

# Belgrove Hiring Service

## Terms and Conditions of Hire

### 1 Hire Agreement

- 1.1 These Terms and Conditions of Hire ("Terms") together with:
- 1.1.1 any Credit Account you completed and submitted to us;
  - 1.1.2 any Hire Schedule provided to you by us, whether signed or not;
  - 1.1.3 any special terms specific to the type of Equipment you have hired attached to your Hire Schedule; and
  - 1.1.4 any implied terms which cannot be excluded,
- are the whole agreement between you and us.
- 1.2 No other contractual terms that you provide us (such as on a purchase order or otherwise) apply and, if provided, they don't constitute a counter-offer.
- 1.3 Subject to clause 1.4, we may vary these terms and conditions at any time by providing written notice to you and the variation will take effect at the time we provide notice.
- 1.4 Any variation pursuant to clause 1.3, shall not apply to Equipment already hired by you at the time of the variation, but will apply for any future Hire after the date of the variation.

### 2 Definitions

"Credit Account" means the commercial credit account application form.

"Equipment" means any equipment supplied to You by Us, including but not limited to portable buildings, building and construction equipment, catering equipment and motor vehicles.

"Hire Schedule" means the hire schedule providing particulars of the Equipment, period of hire and any other applicable terms.

"We/Us/Our" means J.P & J.C. Holdings Pty. Ltd. ACN 005 857 661 trading as Belgrove Hiring Services (ABN 80 005 857 661) and its associates (whether capitalised or not)

"You/Your" refers to the person, firm, organisation, partnership, corporation, trust or other entity hiring Equipment from us, as named in the Credit Account or the Hire Schedule (if you do not hold a Credit Account). The reference to you also includes any employees, agents and contractors, corporation or other related entity (whether capitalised or not).

### 3 Hire Period

- 3.1 The Hire Period commences on the earlier of the day you take possession of the Equipment, or (if you request delivery), when we deliver the Equipment to the address specified for delivery in the Hire Schedule.
- 3.2 The Hire Period ends when you return our Equipment to us or the day specified in the Hire Schedule, whichever is later.
- 3.3 We may have a minimum Hire Period for some Equipment. We will notify you of any relevant minimum Hire Periods prior to you hiring our Equipment.

### 4 Hire Charges

- 4.1 You will pay us for the hire of the Equipment at the rates described in the Hire Schedule.
- 4.2 The hire rates are based on an 8 hour working period, where 8 hours is equivalent to one day's hire. Equipment used for additional hours in the same day will incur a higher daily rate. Equipment used for between 8 hours and 16 hours in the same day will be charged the one and half times the daily rate. Equipment used for between 16 hours and 24 hours in the same day will be charged at twice the standard daily rate.
- 4.3 We may also charge you for any of the following:
- 4.3.1 The hire of the Equipment outside the time specified in the Hire Schedule. This will be calculated at the specified rate in the Hiring Schedule for the Equipment.
  - 4.3.2 Reasonable costs of cleaning and repairing returned Equipment, if the Equipment is not returned in clean and good working condition (if necessary). This includes any cleaning and repairs required as a result of vandalism.
  - 4.3.3 Any fines, penalties or other charges relating to your use or hire of the Equipment.
  - 4.3.4 Stamp duty or other statutory charges relating to your hire of the Equipment.
  - 4.3.5 Consumables supplied by us to you in respect of the Equipment.
  - 4.3.6 Delivery, installation, collection, bagging and/or service calls carried out at your request. Overtime charges may apply if the Equipment is to be delivered or picked up at your request outside ordinary business hours.
  - 4.3.7 The operating costs of the Equipment during the Hire Period incurred by Us.
  - 4.3.8 The cost of replacing the Equipment if it is lost or stolen during the Hire Period.
  - 4.3.9 The replacement cost of any manuals or safety instructions that are damaged or not returned to us.

