

1 Definitions

- 1.1 “Fencefast” means Fencefast Australia Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Fencefast Australia Pty Ltd
- 1.2 “Client” means the Client or any person acting on behalf of and with the authority of the Client.
- 1.3 “Equipment” means all Equipment (including but not limited, to temporary fencing panels, fencing feet, temporary support stays, temporary fence clamps, any signage, padlocks or barbed wire, and any other associated accessories) supplied on hire by Fencefast to the Client (and where the context so permits shall include any incidental supply of services). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation forms as provided by Fencefast to the Client.
- 1.4 “Minimum Hire Period” means the Minimum Hire Period as described on the invoices, quotation, authority to hire, or any other forms as provided by Fencefast to the Client.
- 1.5 “Price” means the cost of the hire of the Equipment as agreed between Fencefast and the Client subject to clause 4 of this contract.

2 The Commonwealth Competition and Consumer Act 2010 (“CCA”) and Fair Trading Acts (“FTA”)

- 2.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the CCA or the FTA in each of the States and Territories of Australia (including any substitute to those Acts or re-enactment thereof), except to the extent permitted by those Acts where applicable.
- 2.2 Where the Client hires Equipment as a consumer these terms and conditions shall be subject to any laws or legislation governing the rights of consumers and shall not affect the consumer’s statutory rights.

3 Acceptance

- 3.1 Any instructions received by Fencefast from the Client for the hire of Equipment and/or the Client’s acceptance of Equipment supplied on hire by Fencefast shall constitute acceptance of the terms and conditions contained herein.
- 3.2 Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments of the Price.
- 3.3 Upon acceptance of these terms and conditions by the Client the terms and conditions are irrevocable and can only be amended with the written consent of Fencefast.
- 3.4 The Client shall give Fencefast not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client or any change in the Client’s name and/or any other change in the Client’s details (including but not limited to, changes in the Client’s address, facsimile number, or business practice). The Client shall be liable for any loss incurred by Fencefast as a result of the Client’s failure to comply with this clause.
- 3.5 Equipment is supplied by Fencefast based only on the terms and conditions of hire herein to the exclusion of anything to the contrary in the terms of the Client’s order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of hire.

4 Price and Payment

- 4.1 At Fencefast’s sole discretion the Price shall be either;
 - (a) as indicated on invoices provided by Fencefast to the Client in respect of Equipment supplied on hire; or
 - (b) Fencefast’s current Price, at the date of delivery of the Equipment, according to Fencefast’s current Price list; or
 - (c) Fencefast’s quoted Price (subject to clause 4.2) which shall be binding upon Fencefast provided that the Client shall accept in writing Fencefast’s quotation within thirty (30) days.
- 4.2 Fencefast reserves the right to change the Price in the event of a variation to Fencefast’s quotation.
- 4.3 At Fencefast’s sole discretion a bond may be required which shall be refunded upon return of the Equipment in a condition acceptable to Fencefast.
- 4.4 At Fencefast’s sole discretion:
 - (a) payment shall be due on delivery of the Equipment; or
 - (b) payment shall be due before delivery of the Equipment.
- 4.5 Time for payment for the Equipment shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due thirty (30) days following the date of the invoice.
- 4.6 Payment will be made by cash, or by cheque, or by bank cheque, or by credit card (plus a surcharge of up to three and a half percent (3.5%) of the Price), or by direct credit, or by any other method as agreed to between the Client and Fencefast.
- 4.7 Receipt by Fencefast of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 4.8 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

5 Hire Period

- 5.1 Hire charges shall commence from the time the Equipment is delivered and set up at the Client’s premises and shall continue until the Equipment is dismantled and collected by Fencefast.
- 5.2 The Client acknowledges and understands that a Minimum Hire Period of one (1) month shall be applicable to all hire of Equipment. An extra one (1) month re-hire fee shall apply in the event that the Equipment is “off-hired” anytime after the agreed hire period.
- 5.3 No allowance whatsoever can be made for time during which the Equipment is not in use for any reason, unless Fencefast confirms special prior arrangements in writing.

