



## Allshelter Pty Ltd Hire Terms & Conditions

These Hire Terms & Conditions are applicable to all hire of Equipment between the Company and the Hirer.

### Definitions

**“Account Application”** means the application by the Hirer for an account with the Company whether completed prior to or contemporaneously with the acceptance of the Hire T&Cs.

**“Approved Credit Hirers”** means Hirers approved by the Company for a Credit Account for use for Hire Agreements.

**“Charges”** are any charges incurred pursuant to the terms of the Hire T&Cs including default charges, Charges set out in clause 5 and LDW.

**“Commencement Date”** means the date stipulated in the Hire Agreement or if no commencement date is stipulated, the date the Hirer takes possession of the Equipment.

**“Consequential Loss”** means loss of revenue;

- (i) loss of profit or anticipated profit;
- (ii) loss of business;
- (iii) loss of business reputation;
- (iv) loss of opportunities;
- (v) loss of anticipated savings;
- (vi) loss of goodwill; and
- (vii) any other loss suffered by a party as a result of a breach of the Hire Agreement that cannot reasonably be considered to arise directly and naturally from that breach.

**“Equipment”** means any equipment belonging to the Company, including but not limited to shelters, containers and any associated or attached accessories and parts available for hire.

**“Fee”** is the agreed hire fee for the hire of the Equipment pursuant to the Hire Agreement.

**“Hire Agreement”** means any Hire Agreement formed pursuant to the Hire T&Cs between the Company and the Hirer.

**“Hire Schedule”** means any document headed “Hire Schedule” or document relating to the Hire Agreement specifying the Equipment, Fee and/or Commencement date.

**“Hire T&Cs”** means the current version of this document.

**“Hirer”** means the Hirer engaging the Company to provide services and/or supply goods, being the Approved Credit Hirer or the Hirer specified in the Hire Agreement.

**“LDW”** is the Loss Damage Waiver assurance plan.

**“MTO Equipment”** includes any Equipment that has been specially ordered for a Hirer (whether locally or from overseas) or which is specially manufactured for the Hirer or is not a stocked item.

**“Initial Hire Term”** means the term set out in the Hire Agreement.

**“Company”** means Allshelter Pty Ltd (ACN 120 090 673).

**“Parties”** refers to the Company, the Hirer and any guarantors.

**“Payment Date”** means the date for payment of Fees and Charges as agreed in writing between the Parties, and if no Payment Date is specified, then payment shall be due on the date stipulated by the Company in any Tax Invoice or other document.

**“PPS Act”** means the Personal Property Securities Act 2009 (Cth) and it’s associated Regulations as varied from time to time.

**“PPSR”** refers to the Personal Property Securities Register established under the PPS Act.



**“Services”** means any services provided by or on behalf of the Company to the Hirer that are in any way associated with the Equipment.

## **1. Hire Agreement and Account Application**

### **1.1. All Hire Agreements consists of:**

- 1.1.1.** The version of these Hire T&Cs applicable at the time of entering into the Hire Agreement;
- 1.1.2.** Any Guarantee completed on behalf of the Hirer;
- 1.1.3.** Each Hire Schedule.
- 1.1.4.** For Approved Credit Hirers the Hire Agreement also includes any Credit Application approval terms and any other terms stipulated by the Company in the approval notice or such other terms as the Company may notify the Hirer from time to time in writing.

### **1.2** The Company may on receipt of a Commercial Account Application approve a Hirer for a Credit Account at its discretion.

### **1.3** The Company may at from time to time vary and update these Hire T&C and such change shall become effective for all subsequent Hire Schedules the Hirer submits to the Company after the Company provides a copy of the updated Hire T&Cs to the Hirer.

### **1.4** Where applicable, the Hire Agreement is a claim for payment under the relevant Building and Construction Industry Security of Payment legislation in the relevant state or territory.

## **2. Warranties, obligations and liabilities**

### **2.1** The Company shall, subject to these Hire T&Cs hire the Equipment specified in the Hire Schedules to the Hirer clean and in good working order.