### 5 Payment

- 5.1 Payment is due on or prior to thirty (30) days from the date of invoice unless we tell you in writing otherwise.
- 5.2 If we don't receive payment on the due date, we may charge interest (as liquidated damages) at the rate of two percent (2%) above the rate of interest fixed from time to time under Section 2 of the Penalty Interest Rates Act 1983.
- 5.3 We may revoke our express or implied approval for giving you credit at any time. We can set-off against any money owing to you amounts owed to us by you on any account whatsoever.
- 5.4 Any payments received from you on overdue accounts will be applied first to satisfy interest which may have accrued, second to reasonable expenses and legal costs, and then to principal.

- 5.5 You are liable for all reasonable expenses (including contingent expenses such as debt collection commission) and legal costs (on a full indemnity basis) incurred by us for enforcement of obligations and recovery of monies due from you to us.

- 5.6 All sums outstanding become immediately due and payable by you to us if you make default in paying any sums due to us, you become bankrupt, or commit any act of bankruptcy, compound with your creditors, have judgment entered against you in any court or, being a company, have a provisional liquidator, liquidator, receiver, receiver manager or administrator appointed, notwithstanding the provisions of any other clause in these Terms.

### 6 Use and Operation of the Equipment

- 6.1 It is your responsibility to have all necessary licences, permits, authorisations and clearances to operate the Equipment and you warrant that your use of the Equipment will not contravene any law.
- 6.2 During the Hire Period you must:
- 6.2.1 Take care of the Equipment. This means lubricating, fuelling and keeping the Equipment in good working condition during the Hire Period at your own cost.
  - 6.2.2 Operate the Equipment in accordance with all applicable laws.
  - 6.2.3 Not deface, remove or tamper with any identifying markings or safety information on the Equipment or perform any repairs on the Equipment without our consent.
  - 6.2.4 Store the Equipment safely and securely so that it is protected from damage and theft.
  - 6.2.5 Not move the Equipment from the State or Territory in which you hired it.
  - 6.2.6 Ensure that any operators of the Equipment are properly trained and qualified in its safe and proper use and that they operate the Equipment safely and strictly in accordance with all applicable laws and only for its intended use.

### 7 Insurance

The Equipment is held at your risk during the Hire Period and it is your responsibility to maintain adequate insurance in respect of the Equipment in respect of theft, loss or damage for the duration of the Hire Period.

### 8 Indemnities and exclusions of liability

- 8.1 No warranties except those implied and that by law cannot be excluded are given by us in respect of Equipment supplied. Where it is lawful to do so, our liability for a breach of a condition or warranty is limited to:
- 8.1.1 In the case of goods, the repair or replacement of the goods or the supply of substitute goods (or the cost of doing so); or
  - 8.1.2 In the case of services, the supplying of the services again, or the payment of the cost of having the services supplied again.
- 8.2 You acknowledge and warrant that you have relied on your own skill and judgment or, alternatively, on the skill and judgment of tradesmen and professional advisers retained by you to provide advice and assistance on the suitability of the Equipment for specific purposes and procedures and, in this respect, you shall indemnify us from and against any suit, claim, demand or compensation which, but for these Terms, you may have had against us.
- 8.3 To the extent permissible by law, we are not liable for any consequential, indirect or special loss or damage, loss of actual or anticipated profits or revenue, loss of business or any loss suffered by third parties arising or relating to Terms, whether arising in contract, tort, in equity, under statute, under an indemnity, whether or not such loss was foreseeable, and even if we are advised of the possibility of such loss or damage.
- 8.4 You indemnify us against all liability, claims, damage, loss, costs and expenses (including but not limited to, legal fees, costs and disbursements on a full indemnity basis) ("Loss") arising or relating to these Terms, or your use of the Equipment in respect of:
- 8.4.1 Personal injury.
  - 8.4.2 Damage to tangible property.
  - 8.4.3 A claim by a third party.
- 8.5 Each indemnity is a separate, independent and continuing obligation which survives termination of these Terms.
- 8.6 We shall not be liable for failure to delivery of the Equipment. If we quote a time for delivery or supply, it's an estimate only. You will not be relieved of any obligation to accept or pay for Equipment because of any failure to deliver. We can stop delivery if you fail to comply with these Terms.
- 8.7 We may refuse to supply any Equipment in our absolute discretion and may make acceptance of a hire conditional upon receiving a satisfactory credit assessment on you.