6 Delivery of the Equipment

- 6.1 At Fencefast's sole discretion delivery of the Equipment shall take place when:
- (a) the Client takes possession of the Equipment at Fencefast's address; or
 - (b) the Client takes possession of the Equipment at the Client's address.
- 6.2 Subject to clause 6.3, Fencefast's Price includes the initial delivery and collection of the Equipment, any subsequent delivery or collection of the Equipment will be charged additionally to the Client.
- 6.3 At Fencefast's sole discretion, any delivery outside of the Sydney metro area may incur additional charges.
- 6.4 The Client shall:
- (a) make all arrangements necessary to take delivery of the Equipment, whenever it is tendered for delivery. In the event that the Client is unable to take delivery of the Equipment as arranged, then Fencefast shall be entitled to charge for redelivery of the Equipment;
 - (b) be responsible for free access by Fencefast to the site on which the Equipment is located. If there are any delays due to free access not being available then the Client shall be responsible and shall reimburse Fencefast for all lost hire fees associated with the Equipment being unavailable. The Client shall also be responsible for all other expenses and costs incurred by Fencefast due to delays in access to the Equipment. The off-hire receipt will be issued when the Equipment is picked up by Fencefast or returned to Fencefast's premises.
- 6.5 The Client acknowledges that Fencefast shall be entitled to charge the Client additionally where Fencefast is requested to relocate the Equipment.
- 6.6 The failure of Fencefast to deliver shall not entitle either party to treat this contract as repudiated.
- 6.7 Fencefast shall not be liable for any loss or damage whatsoever due to failure by Fencefast to deliver the Equipment (or any of it) promptly, or at all, where due to circumstances beyond the control of Fencefast.

7 Risk

- 7.1 Fencefast retains property in the Equipment nonetheless all risk for the Equipment passes to the Client on delivery.
- 7.2 The Client accepts full responsibility for the safekeeping of the Equipment and indemnifies Fencefast for all loss, theft, or damage to the Equipment howsoever caused and without limiting the generality of the foregoing whether or not such loss, theft, or damage is attributable to any negligence, failure, or omission of the Client.
- 7.3 The Client will insure, or self insure, Fencefast's interest in the Equipment against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will effect adequate Public Liability Insurance covering any loss, damage or injury to property arising out of the Equipment. Further the Client will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.
- 7.4 The Client accepts full responsibility for and shall keep Fencefast indemnified against all liability in respect of all actions, proceedings, claims, damages, costs and expenses in respect of any injury to persons or damage to property arising out of the use of the Equipment during the hire period however arising and whether or not arising from any negligence, failure or omission of the Client or any other persons.

8 Access

- 8.1 The Client shall ensure that Fencefast has clear and free access to the work site at all times to enable them to undertake the works. Fencefast shall not be liable for any loss or damage to the site unless due to the negligence of Fencefast.
- 8.2 The Client acknowledges and agrees that Fencefast may charge a labour cost of forty five dollars (\$45) per hour plus GST per each Fencefast installer required to wait due to an inaccessible site.

9 Title

- 9.1 The Equipment is and will at all times remain the absolute property of Fencefast.
- 9.2 If the Client fails to return the Equipment to Fencefast then Fencefast or Fencefast's agent may (as the invitee of the Client) enter upon and into land and premises owned, occupied or used by the Client, or any premises where the Equipment is situated and take possession of the Equipment, without being responsible for any damage thereby caused.
- 9.3 The Client is not authorised to pledge Fencefast's credit for repairs to the Equipment or to create a lien over the Equipment in respect of any repairs.

10 Defects

- 10.1 The Client shall inspect the Equipment on delivery and shall:
- (a) immediately (for non-account Client's); or
 - (b) within twenty-four (24) hours;
- notify Fencefast of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford Fencefast an opportunity to inspect the Equipment within a reasonable time following delivery if the Client believes the Equipment is defective in any way. If the Client shall fail to comply with these provisions the Equipment shall be presumed to be free from any defect or damage. For defective Equipment, which Fencefast has agreed in writing that the Client is entitled to reject, Fencefast's liability is limited to either repairing or replacing the Equipment, except where the Client has hired Equipment as a consumer within the meaning of the Competition and Consumer Act 2010 or the Fair Trading Acts of the relevant state or territories of Australia, and may therefore also be entitled to, either a refund of the hire price of the Equipment, or repair of the Equipment, or replacement of the Equipment.

