for:
 - 10.10.1. inductions on site or time taken to complete induction and/or health and safety checks; and
 - 10.10.2. site access issues including but not limited to:
 - (a) The Company being unable to use working lifts;
 - (b) delay on site that exceeds 1 hour, or the Company being unable to complete the installation / collection and having to re-enter the premises on another

- day to complete the installation and collection (such date to be advised by the Company), or any other reasons that are beyond the Company's control
- (c) parking fines/tickets due to not being able to park vehicles at a loading bay.
- 10.11. Where delivery includes installation, if the Company arrives at the premises but was unable to complete the installation or collection due to reasons beyond the Company's control, the Customer shall pay the Company reasonable costs to re-enter the premises on another day for installation. A reasonable re-delivery/re-collection fee may be charged if the Customer fails to comply with any of the provisions under this clause.

11. **PICKUP / DRY HIRE**

- 11.1. Where the Customer does not elect for the Equipment to be delivered or arrangements for delivery are not agreed in writing between the Company and Customer, the Customer must collect the Equipment from the Company's Alexandria, NSW 2015 Monday-Friday between the hours of 8:00am and 3:00pm.
- 11.2. At collection, it is the responsibility of the Customer to organise appropriate labour to load, in the event Company resources are required to load, additional fees will apply.
- 11.3. Equipment must be transported in a closed vehicle (i.e., truck or van) with all necessary blankets, straps and ties. Utes and/or trailers will not be accepted. The Customer must ensure it arrives for collection with a suitable vehicle for transportation. The Company reserves the right to refuse to hand over the Equipment where it deems, in its sole discretion, that the transportation (including any ties, blankets and straps) are unsuitable or inadequate.
- 11.4. A minimum handling fee starting from \$40 + GST will apply where the Company must assist in the loading of the Equipment.
- 11.5. All Equipment hired must be returned to the Company on the return date as stated on the invoice. In the event that the Equipment is not returned to the Company by the close of business on the last day of hire, the Company must be notified immediately and reserves the right to charge an additional daily hire fee.

12. **SITE APPROVAL**

- 12.1. The Customer shall be responsible for giving any local or other authorities any necessary notice of their intention to erect the Equipment or to have Equipment erected and shall pay all fees in connection therewith. It is the Customer's sole responsibility to ensure that the site is cleared and ready for the erection of the Equipment and that the foundations upon which the Equipment is to be erected are sufficiently firm and otherwise suitable to safely carry the Equipment and the load to be put on it without subsidence.
- 12.2. By taking delivery of the Equipment, the Customer warrants and represents that the foundations upon which the Equipment is placed is stable and safe for the Equipment. The Company relies upon this representation and the Customer will be liable for all loss, damage and costs as a result of or incidental to these representations.

13. **SECURITY**

- 13.1. The Customer must ensure the security of the Equipment until such time as it is returned to or collected by the Company. This includes arranging for adequate security guard or other such surveillance of the Equipment and/or ensuring the relevant premises is locked and secure.
- 13.2. The Customer must ensure that there adequate lighting, water proofing, safe power supply, public protection, covering of power lines and such facilities as might be considered necessary for the safe use and protection of the Equipment.

14. **LOSS AND DAMAGE**

- 14.1. The Company must be notified immediately of any Equipment lost or damaged during the hire period. The Customer indemnifies the Company in respect of all such loss. The Customer must pay on demand to The Company the following amounts:
- i. If the Equipment is lost, the Customer must pay to the Company the current replacement cost of the Equipment;
 - ii. If the Equipment is damaged, the Customer must pay for all repairs;
 - iii. If no notice is given to the Company of a lost item, it shall be deemed as extended hire until such item is returned and hire fees will continue until notice is given or the Equipment is found.

14.2. The Customer agrees to pay full replacement costs for any Equipment lost or considered by the Company, at the Company's sole discretion, as being irreparably damaged. Such payment shall be made by the Customer within seven (7) days of such loss or damage coming to the attention of the Company. In the event payment is not made within the seven (7) day period the Company may, at its sole discretion, commence take steps to recover its loss and damage including, but no limited to commencing proceedings for which the Customer will be liable for all costs and expenses (including legal costs) incurred by the Company on an indemnity basis.

15. INDEMNITY

15.1. The Customer hereby indemnifies the Company and its employees agents and affiliates (as defined by the *Corporations Act 2001* (Cth)), with respect to any loss, claims, suits, liability, expense, or damage made against the Company including those resulting from injury to or death sustained by any person or damage to any property occurring as a direct or indirect result of any act or omission of the Customer whilst the Equipment is in the possession or control of the Customer.

15.2. The indemnities in Clauses 8.2 and 8.3 are intended to survive the expiration or termination of this Agreement.

16. EXCLUSION OF LIABILITY

16.1. The Company shall not be liable to the Customer for any loss or damage suffered by the Customer for any other direct or indirect or consequential loss or damage, whether:

16.1.1. arising from an authorised or unauthorised act or omission;

16.1.2. arising from a contemplated or un contemplated act or omission; or

16.1.3. caused by the by negligence and/or recklessness and/or wilful misconduct of the Company, its servants, agents, employees or subcontractor(s); or

16.1.4. a breach of this these terms and conditions.

16.2. Where liability cannot be excluded or limited, the liability of the Company shall be limited to the actual and verifiable loss or damage of an independent assessment and, under no circumstances, shall the Company be liable for any loss of market, loss of profit or loss of contracts or any loss or damage for anticipated or expected opportunity.

16.3. Should the Customer choose to insure itself or otherwise for any loss or damage it may incur as a result of the hire of the Equipment, however the insurance is arranged, the Customer agrees that any rights of subrogation of the insurer are fully waived as against the Company, its employees, agents or subcontractor(s) in respect of the Services.

16.4. The Company shall not be liable for any damages caused by its Equipment, this includes but is not limited to walls, floors, doors, windows, stairs, furniture, fixtures, fittings, artworks and landscaping. In the event the site is not clear to receive the Equipment the Company may take all reasonable steps to clear the site and will not be liable for any loss or damage caused.

17. PHOTOGRAPHS

17.1. The Customer authorises the Company to take and publish photographs of the Customer using the Equipment.

17.2. The Company will use its best endeavours to take photos with a focus on the Equipment and exclude recognisable private property and persons wherever reasonably possible.

18. MISCELLANEOUS PROVISIONS

18.1. If any provision of this Agreement shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

18.2. This Agreement shall be governed by the laws of New South Wales and submit to the non-exclusive jurisdiction of the courts of New South Wales.

18.3. The Customer shall not be entitled to set off against or deduct from the Hire Fees any sums owed or claimed to be owed to the Customer by the Company.

18.4. The Company may license or sub-contract all or any part of its rights and obligations without the Customer's consent.

- 18.5. Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm, or other event beyond the reasonable control of either party.
- 18.6. The failure by any Party to enforce any provision of this Agreement shall not be treated as a waiver of that provision, nor shall it affect any Parties right to subsequently enforce that provision.
- 18.7. The Company and the Customer agree that they will keep at all times as strictly confidential any confidential information that is disclosed or provided by one party to the other. In this clause, "commercial in confidence" means information in any form but does not include information that is already in the public domain.
- 18.8. This Agreement may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.
- 18.9. This Agreement and the terms herein may only be varied or replaced in written document or deed and duly executed by the Company and Customer.