### 9 Equipment

- 9.1 We own the Equipment and in all circumstances we retain title to the Equipment. Your rights to use the Equipment is as bailee only. The Equipment shall be at your risk from the time of delivery or pickup
- 9.2 You are not entitled to offer, sell, assign, sub-let, charge, mortgage, pledge or create any form of security interest over, otherwise deal with the Equipment in any other manner other than as described by these Terms.
- 9.3 We are irrevocably authorised to enter any premises where the Equipment is kept, and to use your name and to act on your behalf, if necessary, to recover possession of the Equipment without liability for trespass or any resulting damage.

### 10 Personal Property Security Interest

- 10.1 You acknowledge that these Terms may be deemed to be a PPS Lease under the Personal Property Security Act 2009 (Cth) ("PPSA") and that we may register a security interest on the Personal Property Security Register against you to protect our interest under the Agreement.

- 10.2 You waive any right to receive notice in relation to any registration or amendment to a registration on the Personal Property Security Register ('PPSR'). At your own expense, you will provide all reasonable assistance and relevant information to enable us to register on the PPSR and generally to obtain, maintain, register and enforce the security interests created by these Terms.
- 10.3 Any payments received from you shall be deemed to be made and applied by us in the following order (unless we otherwise determine): (1) to any obligation owed by you which is unsecured, in the order in which the obligations were incurred; (2) to any obligations that are secured, but not by a purchase money security interest ('PMSI'), in the order in which those obligations were incurred (3) to obligations that are secured by a PMSI, in the order in which those obligations were incurred.
- 10.4 Until you have paid all money owing to us, you must at all times ensure that all Equipment, while in your possession, can be readily identified and distinguished, and has not been affixed to any land.
- 10.5 To the extent permissible by law, you agree that the following provisions of the PPSA will not apply and you will have no rights under them: Section 95 (to the extent that it requires the secured party to give notices to the grantor); section 96; section 118 (to the extent that it allows a secured party to give notice to the grantor); section 121(4); section 125; section 130; section 132(3)(d); section 132(4); section 135; section 142; section 143.
- 10.6 Section 115(7) of the PPSA allows for the contracting out of provision of the PPS Act, the following provisions of the PPS Act will not apply and the you will not have any rights under them: section 127; section 129(2),(3); section 130(1); section 132; section 134(2); section 135; section 136(3), (4) and (5) and section 137.
- 10.7 Unless otherwise agreed and to the extent permitted by the PPSA, the parties agree not to disclose any information of a kind referred to in section 275(1) of the PPSA to an interested person or any other person. You waive any right you may have, or but for this clause may have had had, under section 275(7)(c) of the PPSA to authorise the disclosure of the above information.

#### 11 Privacy Act 1988 ('Privacy Act')

- 11.1 To enable us to assess your application for credit, you authorise us: (1) to obtain from a credit reporting agency/body a consumer or commercial credit report containing personal information about you and any guarantors; and (2) to obtain a report from a credit reporting agency/body and other information in relation to your commercial credit activities, and (3) to give to a credit reporting agency/body information including identity particulars and application details.
- 11.2 You authorise us to give to and obtain from any credit provider named in the accompanying Credit Account and credit providers that may be named in a credit report issued by a credit reporting agency/body information about your credit arrangements. You understand that this information can include any information about your credit worthiness.
- 11.3 You understand that information can be used for the purposes of assessing your application for credit, assisting you to avoid defaulting on your credit obligations, assessing your credit worthiness and notifying other credit providers and credit reporting agencies of a default by you under these Terms.

#### 12 Notification

You must notify us in writing within seven (7) days of: (1) Any alteration of your name or ownership; (2) the issue of any legal proceedings against you; (3) the appointment of any provisional liquidator, liquidator, receiver, receiver manager or administrator to you; and (4) Any change in the ownership of your business name. You agree that you shall be liable to us for all Equipment supplied to the new owner by us until notice of any such change is received.

#### 13 Force Majeure

We shall be released from our obligations in the event of national emergency, war, prohibitive governmental regulation or if any other cause beyond the control of the parties renders provision of the Goods impossible, where all money due to us shall be paid immediately and, unless prohibited by law, we may elect to terminate the Agreement.