11 Client's Responsibilities

- 11.1 The Client shall:
- (a) notify Fencefast immediately by telephone of the full circumstances of any Equipment failure or accident. The Client is not absolved from the requirements to safeguard the Equipment by giving such notification;
 - (b) satisfy itself at commencement that the Equipment is suitable for its purposes;
 - (c) operate 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 Fencefast or posted on the Equipment;
 - (d) ensure that all persons operating or erecting the Equipment are suitably instructed in its safe and proper use and where necessary hold a current Certificate of Competency and/or are fully licensed to operate the Equipment and shall provide evidence of the same to Fencefast upon request;
 - (e) comply with all occupational health and safety laws relating to the Equipment and its operation;
 - (f) provide Fencefast with a minimum of two (2) business days notice of off-hire. The Client shall be responsible for the Equipment under these terms and conditions until the two (2) days have lapsed;
 - (g) 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 Fencefast;
 - (h) keep the Equipment in their own possession and control and shall not assign the benefit of the hire contract nor be entitled to lien over the Equipment;
 - (i) 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;
 - (j) employ the Equipment solely in its own work and shall not permit the Equipment of any part thereof to be used by any other party for any other work;
 - (k) not fix any of the Equipment in such a manner as to make it legally a fixture forming part of any freehold;
 - (l) indemnify and hold harmless Fencefast in respect of all claims arising out of the Client's use of the Equipment;
 - (m) not permit the removal of the Equipment from the installation site without the prior written approval of Fencefast.
- 11.2 Immediately on request by Fencefast (and in the event that no damage waiver fee has been paid by the Client), the Client will pay:
- (a) the new list price of any Equipment that is for whatever reason destroyed, written off or not returned to Fencefast;
 - (b) all costs incurred in cleaning the Equipment;
 - (c) 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;
 - (d) the cost of repairing any damage to the Equipment caused by the negligence of the Client or the Client's agent;
 - (e) the cost of repairing any damage to the Equipment caused by vandalism, or (in Fencefast's reasonable opinion) in any way whatsoever other than by the ordinary use of the Equipment by the Client.
- 11.3 If a damage waiver has been issued to the Client, Fencefast agrees not to claim for damages to the Equipment caused by accident or collision by the Client on condition that the Client can prove that adequate steps were taken to protect the Equipment.
- 11.4 Expressly excluded from the damage waiver shall be:
- (a) loss or damage caused by mistreatment of the Equipment;
 - (b) theft, loss or damage to items not listed and/or paid for in the damage waiver.

12 Cancellation

- 12.1 Fencefast may cancel these terms and conditions or cancel delivery of Equipment at any time before the Equipment is delivered by giving written notice. On giving such notice Fencefast shall repay to the Client any sums paid in respect of the Price. Fencefast shall not be liable for any loss or damage whatever arising from such cancellation.
- 12.2 In the event that the Client cancels delivery of the Equipment the Client shall be liable for any loss incurred by Fencefast (including, but not limited to, any loss of profits) up to the time of cancellation.

