

“Terms and Conditions”

In these terms and conditions:

- 1) TFB means TFB Hire Pty Ltd as the trustee for The TFB Hire Trust ABN 77 392 289 429.
- 2) Delivery is deemed to have occurred when the fence has been transported to a location at the request of the Hirer.
- 3) Temporary fence means the temporary fence hired by TFB to the Hirer subject to these terms and conditions.
- 4) Hirer means the Person, Company or any other entity hiring the Equipment from TFB including its employees and contractors.
- 5) Initial Hire Period means the initial hire period identifiable within your Quote.
- 6) Rates means the hire rates listed within the accepted Quote for the Initial Period, subject to any variation to the rates that have been agreed in writing between the parties for the remainder of the Hire Period.
- 7) Hire Fee means the hire fee (including the installation and hire costs) as set out in the Quote provided to the Hirer by TFB.
- 8) Equipment means the goods products hired by TFB to the hire subject to these terms and conditions.
- 9) Return of the equipment is deemed to have occurred when TFB is notified in writing that the Hirer is finished with the equipment, and/or the equipment is collected by TFB.

RATES AND RENTAL PERIOD

- 1) The Rental or Hire period (“Hire Period”) starts when Equipment is delivered to the site that is either specified in the Quote or otherwise agreed in writing between TFB and the Hirer and ends when collected by TFB from site.
- 2) All hire periods are for the Initial Hire Period between TFB and the Hirer together with and subject to automatic rollover detailed below under these terms and conditions.
- 3) Once the Initial Hire Period has ended, the hire period is automatically extended for an additional period equivalent to the Initial Hire Period commencing from the day after the end of the Initial Hire Period and the Hire Period will continue to extend on a rolling basis in additional periods equivalent to the Initial Hire Period thereafter until the Hirer gives notice of cancellation under these terms and conditions or the Equipment is otherwise returned to TFB’s depot.
- 4) The Hire Period includes weekends and public holidays.
- 5) During the Hire period the Hirer must pay TFB a hire fee calculated in accordance with the Rate.
- 6) The Hire Fee must be paid in accordance with the payment terms detailed below.
- 7) Not receiving an invoice will in no way relieve the Hirer of its responsibility to pay the amounts due under these terms and conditions.
- 8) In circumstances where the Hirer has given TFB a valid credit card authority or account debit authority, the Hirer authorises TFB to debit all fees and charges payable and due in accordance with these “Terms and Conditions” to the Hirer’s card or account. In circumstances where a Hirer’s original payment is paid by credit card then the Hirer expressly authorises TFB to deduct recurring payments from that card as each recurring Hire Period begins. Failure by the credit card provider or bank to honour any such charges shall not relieve the Hirer from personal responsibility for such charges.
- 9) Failure to pay in accordance with the rates and/or invoices will be considered a breach of this agreement.
- 10) The Hirer must pay on demand on a full indemnity basis, all costs incurred in recovering any amount owed to TFB by the Hirer including legal fees.
- 11) The Hirer agrees to pay a service charge on all past due balances at the rate of 2.5% per month or part thereof.
- 12) To secure payment of all monies which may become payable by the Hirer to TFB the Hirer charges in favour of all the Hirer’s state and interest in any land and in any other assets whether tangible or intangible in which the Hirer has any legal or beneficial interest on in which the Hirer later acquires.
- 13) The Hirer consents to the lodging by TFB of a caveat or caveats, which note TFB’s interest in that property.
- 14) The Hirer retains TFB to deliver, pick up, install or remove the Equipment from the site documented.
- 15) If TFB is delayed from delivering or removing the equipment from any location for any reason beyond its reasonable control, it may charge the Hirer additional delivery charges. The additional charges will be calculated for every 15 minutes (or part) waiting time at the rate of \$35 per 15 minutes.
- 16) The Hirer is liable for any damage or loss (including consequential loss) which may arise as a direct or indirect result of the delivery, hire, pick up, installation or removal of the equipment by TFB and whether caused by the Hirer, or any other person.

