

Cage Temporary Fencing - Terms & Conditions of Hire

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- 15.8 The Hirer must unconditionally ratify any actions taken by Cage under clauses 15.3 to 15.5.
- 15.9 Subject to any express provisions to the contrary (including those contained in this clause 15), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 15.10 Only to the extent that the hire of the Equipment exceeds a two (2) year hire period with the right of renewal shall clause 15 apply as a security agreement in the form of a PPS Lease in respect of Section 20 of the PPSA, in all other matters this clause 15 will apply generally for the purposes of the PPSA.
- 16. Security and Charge**
- 16.1 In consideration of Cage agreeing to supply Equipment, the Hirer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Hirer either now or in the future, to secure the performance by the Hirer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 16.2 The Hirer indemnifies Cage from and against all Cage's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Cage's rights under this clause.
- 16.3 The Hirer irrevocably appoints Cage and each director of Cage as the Hirer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 16 including, but not limited to, signing any document on the Hirer's behalf.
- 17. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)**
- 17.1 The Hirer must inspect the Equipment on delivery and must within twenty-four (24) hours of delivery notify Cage in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Hirer must notify any other alleged defect in the Equipment as soon as reasonably possible after any such defect becomes evident. Upon such notification the Hirer must allow Cage to inspect the Equipment.
- 17.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (Non-Excluded Guarantees).
- 17.3 Cage acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 17.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, Cage makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Equipment. Cage's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 17.5 If the Hirer is a consumer within the meaning of the CCA, Cage's liability is limited to the extent permitted by section 64A of Schedule 2.
- 17.6 If Cage is required to rectify, re-supply, or pay the cost of re-supplying any services or Equipment under this clause or the CCA, but is unable to do so, then Cage may refund any money the Hirer has paid for the services or Equipment but only to the extent that such refund shall take into account the value of any services or Equipment and consumables which have been provided to the Hirer which were not defective.
- 17.7 If the Hirer is not a consumer within the meaning of the CCA, Cage's liability for any defect or damage in the services or Equipment is:
- limited to the value of any express warranty or warranty card provided to the Hirer by Cage at Cage's sole discretion;
 - limited to any warranty to which Cage is entitled, if Cage did not manufacture the Equipment;
 - otherwise negated absolutely.
- 17.8 Notwithstanding clauses 17.1 to 17.7 but subject to the CCA, Cage shall not be liable for any defect or damage which may be caused or partly caused by, or arise as a result of:
- the Hirer failing to properly maintain or store any Equipment;
 - the Hirer interfering with the Equipment in any way without Cage's written approval to do so;
 - the Hirer using the Equipment for any purpose other than that for which it was designed;
 - the Hirer continuing the use of the Equipment after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - the Hirer failing to follow any instructions or guidelines provided by Cage;
 - fair wear and tear, any accident, or act of God.
- 17.9 In the case of second hand Equipment purchased by the Hirer, unless the Hirer is a consumer under the CCA, the Hirer acknowledges that it has had full opportunity to inspect the second hand Equipment prior to delivery and accepts them with all faults and that to the extent permitted by law no warranty is given by Cage as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Hirer acknowledges and agrees that Cage has agreed to provide the Hirer with the second hand Equipment and calculated the Price of the second hand Equipment in reliance of this clause 17.9.
- 18. Hirer's Responsibilities**
- 18.1 The Hirer shall:
- maintain the Equipment as is required by Cage;
 - be responsible for any graffiti damage to the Equipment and any cost of removal of the graffiti;
 - the Equipment shall be at the site specified in any quotation or other document and may only be moved to another location with the written approval of Cage;
 - notify Cage immediately by telephone of the full circumstances of any breakage or accident in connection with the Equipment. The Hirer is not absolved from the requirements to safeguard the Equipment by giving such notification;
 - satisfy itself prior to taking delivery of the Equipment that the Equipment is suitable for its purposes;
 - erect the Equipment safely, strictly in accordance with the law, only for its intended use, and in accordance with any manufacturer's instruction, whether supplied by Cage or posted on the Equipment;
 - ensure that all persons erecting, moving or dismantling the Equipment are suitably instructed in its safe and proper use;
 - comply with all work health and safety requirements relating to the Equipment and its use;
 - keep the Equipment in their own possession and control;
 - not alter or make any additions to the Equipment including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment;
 - employ the Equipment solely in its own work and not permit the Equipment of any part thereof to be used by any other party for any other work;
 - not use or carry any illegal, prohibited or dangerous substance on the Equipment;
 - not fix any of the Equipment in such a manner as to make it legally a fixture forming part of any freehold as per clause 8.2;
 - on termination of the hire, deliver the Equipment complete with all parts and accessories clean and in good order as delivered, fair wear and tear accepted, to Cage.