### **2.2** The Hirer warrants and agrees that it is a condition of the Hire Agreement that the Hirer, its agents or employees:

- 2.2.1** Accept the hire is for the use of the Hirer only and the Hirer must not allow or authorise anyone else to use or have possession of the Equipment;
- 2.2.2** Will pay all Fees and Charges pursuant to the Hire T&Cs by the Payment Date.
- 2.2.3** Has not relied on any representation from the Company or its agents unless specified in the Hire Schedule;
- 2.2.4** Has satisfied itself as to the Equipment’s suitability, condition and fitness for its intended purpose;
- 2.2.5** Has appropriate knowledge and understanding of the operation of the Equipment;
- 2.2.6** Has all necessary or required licenses and permits to operate the Equipment;
- 2.2.7** Will use all reasonable care to look after the Equipment in accordance with any notice or instruction provided by the Company;
- 2.2.8** Will not tamper with, alter, modify or repair the Equipment without written permission from the Company;
- 2.2.9** Will immediately notify the Company of any defect, damage or need of repair to the Equipment;
- 2.2.10** Will take care and protect the Equipment from damage;
- 2.2.11** Must use and operate the Equipment in a lawful manner;
- 2.2.12** Must return at their costs any Equipment to the Company for any routine maintenance, in accordance with any schedule or Notice issued or received by the Hirer from the Company;
- 2.2.13** The Hirer further warrants:
  - 2.2.13.1** To provide full details and information of the Hirers requirements, experience and knowledge of any issue relevant to the Hire Agreement;



- 2.2.13.2 To only use the Equipment for its intended purpose;
  - 2.2.13.2.1 safely and in accordance with all legal requirements (including WHS requirements);
  - 2.2.13.2.2 in accordance with manufacturer's guidelines;
  - 2.2.13.2.3 in accordance with the Company's instructions;
  - 2.2.13.2.4 in accordance with all legal requirements;
- 2.2.13.3 To only use the Equipment during the Hire Term;
- 2.2.13.4 To return the Equipment clean and in good working order;
- 2.2.13.5 To return the Equipment by the end of the Hire Term;
- 2.2.13.6 To co-operate and comply with any request or demand from the Company or a statutory authority;
- 2.2.13.7 Subject to clause 6.1 pay for LDW or to take out and maintain full replacement, public liability and third party property damage insurance, covering the replacement value of the Equipment and the liability arising from the use and operation of the Equipment.

**2.3** The Hirer shall assume all risk and liabilities for and in respect of the Equipment and for all injuries to or death of persons and any damage to property howsoever arising from the Hirer's possession, use, storage or transport of the Equipment.

**2.4** The Hirer releases, discharges and indemnifies the Company from all claim, damage, action, demands and cost incurred, claimed or payable by the Company relating to or arising out of any breach of warranty, agreement or obligation, or otherwise arising out of the use of the Equipment by the Hirer its agent, representative or employee, associated with the Hire Agreement.

### **3. Term of Agreement**

**3.1.** The Hire Term of the Hire Agreement shall commence on the Commencement Date and continue until the items are returned to Allshelter by the customer in full.

### **4. Hire Fees and Payment**

- 4.1.** The Hire Fee shall be calculated from the Commencement Date and shall continue to the date that all items have been returned in full.
- 4.2.** The refundable deposit is credited to the customer once all items returned are confirmed and in good order and condition.
- 4.3.** Fees are invoiced and payable monthly in advance.
- 4.4.** All Fees and Charges must be paid by the Payment Date.
- 4.5.** All Fees and Charges are subject to GST which is payable in addition to the Fees and Charges on the Payment Date provided the Company provides the Hirer a compliant Tax Invoice.