RECEIPT OF EQUIPMENT

The Hirer must satisfy itself, (and acknowledges that it has satisfied) itself) that:

- 1) It has received the Equipment in good condition in the quantity ordered;
- 2) It, and any employee or contractor using the Equipment, has been fully instructed in the use of the Equipment and under stands its proper use and means of installation and removal, and
- 3) The equipment is suitable and fit for the purpose for which the Hirer intends to use it and acknowledges that it does not rely on any actual or implied representation by TFB as to the suitability or fitness of the Equipment for any particular purpose.

USE OF EQUIPMENT

- 1) The Hirer must ensure that the Equipment is only used in accordance with TFB instructions and any procedures recommended by TFB from time to time.
- 2) The Hirer must not, without the prior consent in writing of TFB:
 - 1) Alter or make additions to the Equipment; or
 - 2) Deface, remove or conceal any TFB logo.

the Hirer must

- 1) Not damage, abuse or mistreat or allow Equipment to be deliberately damaged, abused, or mistreated, and
- 2) Use and ensure that the Equipment is used, in a safe manner.
- 3) If any damage, loss, theft or destruction of the Equipment occurs whether the Hirer is responsible or not, the Hirer must:
 - a) Immediately notify TFB and provide full details of the damage, loss theft or destruction, and
 - b) If demanded by TFB pay TFB the cost of replacement or repair of Equipment in accordance with TFB – damaged & lost equipment rate - as advised by phoning TFB at any time.
- 4) The Hirer must use the Equipment at all times strictly in accordance with:
 - a) All applicable laws, and
 - b) Any relevant industry usage custom and standards for goods similar to the equipment.
- 5) The Hirer must obtain and maintain, at its own expense, any permit or license that may be required under any law.

RETURN OF MATERIALS AND DAMAGE WAIVER

- 1) If the Hirer returns the Equipment in a condition, which in the reasonable opinion of TFB renders it unusable for hire, the Hirer must pay TFB on demand the cost of replacement calculated in accordance with TFB damaged & lost equipment rate. In no circumstances will title to the Equipment or any part of it pass to the Hirer.
- 2) In addition to any other obligation the Hirer may have to TFB the Hirer will be liable for all losses including consequential losses, incurred by TFB arising out of the Equipment not being returned (or made available for collection) in normal business hours. This clause in no way limits any liability the Hirer has to TFB.
- 3) Where a waiver charge has been charged to the Hirer as set out in the Quote (if applicable) (“Waiver Charge”) TFB agrees to waive its rights to claim for loss or damage to the Equipment caused by theft, burglary, fire, storm, accident or collision only if TFB is provided with a police report confirming the circumstances of the loss or damage.
- 4) Expressly excluded from this waiver is loss or damage caused by:
 - a) Loss or damage due to misuse, abuse, or use of the Equipment in contravention of the terms and conditions of hire;
 - b) Loss or damage to items on which the waiver premium is not charged or where it has been charged but not paid;
 - c) Theft of the equipment unless reasonably secured, mysterious disappearance or wrongful conversion of the Equipment; and
 - d) Incidental costs associated with transport and labour for replacement materials to make good if required.

RIGHTS

- 1) TFB may terminate all hire agreements and recover the Equipment at any time without notice to the Hirer.
- 2) TFB may enter any premises or location where the Equipment or any part thereof is or is believed to be located for the purpose of:
 - 1) Inspecting or testing the Equipment,
 - 2) Protecting TFB’s rights or interests in the Equipment,
 - 3) Ensuring compliance with any law including any law relating to health and safety, or
 - 4) Exercising its right to take possession or control of the Equipment.
- 3) Nothing in this clause limits any rights TFB may have:
 - 1) in respect of the Equipment,
 - 2) against the Hirer, or
 - 3) against any other person, at any time.