- 18.2 Immediately on request by Cage the Hirer will pay:
- the new list price of any Equipment that is for whatever reason destroyed, written off, or not returned to Cage;
 - all costs incurred in cleaning the Equipment;
 - all costs of repairing any damage caused by the ordinary use of the Equipment up to an amount equal to ten percent (10%) of the new list price of the Equipment;
 - the cost of repairing any damage to the Equipment caused by the negligence of the Hirer or the Hirer's agent;
 - the cost of repairing any damage to the Equipment caused by vandalism, or (in Cage's reasonable opinion) in any way whatsoever other than by the ordinary use of the Equipment by the Hirer;
 - any lost hire fees Cage would have otherwise been entitled to for the Equipment, under this, or any other hire contract;
 - the cost of fuels and consumables provided by Cage and used by the Hirer;
 - any insurance excess payable in relation to a claim made by either the Hirer or Cage in relation to any damage caused by, or to, the hire Equipment whilst the same is hired by the Hirer and irrespective of whether charged by the Hirer's insurers or Cage's.
- 19. Cancellation**
- Without prejudice to any other remedies Cage may have, if at any time the Hirer is in breach of any obligation (including those relating to payment) under these terms of hire Cage may repossess the Equipment as per clause 14.1(b), or suspend or terminate the supply of Equipment to the Hirer and any of its other obligations under the terms and conditions. Cage will not be liable to the Hirer for any loss or damage the Hirer suffers because Cage has exercised its rights under this clause.
- 19.2 Cage may cancel these terms and conditions or cancel delivery of Equipment at any time before the Equipment is delivered by giving written notice to the Hirer. On giving such notice Cage shall repay to the Hirer any sums paid in respect of the Price. Cage shall not be liable for any loss or damage whatsoever arising from such cancellation.
- In the event that the Hirer cancels delivery of the Equipment the Hirer shall be liable for any and all loss incurred (whether direct or indirect) by Cage as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 20. Default and Consequences of Default**
- Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and one half percent (2.5%) per calendar month (and at Cage's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- If the Hirer owes Cage any money the Hirer shall indemnify Cage from and against all costs and disbursements incurred by Cage in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Cage's contract default fee, and bank disbursement fees).
- Further to any other rights or remedies Cage may have under this contract, if the Hirer has made payment to Cage, and the transaction is subsequently reversed, the Hirer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by Cage under this clause 20 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Hirer's obligations under this contract.
- 20.4 Without prejudice to Cage's other remedies at law Cage shall be entitled to cancel all or any part of any order of the Hirer which remains unperformed and all amounts owing to Cage shall, whether or not due for payment, become immediately payable in the event that:
- any money payable to Cage becomes overdue, or in Cage's opinion the Hirer will be unable to meet its payments as they fall due; or
 - the Hirer has exceeded any applicable credit limit provided by Cage;
 - the Hirer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Hirer or any asset of the Hirer.
- 21. Privacy Policy**
- 21.1 All emails, documents, images or other recorded information held or used by Cage is Personal Information, as defined and referred to in clause 21.3, and therefore considered Confidential Information. Cage acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1988 ("the Act") including the Part IIIC of the Act being Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB) and any statutory requirements, where relevant in a European Economic Area ("EEA"), under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). Cage acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Clients Personal Information, held by Cage that may result in serious harm to the Hirer, Cage will notify the Hirer in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Hirer by written consent, unless subject to an operation of law.
- Notwithstanding clause 21.1, privacy limitations will extend to Cage in respect of Cookies where transactions for purchases/orders transpire directly from Cage's website. Cage agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Hirer's:
- IP address, browser, email client type and other similar details;
 - tracking website usage and traffic; and
 - reports are available to Cage when Cage sends an email to the Hirer, so Cage may collect and review that information ("collectively Personal Information").