### **5. Charges**

**5.1** In addition to the Fees the Hirer must pay Charges for:

- 5.1.1** Any costs incurred by the Company for any expenses related to the Hire Agreement or the Hire T&Cs;
- 5.1.2** All minor, repairs, and maintenance due to wear and tear of the shelter and replacement of consumable components will be charged up to the maximum of one month of the rental value.;
- 5.1.3** The Hirer will be charged for; any additional cleaning and major repairs if the equipment is not returned clean and in working order and or damaged beyond normal wear and tear, or replacement of any missing items;



- 5.1.4 All fines, penalties, charges or levies incurred by the Hirer or its agent relating to the use, operation or possession of the Equipment;
- 5.1.5 All government duties, fees, GST, taxes and charges imposed or relating to any Goods or Services provided pursuant to the Hire Agreement;
- 5.1.6 All costs of delivering and/or collecting the Equipment.
- 5.2 If the Hirer has booked or reserved Equipment (except MTO Equipment) for hire and fails to collect the Equipment or cancel such booking or reservation with less than forty-eight (48) hours notice, then the Company may charge a cancellation Charge of 50% of the Fee for the Initial Term.
- 5.3 The hire of MTO Equipment is not subject to cancellation.
- 5.4 The Hirer shall pay for the full cost of repair or replacement of all or parts of the Equipment that is damaged as a result of a breach of any warranties in the Hire T&Cs.
- 5.5 Any Charges, including default charges, incurred pursuant to the Hire T&Cs shall be payable by the due date on any Tax Invoice or demand on which they appear.

#### **6. Loss Damage Waiver Assurance Plan (LDW):**

- 6.1 As a precondition of hiring Equipment from the Company, the Hirer must produce evidence of insurance that covers loss or damage to the Equipment arising from or associated with the hire and the use by the Hirer for an amount not less than full new replacement cost of the Equipment, or the Hirer shall be required to purchase the LDW from the Company, which is NOT INSURANCE. If the Hirer purchases the LDW the Hirer shall pay to the Company as a charge in addition to the monthly Fee an LDW charge equal to 10% of the monthly Fee each month of the Hire Term.
- 6.2 If the Hirer purchases the LDW, and if the Equipment is used in compliance with this plan, then the Company agrees to waive, to the extent specified herein and in the Hire Agreement, its right to claim from the Hirer, damages, save for and conditional on the Hirer paying to the Company an excess of 15% of any claim up to and including the full new replacement cost of the Equipment within fourteen (14) days of receiving a request for payment of the excess.
- 6.3 Notwithstanding the Hirer's payment of the LDW charge, the Hirer will be liable to the Company for all loss of or damage to the Equipment and related expenses incurred by the Company resulting from breach of any of the Hirer Warranties, Obligations and Liabilities or any of the following circumstances:
  - 6.3.1 The Hirer's failure to notify the Company within 24 hours of an incident that has resulted in loss or damage to the Equipment.
  - 6.3.2 The Hirer's failure to pay all invoices including the LDW within the Company's payment terms;
  - 6.3.3 The Hirer's failure to pay the excess within the agreed time.

#### **7. Refundable Deposit**

- 7.1. A deposit consisting of three months Fees (including GST) is payable on or before the Hire Schedule is signed.
- 7.2. Subject to all Fees and Charges being paid by the Hirer the deposit will be refunded at the end of the Hire Term.
- 7.3. Retention of the Deposit by the Company due to non-payment of any Fees or Charges does not release the Hirer from any Fees or Charges still due and payable to the Company.

#### **8. Default and Breach**

- 8.1 The Hirer shall be in default of the Hire Agreement if the Hirer fails to:
  - 8.1.1 Pay any Fee and Charges by the Payment Date;



