

# Terms and Conditions of Hire

1. **Hire**
  - 1.1. We agree to rent the equipment to you for the term on the terms and conditions set out in this hire agreement.
2. **Delivery**
  - 2.1. You must, subject to clause 2.2:
    - 2.1.1. collect the equipment from our address on the first day of the term; and
    - 2.1.2. return the equipment to our address on the last day of the term or the last day of the hire, as the case may be, at your own cost and expense.
  - 2.2. If we have agreed to arrange the delivery of the equipment to you or your agent:
    - 2.2.1. you must pay for all costs associated with delivery to you or your agent including freight, insurance and other charges arising from the point of dispatch to the point of delivery to you or your agent;
    - 2.2.2. we will use reasonable endeavours to arrange delivery of the equipment by the first day of the term;
    - 2.2.3. you must pay for the costs incurred in storing the equipment and arranging for its re-delivery to you or your agent, or its return to our address if you or your agent are not at the location to accept delivery.
3. **Payments**
  - 3.1. You must pay the hire charges to us either at the time when your order is processed or at the time the equipment is collected by you or your agent.
  - 3.2. Hire charges accrue until the equipment is returned to us in a clean and serviceable condition.
  - 3.3. All time is chargeable including on Saturdays, Sundays and public holidays.
  - 3.4. If you do not attend to payment of the hire charges on time, we may withhold delivery of the equipment to you.
  - 3.5. If you are late in making payment of the hire charges:
    - 3.5.1. We may withhold delivery of the equipment to you;
    - 3.5.2. you must pay interest at the rate of 1% per month on money due and payable but unpaid from time to time by you on any amount owing under this hire agreement computed from the due date until the date for payment .
    - 3.5.3. you must pay further hire charges at the same rate as listed in the hire agreement and late fees for each piece of equipment being the lesser of \$5.50 per day and \$35.00 per month.
  - 3.6. Payment of the hire charges by cheque is not deemed made until the proceeds of the cheque have cleared.
  - 3.7. You must pay the bond at the start of the term. If you comply with the terms and conditions of hire, the equipment is undamaged when it is returned to us, and you have paid all amounts which you are liable to pay to us under these terms and conditions, the bond will be returned to you. We may deduct from the bond and keep any amounts which you are liable to pay to us under these terms and conditions and which you have not paid when due.
  - 3.8. All amounts payable by you under this hire agreement are expressed as goods and services tax exclusive amounts. You must pay us any applicable goods and services tax in addition to the amounts expressed in this agreement.
  - 3.9. Time is of the essence with respect to your performance of your obligations under this hire agreement.
4. **Holding over**
  - 4.1. If you and we agree that the equipment will remain in your possession after the term expires, you will hold and make use of the equipment subject to the terms and conditions of this hire agreement which will continue to apply so far as they are capable of application. To avoid doubt:
    - 4.1.1. The hire charges will be paid by you to us during the period of possession after the last day of the period described as the term in the reference table as if that period forms part of the term; and
    - 4.1.2. The hire will subsist on a week to week basis but may be terminated by us at any time by giving you 24 hours' written notice.
5. **Things you must do**

You must:

  - 5.1. Inspect the equipment at the time of delivery to satisfy yourself as to its condition and specifications. Subject to the guarantees contained in sections 56 and 57 of the ACL which apply to a consumer, you are deemed to have accepted the equipment unless you notify us to the contrary at the time of delivery. If we accept that the equipment is not in good condition and/or the specifications are not correct, we may at our option either replace the equipment or terminate the hire agreement and refund any hire charges paid by you;
  - 5.2. use and care for the equipment as if it was your own, in the manner of a prudent owner;
  - 5.3. ensure that the equipment is used only by persons properly instructed in the use of the equipment; and
  - 5.4. comply with all laws regarding the use and operation of the equipment.
6. **Things you must not do**

You must not:

  - 6.1. use the equipment otherwise than for the purpose for which it was designed and for which it may be lawfully used;
  - 6.2. sell the equipment;
  - 6.3. use the equipment in a dangerous or unlawful manner or for an illegal purpose;
  - 6.4. allow the equipment to be misused;
  - 6.5. leave the equipment in a location, position or in circumstances where it is unsafe to do so; and
  - 6.6. make any modification to the equipment without first obtaining our permission.
7. **Maintenance and repair**
  - 7.1. We will supply the equipment to you in a safe serviceable and clean condition.
  - 7.2. You are responsible for ensuring that the equipment remains in a safe serviceable and clean condition apart from fair wear and tear.
  - 7.3. If the equipment breaks down or is not working satisfactorily, you must notify us immediately. If requested by us, you must return the equipment to us for examination.
  - 7.4. You must not repair or attempt to repair the equipment unless you obtain our written consent.
  - 7.5. You must bear the cost of repairing the equipment unless that is contrary to the ACL.
8. **Return of equipment**
  - 8.1. At the end of the term, you must return the equipment to us at the location which we agree with you.
  - 8.2. You must return the equipment to us in good repair and condition, and undamaged apart from fair wear and tear.
  - 8.3. The equipment must be reasonably clean when you return it. If it is not, you will be charged a cleaning fee.
  - 8.4. If you do not return the equipment on the date and by the time shown in the hire agreement, you must pay the hire charges until the equipment is returned or possession of the equipment is recovered by us.