#### 14 Equitable Charge

You as beneficial owner and/or registered proprietor now charges in favour of us all of your estate and interest in any real property (including but not limited to any applicable land owned by you or described as the your Street Address in the Credit Account if applicable) ('Land') to secure payment of accounts rendered by us to you for the delivery and/or supply of the Goods including interest payable on these accounts and costs (including legal costs on a full indemnity basis) incurred by us and including the costs to prepare and lodge a Caveat against the Land and to remove the Caveat.

#### 15 Failure to Act

Our failure to enforce or insist upon the timely performance of any term, condition, covenant or provision in these Terms, or our failure to exercise any right or remedy available under these Terms or at law, or our failure to insist upon timely payment of monies when due or to demand payment of any charges or fees which accrue or any extension of creditor forbearance under these Terms shall not constitute a waiver of any subsequent default or a waiver of our right to demand timely payment of future obligations or strict compliance with the Terms.

#### 16 Legal Construction

- 16.1 These Terms shall be governed by and interpreted according to the laws of Victoria and the parties consent and submit to the jurisdiction of the courts of Victoria.
- 16.2 Notwithstanding that any provision of the Terms may prove to be illegal or unenforceable pursuant to any statute or rule of law or for any other reason that provision is deemed omitted without affecting the legality of the remaining provisions and the remaining provisions of the Terms shall continue in full force and effect.

#### 17 Storage Equipment

This clause applies to the Hire of Equipment used for the storage of goods including, but is not limited to: shipping containers, lunch rooms, site offices and any other structure which may be used for the storage of any goods ("Storage Equipment").

- 17.1 If you do not pay us at the time specified for payment, we will give you 14 days' notice of the default.
- 17.2 We may terminate at the expiration of the Notice Period by written notice to you. You must remove any goods stored in the Equipment within 14 days of termination.
- 17.3 If you do not remove the goods from the Storage Equipment, you irrevocably authorise us to make provisions for the removal, and disposal if necessary, of any of the remaining goods stored in the Storage Equipment, at our discretion ("Uncollected Goods").
- 17.4 You grant us a security interest in any Uncollected Goods and irrevocably appoint us as your attorney to do all acts or things necessary to sell the Uncollected Goods and to use the proceeds of such sale to satisfy any outstanding payment obligations owed by you to us (including any third party costs relating to the sale, legal costs and debt collection commission or fees). Any proceeds remaining after sale of the Uncollected Goods will be remitted to you.
- 17.5 You grant an irrevocable licence authorising us, or any third party we engage for such purposes, to:
- 17.5.1 Enter any premises where the Storage Equipment is kept, and to use your name and to act on your behalf, if necessary, to recover possession of the equipment without liability for trespass or any resulting damage; and
- 17.5.2 Enter any of Storage Equipment stored on your premises by any means necessary for the purposes of recovery, including, but not limited to, removing any locks placed on the equipment by you or another party
- 17.6 We will not be liable for, and you indemnify us for any Loss relating to the removal of Uncollected Goods from the Storage Equipment or collection of the Storage Equipment.
- 17.7 Security of the Storage Equipment while in your possession is your responsibility. We are not liable for any Loss relating to actions of you or a third party whilst the equipment is in your possession.
- 17.8 You are prohibited from storing any unsafe, dangerous, potentially dangerous, or illegal goods in the Storage Equipment. We may immediately terminate this agreement by written notice to you if you breach this clause 17.8 and you must remove all goods from the Storage Equipment within two business days of termination. You indemnify us for all Loss relating to the Storage of such goods in the Storage Equipment.
- 17.9 Storage Equipment must only be used for the purposes that they are intended and when used in workplaces, relevant legislation, codes of practice and guidelines must be satisfied. We accept no responsibility for any breaches of any legislation, codes of practice and guidelines. For further information, contact the relevant branch of your local Worksafe authority.
- 17.10 Storage Equipment, including containers, are not intended to be watertight. You must make your own suitable provisions for the protection of your stored items from water damage. We are not liable for any Loss relating to water damage.
- 17.11 We do not provide insurance for any goods stored in Storage Equipment and any goods stored in the Storage Equipment are stored at your own risk.