- 8.1.2** Comply with any warranty, obligation or agreement specified in the Hire T&Cs or the Hire Agreement;
- 8.1.3** Abide and comply with a lawful request or demand from the Company or a statutory authority at any time during the term of the hire;
- 8.1.4** Return the Equipment by the end of the Hire Term.
- 8.2** In the event of a default by the Hirer, in addition to all of their other rights at law and pursuant to these Hire T&Cs, the Company shall be entitled to:
  - 8.2.1** immediately terminate the Hire Agreement; and
  - 8.2.2** charge the Hirer interest on all amounts not paid by the Hirer within the Hire Term for payment at a rate of 1.5% per calendar month calculated from the Payment Date and accruing monthly therefrom until the date of payment; and
  - 8.2.3** collect the Equipment in the possession or control of the Hirer; and
  - 8.2.4** charge the Hirer an Equipment collection fee at cost plus 10%.
- 8.3** If the Hirer defaults in payment of any invoice when due and payable, the Hirer shall indemnify the Company from and against all expenses, costs and disbursements incurred by the Company in pursuing the debt including all reasonably charged legal costs on a “solicitor and own client” basis and the fees charged to the Company by any mercantile agency.
- 8.4** In the event the Hire Agreement is terminated prior to the end of the Initial Hire Term, an early termination charge equal to the Fee for the remaining period of Initial Hire Term shall be due and payable.

## **9 Transport Services**

- 9.1** Where the Company or its subcontractors provide delivery, carriage, collection or relocation services, it is agreed that neither the Company nor its subcontractors are common carriers and accept no liability as such. All delivery, carriage, collection or relocation services are performed at the Hirer’s risk and to the extent permitted by law the Hirer bears the risk of loss or damage arising out of the Equipment or its contents.
- 9.2** The Hirer must not place or cause to be placed into the Company’s Equipment any material or items that are or are liable to be explosive, flammable, hazardous or damaging without presenting to the Company a full description of such material or items and this obligation must be part of any term of sub-hire, in favour of the Company.

## **10. Termination**

- 10.1.** The Company may terminate this agreement by written notice to the Hirer with immediate effect if:
  - 10.1.1.** the Hirer breaches any provision of the agreement; or
  - 10.1.2.** otherwise, on one month written notice.
- 10.2.** On the termination or expiry of the agreement, the Hirer must:
  - 10.2.1.** return the Equipment to the Company at its nominated premises;
  - 10.2.2.** allow the Company such access to the premises or otherwise at Hirer’s cost so as to allow Company to collect the Equipment;
  - 10.2.3.** pay to the Company the cost of repairing any damage to the Equipment other than fair wear and tear.
  - 10.2.4.** pay to the Company any and all other charges owing under this agreement, and any legal fees to recover possession of the Equipment



## **11. Ownership and PPSA**

- 11.1.** Legal and beneficial ownership of the Equipment shall at all times remain with the Company and the Hire Agreement only provides the Hirer a right of use of the Equipment and possession as a Bailee in accordance with the terms of the Hire Agreement.
- 11.2.** Risk in and responsibility for the Equipment passes to The Hirer on and from the Commencement Date and until the Hirer returns the Equipment to the Company in the condition in which it was provided subject to fair wear and tear and until all charges and repairs and damages costs assessed by the Company are paid by the Hirer.
- 11.3.** The Hirer shall at no time be entitled to sell, assign, sublet, charge, mortgage or create any form of *Security Interest* over or in the Equipment.