- 8.5. If you leave any property in the equipment when it is returned to us and you do not retrieve that property within 24 hours, the property will be deemed abandoned and may be disposed of as we think fit.
- 9. Termination**
- 9.1. You may terminate the hire agreement at any time by returning the equipment to us. You must pay all money due to us under the hire agreement, including hire charges for the full term, at the time that you return the equipment.
- 9.2. We may terminate the hire agreement and take back possession of the equipment if you commit a material breach of this hire agreement.
- 10. Cancellation**
- 10.1. We may cancel your hire agreement by written notice to you if we are unable to deliver or provide the equipment to you;
- 10.2. If you wish to cancel your hire agreement and we have not yet dispatched the equipment to you, you must give us notice in writing in which event the following applies:
- 10.2.1. If you give between 72 hours' notice and up to seven days' notice, you will be refunded 50% of your hire charges (if any) paid by you in advance;
- 10.2.2. If you give more than seven days' notice, you will be refunded 100% of your hire charges (if any) paid by you in advance;
- 10.2.3. If you give less than 72 hours' notice, you will not receive any refund.
- 11. Access**
- 11.1. You authorise us to enter upon any premises where we reasonably believe any equipment or any part thereof to be and, subject to our discretion, inspect, test, repair, replace or repossess the equipment.
- 12. Risk, liability, release and indemnity**
- 12.1. You use the equipment at your own risk.
- 12.2. You assume all liability for loss or damage or injury to persons or property, or to a third party arising out of the use, installation or possession of the equipment unless recoverable from us due to the failure of any statutory guarantee under the ACL;
- 12.3. You acknowledge that we are not liable to you or any third parties for any loss or damage you or a third party may suffer as a consequence of the equipment not being delivered by the first day of the term;
- 12.4. If you are a consumer, nothing in this hire agreement restricts, limits or modifies your rights against us for failure of a statutory guarantee under the ACL;
- 12.5. If you are not a consumer, we are not liable to you or any third party for loss or damage in any way arising under or in connection with the hire, installation, use of, storage or any other dealings with the equipment by you or any third party;
- 12.6. To the greatest extent permitted by law, you release us from liability for any loss, damage, injury, cost or expense suffered or incurred by you or a third party arising from or incidental to your use or possession of the equipment, except to the extent that it is caused by our negligent or wilful act or omission.
- 12.7. You must indemnify us and keep us indemnified against any claim, cost, injury, damage or loss which we suffer or incur in respect of or arising from any breach of this hire agreement by you.
- 12.8. You indemnify us against any loss or damage suffered by us or our employees, contractors or agents as a result of our arranging delivery of the equipment to you or your agent except where you are a consumer and we have not exercised due care and skill.
- 13. Our Insurance**
- 13.1. If the box contained in the insurance item of the reference table is ticked/marked "no":
- 13.1.1. You acknowledge having received a copy of our insurance policy on or prior to the commencement date;
- 13.2. Subject to clause 13.3:
- 13.2.1. You must not do or fail to do anything which, if done or not done by us, would void or otherwise detract from our rights under our insurance policy; and
- 13.2.2. You indemnify us from loss, liability or damages sustained because of any failing on your part to strictly observe and perform your obligations under clause 13.2.1.
- 13.3. Nothing in clause 13.2 imposes an obligation on you to pay insurance premiums necessarily payable by us to the insurer under our insurance policy to keep and maintain the currency of that policy.
- 13.4. If a claim is made under our insurance policy because of destruction of or damage to the equipment (or any part of it) which is brought about by your acts or omissions ("our claim"), you must:
- 13.4.1. pay to us on demand any deductible or excess payment or any other cost or expense incurred by us under our insurance policy in connection with our claim; and
- 13.4.2. indemnify and hold us indemnified from loss or liability arising under our insurance policy in connection with any excess or deductible payment or other sum payable by us and relating to our claim.
- 14. Your insurance**
- 14.1. Throughout the term, you must take out and maintain at your own cost and expense (with an insurance company approved by us), a policy of public risk insurance in your name. The policy must provide for insurance cover in an amount reasonably determined by us from time to time (and at the commencement date, the sum so determined is \$20 million).
- 14.2. You must:
- 14.2.1. cause our interest as owner to be noted on the policy of insurance referred to in clause 14.1; and
- 14.2.2. in respect of that insurance, produce a certificate of currency on our demand made from time to time throughout the term.
- 14.3. If the box contained in the insurance item of the reference table is ticked/marked "yes", the following provisions apply:
- 14.3.1. You must insure the equipment for its full replacement and reinstatement value at all times during the term and any other period during which the equipment is in your power, possession or control;
- 14.3.2. Insurance taken out under this clause 14.3 must be taken out:
- 14.3.2.1. at your sole cost (which cost is in addition to any other cost or expense payable by you under this agreement); and
- 14.3.2.2. with an insurer that is satisfactory to us in all respects.
- 14.3.3. Before we release the equipment to you, we may insist that you give us documentary evidence of:
- 14.3.3.1. insurance required to be taken out under this clause;
- 14.3.3.2. the currency of that insurance (including a receipt for the premium payable to maintain the insurance for the term);
- 14.3.3.3. the identity of the insurer,
- together with a copy of the policy document. Nothing in this clause 14.3.3 (and any step taken by us under it) affect any other provision in the agreement including your obligation to pay the hire fee throughout the term under clause 3.
- 14.4. You must not do or fail to do any act, omission, matter or thing which could invalidate, render subject to cancellation or adversely affect the policy of insurance referred to in clause 14.1.
- 15. Ownership and personal property securities law**
- 15.1. Ownership of the equipment remains with us at all times.
- 15.2. By entering into the hire agreement, you may be granting a security interest in the equipment to us. The security interest attaches to the equipment when you take possession of the equipment. We may perfect our security interest by lodging a

financing statement in the PPSR. You must do anything we reasonably require to enable us to do so.

- 15.3. We do not need to give you any notice under the PPSA, unless notice is required by the PPSA and that requirement cannot be excluded.

#### 16. Warranty of authority

- 16.1. Each person signing this hire agreement as an authorised officer or agent of a party by so doing warrants that as at the time of signature by him/her, he/she has full authority to execute on behalf of that party.

#### 17. Assignment

- 17.1. This hire agreement is personal to you and cannot be assigned without our prior written consent which consent may be given, refused or given on such conditions as we in our discretion determine.