- In order to enable / disable the collection of Personal Information by way of Cookies, the Hirer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable, provided on the website prior to proceeding with a purchase/order via Cage's website.
- The Hirer agrees for Cage to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) about the Hirer in relation to credit provided by Cage.
- The Hirer agrees that Cage may exchange information about the Hirer with those credit providers and with related body corporates for the following purposes:
- to assess an application by the Hirer; and/or
 - to notify other credit providers of a default by the Hirer; and/or
 - to exchange information with other credit providers as to the status of this credit account, where the Hirer is in default with other credit providers; and/or
 - to assess the creditworthiness of the Hirer including the Hirer's repayment history in the preceding two (2) years.
- 21.5 The Hirer consents to Cage being given a consumer credit report to collect overdue payment on commercial credit.
- The Hirer agrees that personal credit information provided may be used and retained by Cage for the following purposes (and for other agreed purposes or required by):
- the provision of Equipment; and/or
 - analysing, verifying and/or checking the Hirer's credit, payment and/or status in relation to the provision of Equipment; and/or
 - processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Hirer; and/or
 - enabling the collection of amounts outstanding in relation to the Equipment.
- Cage may give information about the Hirer to a CRB for the following purposes:
- to obtain a consumer credit report;
 - allow the CRB to create or maintain a credit information file about the Hirer including credit history.
- The information given to the CRB may include:
- Personal Information as outlined in 21.3 above;
 - name of the credit provider and that Cage is a current credit provider to the Hirer;
 - whether the credit provider is a licensee;
 - type of consumer credit;
 - details concerning the Hirer's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
- (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Hirer no longer has any overdue accounts and Cage has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
- (g) information that, in the opinion of Cage, the Hirer has committed a serious credit infringement;
- (h) advice that the amount of the Hirer's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 21.9 The Hirer shall have the right to request (by e-mail) from Cage:
- a copy of the Personal Information about the Hirer retained by Cage and the right to request that Cage correct any incorrect Personal Information; and
 - that Cage does not disclose any Personal Information about the Hirer for the purpose of direct marketing.
- 21.10 Cage will destroy Personal Information upon the Hirer's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 21.11 The Hirer can make a privacy complaint by contacting Cage via e-mail. Cage will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Hirer is not satisfied with the resolution provided, the Hirer can make a complaint to the Information Commissioner at www.oaic.gov.au.
- 22. Service of Notices**
- Any written notice given under this contract shall be deemed to have been given and received:
- by handing the notice to the other party, in person;
 - by leaving it at the address of the other party as stated in this contract;
 - by sending it by registered post to the address of the other party as stated in this contract;
 - if sent by facsimile transmission to the fax number of the other party as stated in this contract (if any), on receipt of confirmation of the transmission;
 - if sent by email to the other party's last known email address.
- 22.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.
- 23. General**
- The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 23.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Queensland, the state in which Cage has its principal place of business, and are subject to the jurisdiction of the courts of Queensland.
- 23.3 Subject to clause 17, Cage shall be under no liability whatsoever to the Hirer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Hirer arising out of a breach by Cage of these terms and conditions (alternatively Cage's liability shall be limited to damages which under no circumstances shall exceed the Price).
- 23.4 Cage may licence and/or assign all or any part of its rights and/or obligations under this contract without the Hirer's consent.
- 23.5 The Hirer cannot assign or licence without the written approval of Cage.
- 23.6 Cage may elect to subcontract out any part of the provision services but shall not be relieved from any liability or obligation under this contract by so doing. Furthermore, the Hirer agrees and understands that they have no authority to give any instruction to any of Cage's sub-contractors without the authority of Cage.
- 23.7 The Hirer agrees that Cage may amend these terms and conditions by notifying the Hirer in writing. These changes shall be deemed to take effect from the date on which the Hirer accepts such changes, or otherwise at such time as the Hirer makes a further request for Cage to provide Equipment on hire to the Hirer.
- 23.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 23.9 Both parties warrant that they have the power to enter into this contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this contract creates binding and valid legal obligations on them.