## **12. Personal Property Securities**

- 12.1.** Defined terms in this clause have the same meaning as given to them in the PPSA.
- 12.2.** The Company and the hirer acknowledge that this agreement creates a Security Interest under the PPSA and also gives rise to a Purchase Money Security Interest (PMSI) in favour of the Company over the Equipment supplied or to be supplied on hire to the Hirer, as Grantor, pursuant to this agreement.
- 12.3.** The Equipment supplied or to be supplied under this agreement falls within the PPSA classification of "Other Goods" and / or "Motor Vehicles" hired by the Hirer pursuant to the agreement.
- 12.4.** The Company and the Hirer acknowledge that the Company, as Secured Party, is entitled to register its security interest in the Goods supplied or to be supplied to Hirer on hire under this agreement on the PPSA Register as Collateral.
- 12.5.** To the extent permissible at law, the Hirer:
  - 12.5.1.** waives its right to receive notification of or a copy of any Verification Statement confirming registration of a Financing Statement or a Financing Change Statement relating to a Security Interest granted by the Hirer, as Grantor, to the Company.
  - 12.5.2.** agrees to indemnify the Company on demand for all costs and expenses, including legal costs and expenses on a solicitor / client basis, associated with the:
    - a)** registration or amendment or discharge of any Financing Statement registered by or on behalf of the Company; and
    - b)** enforcement or attempted enforcement of any Security Interest granted to the Company by the Hirer.
- 12.6.** The Company and Hirer acknowledge that for the purpose of section 109(1) of the PPSA this agreement does not secure payment or performance of an obligation. However, if Chapter 4 of the PPSA does apply to the enforcement of a security interest arising under this agreement, the Hirer agrees, to the extent permissible at law, to the following:
  - 12.6.1.** that nothing in sections 130 or 143 of the PPSA will apply to this agreement or the Security under this agreement;
  - 12.6.2.** to waive its right to do any of the following under the PPSA:
  - 12.6.3.** receive notice of removal of an Accession under section 95;



- 12.6.4.** receive notice of an intention to seize Collateral under section 123;
- 12.6.5.** object to the purchase of the Collateral by the Secured Party under section 129;
- 12.6.6.** receive notice of disposal of Collateral under section 130;
- 12.6.7.** receive a Statement of Account if there is no disposal under section 130(4);
- 12.6.8.** receive a Statement of Account under section 132(3)(d) following a disposal showing the amounts paid to other Secured Parties and whether Security Interests held by other Secured Parties have been discharged.
- 12.6.9.** receive notice of retention of Collateral under section 135;
- 12.6.10.** redeem the Collateral under section 142; and
- 12.6.11.** reinstate the Security Agreement under section 143.
- 12.7.** All payments received from the Hirer must be applied in accordance with section 14(6)(c) of the PPSA.

### **13. Exclusions and Limitation of Liability**

- 13.1.** In entering into a Hire Agreement with the Company the Hirer warrants and agrees that:
  - 13.1.1.** They have not relied on any warranty, representation or calculation made by the Company or any of its employees or agents which has not been expressly included in the Hire T&Cs or the Hire Agreement;
  - 13.1.2.** All agreements shall be deemed to exclude any Exclusions set out in any Hire Agreement;
  - 13.1.3.** They have read and consent to the Hire T&Cs.
- 13.2.** They authorise the Company and its representatives to access any land, by any means, on which the Equipment is held or stored at all times to install, inspect, repair or remove the Equipment.
- 13.3. Warranties and Liability – Non-Consumer Equipment and Services**
  - 13.3.1.** This clause 13.3 applies where the amount payable for the hire of the Equipment and / or related services during the Initial Hire Term exceeds AUD\$40,000 or such other amount as may be prescribed by the Australian Competition & Consumer Act 2010 and its regulations from time to time or the Equipment and/ or related services is not ordinarily acquired for personal, domestic or household use.
  - 13.3.2.** To the extent permitted by law:
    - a) the Company excludes all express and implied warranties in respect of the Equipment and Services that would otherwise be implied by the law into the Agreement;
    - b) the Company excludes all liability for any damage, whether arising in contract, tort (including, without limitation, negligence or breach of statutory duty) or otherwise to compensate the Hirer for any Consequential Loss;
    - c) the Company's liability for any breach of any warranty or any term implied by the law into the Agreement is limited, to any one or more of the following at the Company's option:
      - i. in relation to goods:
        - (aa) the replacement of the goods or the supply of equivalent goods;
        - (bb) the repair of the goods;
        - (cc) the payment of the cost of replacing the goods or of acquiring equivalent goods; or





- (dd) the payment of the cost of having the goods repaired.
- ii. in relation to the services:
  - (aa) the supply of the services again; or
  - (bb) the payment of the cost of having the services supplied again.