- 17.2. In connection with any sub-hire by you, the following provisions apply:

17.2.1. You must not sub-hire any of the equipment to anyone unless we (in our absolute discretion) first consent in writing. Any such sub-hire must be in writing in a form acceptable to us and must be expressed to be subject to our rights under this hire agreement. You must not vary a sub-hire without our prior written consent (which may be withheld in our absolute discretion);

17.2.2. You must ensure that we are provided at all times with up to date information about any sub-hire including the identity of the sub-hirer, the terms of the state of accounts and payments under the sub-hire and the location and condition of the equipment;

17.2.3. the hirer must take all steps including registration under PPSA as may be required to:

17.2.3.1. ensure that any security interest arising under or in respect of a sub-hire is enforceable, perfected or otherwise effective under PPSA;

17.2.3.2. enable you to gain (subject always to our rights) first priority (or any other priority agreed by us in writing) for the security interest;

17.2.3.3. and enable us and you to exercise our respective rights in connection with the security interest.

#### 18. Card authorisation

- 18.1. You authorise us to charge your credit card or debit card specified in the hire agreement with all amounts which you are liable to pay us under the hire agreement, including amounts payable pursuant to clause 12.

#### 19. Waiver

- 19.1. No failure, delay, relaxation or indulgence by a party in exercising a power or right under this hire agreement operates as a waiver of the power or right, and no single or partial exercise of a power or right and no single failure to exercise precludes any other or future exercise of the power or right or the exercise of any other power or right.

#### 20. Entire understanding

- 20.1. The covenants and provisions contained in this hire agreement exclusively and completely state the rights of the parties with respect to the subject matter of this hire agreement. This hire agreement supersedes all negotiations and prior agreements, whether written or oral, in respect of the subject matter of this hire agreement. If there is conflict or inconsistency between the terms, conditions and provisions of this hire agreement and any prior agreement or arrangement, the terms, conditions and provisions of this hire agreement will prevail.

#### 21. No reliance

- 21.1. The parties have not in entering this hire agreement relied upon any statement, representation, undertaking, warranty or condition made or given by or on behalf of any other party in respect of the subject matter of this hire agreement other than those that are expressly contained in this hire agreement.

#### 22. Amendments

- 22.1. No modification, variation, amendment or alteration of this hire agreement is valid unless in writing and executed by all parties.

#### 23. Miscellaneous

- 23.1. Any quotation provided to you by us for the proposed supply of goods and services:

23.1.1. is valid for 30 days only;

23.1.2. is an invitation to treat only; and

23.1.3. is only valid if in writing.

- 23.2. If you place an order via telephone, by electronic means or via our website, a binding agreement does not come into being until the later of:

23.2.1. we notify you in writing that we accept your offer; or

23.2.2. we provide you with the goods or services ordered.

#### 24. Dictionary

In this hire agreement:

- 24.1. **ACL** means the Australian Consumer Law Schedule 2 of the Competition and Consumer Act 2010 (Cth);

- 24.2. **bond** means the amount of money specified in the hire agreement paid either in cash or via a credit card or debit card;

- 24.3. **consumer** has the same meaning as the definition in the ACL

- 24.4. **equipment** means the good described in the hire agreement and includes all equipment, accessories and other goods supplied with the equipment

- 24.5. **hire agreement** means the hire agreement form containing the details of the hire agreement and signed by you, and includes these terms and conditions;

- 24.6. **hire charges** includes the rental rate, and extras specified in the hire agreement;

- 24.7. **PPSA** means the *Personal Properties Securities Act 2009*;

- 24.8. **PPSR** means the Personal Properties Securities Register established by the PPSA;

- 24.9. **sub-hire** means any lease, hire, bailment or granting of possession of the equipment;

- 24.10. **term** means the period of hire, beginning when you take possession of the equipment and ending on the return date, or when you return the equipment to us, whichever is the latter;

- 24.11. **you/your** means the person whose details appear in the "Hirer's Details" section of the hire agreement and, where the context permits, includes the authorised drivers;

- 24.12. **we/our/us** means Oz Baby Hire Pty Ltd ACN 604 335 766, and includes its employees and agents;