13 Default and Consequences of Default

- 13.1 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 Fencefast's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 13.2 If the Client owes Fencefast any money the Client shall indemnify Fencefast from and against all costs and disbursements incurred by Fencefast in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Fencefast's collection agency costs, and bank dishonour fees).
- 13.3 Without prejudice to any other remedies Fencefast may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms of hire Fencefast may repossess the Equipment as per clause 9.2, or suspend or terminate the supply of Equipment to the Client and any of its other obligations under the terms and conditions. Fencefast will not be liable to the Client for any loss or damage the Client suffers because Fencefast has exercised its rights under this clause.
- 13.4 Without prejudice to Fencefast's other remedies at law Fencefast shall be entitled to cancel all or any part of any order of the Client which remains unperformed in addition to and without prejudice to any other remedies Fencefast may have and all amounts owing to Fencefast shall, whether or not due for payment, become immediately payable in the event that:
- (a) any money payable to Fencefast becomes overdue, or in Fencefast's opinion the Client will be unable to meet its payments as they fall due; or

- (b) the Client 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
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

14 Security and Charge

- 14.1 In consideration of Fencefast agreeing to supply Equipment, the Client 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 Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 14.2 The Client indemnifies Fencefast from and against all Fencefast's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Fencefast's rights under this clause.
- 14.3 The Client irrevocably appoints Fencefast and each director of Fencefast as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 14 including, but not limited to, signing any document on the Client's behalf.

15 Privacy Act 1988

- 15.1 The Client agrees for Fencefast to obtain from a credit reporting agency a credit report containing personal credit information about the Client in relation to credit provided by Fencefast.
- 15.2 The Client agrees that Fencefast may exchange information about the Client with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency for the following purposes:
 - (a) to assess an application by the Client; and/or
 - (b) to notify other credit providers of a default by the Client; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Client.The Client understands that the information exchanged can include anything about the Client's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.
- 15.3 The Client consents to Fencefast being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 15.4 The Client agrees that personal credit information provided may be used and retained by Fencefast for the following purposes (and for other purposes as shall be agreed between the Client and Fencefast or required by law from time to time):
 - (a) the provision of Equipment on Hire; and/or
 - (b) the marketing of services by Fencefast, its agents or distributors; and/or
 - (c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Equipment on hire; and/or
 - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
 - (e) enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the hire of the Equipment.
- 15.5 Fencefast may give information about the Client to a credit reporting agency for the following purposes:
 - (a) to obtain a consumer credit report about the Client;
 - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Client.
- 15.6 The information given to the credit reporting agency may include:
 - (a) personal particulars (the Client's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number);
 - (b) details concerning the Client's application for credit or commercial credit and the amount requested;
 - (c) advice that Fencefast is a current credit provider to the Client;
 - (d) advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;
 - (e) that the Client's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
 - (f) information that, in the opinion of Fencefast, the Client has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Client's credit obligations);
 - (g) advice that cheques drawn by the Client for one hundred dollars (\$100) or more, have been dishonoured more than once;
 - (h) that credit provided to the Client by Fencefast has been paid or otherwise discharged.

16 Personal Property Securities Act 2009 ("PPSA")

- 16.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.

- 16.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Equipment that has previously been supplied and that will be supplied in the future by Fencefast to the Client.
- 16.3 The Client undertakes to:
- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Fencefast may reasonably require to:
 - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 16.3(a)(i) or 16.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, Fencefast for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Equipment charged thereby;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of Fencefast;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Equipment in favour of a third party without the prior written consent of Fencefast.
- 16.4 Fencefast and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 16.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 16.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 16.7 Unless otherwise agreed to in writing by Fencefast, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 16.8 The Client must unconditionally ratify any actions taken by Fencefast under clauses 16.3 to 16.5.
- 16.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions the PPSA.

17 General

- 17.1 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.
- 17.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales and are subject to the jurisdiction of the courts of New South Wales.
- 17.3 Fencefast shall be under no liability whatsoever to the Client for any indirect loss and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by Fencefast of these terms and conditions.
- 17.4 In the event of any breach of this contract by Fencefast the remedies of the Client shall be limited to damages. Under no circumstances shall the liability of Fencefast exceed the Price.
- 17.5 The Client shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Client by Fencefast.
- 17.6 Fencefast may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 17.7 Fencefast reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which Fencefast notifies the Client of such change. Except where Fencefast supplies further Equipment to the Client and the Client accepts such Equipment, the Client shall be under no obligation to accept such changes.
- 17.8 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.
- 17.9 The failure by Fencefast to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Fencefast's right to subsequently enforce that provision.