#### **13.4. Warranties and Liability – Consumer Equipment and Services**

- 13.4.1.** This clause 13.4 applies only where the amount payable for the hire of the Equipment and/or Services during the Initial Hire Term is \$40,000 (or such other amount as may be prescribed by the Australian Competition & Consumer Act 2010 and its regulations from time to time) or less or the Equipment and/or Services are ordinarily acquired for personal, domestic or household use.
  - 13.4.2.** Application of consumer guarantees under the Australian Consumer Law. The Equipment and Services to be provided come with guarantees that cannot be excluded under the Australian Consumer Law.
  - 13.4.3.** In relation to the Equipment, the Hirer is entitled to a replacement or refund for a major failure and to compensation for any other reasonably foreseeable quality loss or damage. The Hirer is also entitled to have the Equipment repaired or replaced if the Equipment fails to be of acceptable quality and the failure does not amount to a major failure.
  - 13.4.4.** In relation to any Services provided, the Hirer can cancel the Hire Agreement and pay a reasonable amount for the Services provided or seek a refund. For money already paid, the Hirer can keep the Hire Agreement on foot and negotiate a reduced price for the drop in value of the Services— this may mean asking for some of the Hirer’s money back if the Hirer has already paid.
- 13.5.** The Company shall not be liable to the Hirer for any loss, damage, delay or failure to perform as a result or arising from any act of God, disease, strike, lockouts, war, fire, IT malfunctions or any accident or incident of any nature what so ever beyond the reasonable control of the Company.
- 13.6.** The provision in this section in no way limits or reduces the statutory guarantee pursuant to the Competition and Consumer Act or the Australian Consumer Law.

#### **14. Waiver**

- 14.1.** The failure or indulgences by the Company to exercise, or delay in exercising, any right, power or privilege available to it under the Hire Agreement will not operate as a waiver thereof or preclude any other or further exercise thereof or the exercise of any right or power and the Company shall be entitled to require strict compliance at all times.

#### **15. Proper Law**

- 15.1.** The Hire Agreement is governed by and will be construed in accordance with the laws of the State of New South Wales, Australia.
- 15.2.** The Parties agree to submit to the exclusive jurisdiction of the Courts of the State of NSW if the Local Court has jurisdiction the Parties consent to the exclusive jurisdiction of the Local Court closest to the Company’s place of business.
- 15.3.** All Hire Agreements shall be deemed to have been entered into at the Company’s place of business.

#### **16. General provisions**





- 16.1.** The Hire Agreement and the Hire T&Cs shall continue to have full force and effect until the Equipment is returned and all the Hirer's obligations have been complied with and payments made.
- 16.2.** The Company may serve any notice or Court document on the Hirer by hand or by forwarding it by post to the address of the Hirer's last known to the Company, or where a fax number or an email address has been supplied by the Hirer, by sending it to that number or address. Such notices shall be deemed to be given:
  - 16.2.1.** where delivered by hand, on the day of delivery;
  - 16.2.2.** where sent by post, two (2) business days after the day of posting; and
  - 16.2.3.** where sent by facsimile or email on the day of dispatch, provided that a clear transmission report is obtained.
- 16.3.** The Hire Agreement represents the entire agreement and no agreement or understanding varying or extending the terms of the Hire T&Cs shall be legally binding upon either Party unless in writing and signed by both Parties or allowed by these Hire T&Cs.
- 16.4.** The Hirer shall not be entitled to set off against or deduct from the Fee or Charges any sums owed or claimed to be owed to the Hirer against the Company.
- 16.5.** No agreement or understanding varying or extending the Hire Agreement shall be legally binding on either Party unless varied in writing and signed by both Parties or permitted by the Hire T&Cs.
- 16.6.** If any term of the Hire Agreement or Hire T&Cs shall be invalid, void, illegal or unenforceable, they shall be severed from the agreement and the remaining provisions shall not be affected, prejudiced or impaired by such severance.
- 16.7.** The Hirer may not assign or attempt to assign the Hire Agreement or any right under the Hire Agreement without the prior written consent of the Company.