DISCLAIMER OF WARRANTIES

- 1) Subject to sub-paragraph 3 of this clause, TFB gives no warranties, express or implied as to the fitness of the Equipment for any particular purpose. TFB is not responsible to the Hirer or to any other person for any loss including consequential loss, damage or injury caused by or resulting from or in any way connected with, the Equipment, or any defect in it. All guarantees, warranties, undertakings or representations express or implied are excluded to the maximum extent permitted by law.
- 2) TFB will not be responsible for failure or delay in delivery, pick up, installation or removal due to any causes beyond its reasonable control and will have no liability to the Hirer or any other person for any loss including consequential loss arising out of such failure or delay.
- 3) Notwithstanding the above, nothing in this agreement restricts or modifies any right or remedy which any guarantee imposed or implied under the Australian Consumer Law (if applicable) which contains guarantees to protect consumers of certain goods and services.
- 4) Save for any liability that TFB may not exclude, to the maximum extent permitted by law, TFB’s liability for all claims arising under this agreement, whether in contract, tort (including without limitation negligence), in equity, under statute, under an indemnity or on any other basis, is limited to an amount equal to the Hire Fee paid by the Hirer under its agreement with TFB.

LIABILITIES OR INDEMNITY

- 1) The Hirer is liable for all damages or loss including consequential loss whether caused by the Hirer or any other third party, arising directly or indirectly out of the use of the Equipment by or on the Hirer’s behalf.
- 2) To the maximum extent permitted by law, the Hirer releases TFB from all liability for any loss or damage it may suffer or arising out of the use, construction, storage, maintenance or transport of the Equipment, however caused.
- 3) The Hirer agrees to indemnify and keep TFB and its employees and contractors indemnified from all damage suits, actions, claims and demands arising out of the use, maintenance, transport, installation or operation of the Equipment by the Hirer or any person authorised by it to use the Equipment.
- 4) The Hirer must not do or allow to be done any act matter or thing, which may invalidate or prejudice any,
 - 1) Insurance policy effected by TFB,
 - 2) Claim made by or against TFB, or
 - 3) Right TFB may have against any person, arising directly or indirectly out of the use of the Equipment by the Hirer.

TITLE AND SECURITY

- 1) Title to the equipment remains with TFB at all times and the Hirer only holds the Equipment as bailee during the Hire Period.
- 2) The Hirer is not entitled to offer, sell, assign, sub-let, charge, mortgage, pledge or create any form of security interest over or otherwise deal in any way with any of the equipment.
- 3) This clause applies to the extent that the contract with the Hirer provides for a “security interest” for the purposes of the Personal Property Securities Act 2009 (Cth) (“PPS Law”). References to PPS Law in this agreement include references to amended, replacement and successor provisions or legislation.
- 4) If TFB does not have at commencement of the Hire Period, a PPS Law registration ensuring a perfected first priority security interest in the Equipment, the Hirer (including the Initial Hire Period, any extension of the Initial Hire Period or the aggregate of consecutive Hire Periods during which the Hirer has substantially uninterrupted possession) may not despite anything else in this document, or any quote or hire schedule be longer than a year.
- 5) TFB may register its security interest. The Hirer must do anything (such as obtaining consents and signing documents) which TFB requires for the purposes of:
 - 1) ensuring that TFB’s security interest is enforceable, perfected and otherwise effective under the PPS Law;
 - 2) enabling TFB to gain first priority (or any other priority agreed to by TFB in writing) for its security interest; and
 - 3) enabling TFB to exercise rights in connection with the security interest.
- 6) The rights of TFB under this document are in addition to and not in substitution for TFB’s rights under other law (including the PPS Law) and TFB may choose whether to exercise rights under this document, and/or under such other law, as it sees fit. To avoid any doubt, TFB’s security interest will attach to proceeds.
- 7) To the extent Chapter 4 of the PPSA applies to any security interest under this agreement, the following provisions of the PPS Law do not apply and, for the purposes of section 115 of the PPS Law are contracted out of this agreement in respect of all goods to which that section can be applied: section 95 (notice of removal of accession to the extent it require TFB to give a notice to the Hirer); section 96 (retention of accession); section 121(4) (notice to grantor); section 125 (obligations to dispose of or retain collateral); section 130 (notice of disposal to the extent it requires TFB to give a notice to the Hirer); section 129(2) and 129(3); section 132(3)(d) (contents of statement of account after disposal); section 132(4) (statement of account if no disposal); section 135 (notice of retention); section 142 (redemption of collateral) and section 143 (re-attachment of security agreement).
- 8) The following provisions of the PPS Law: section 123 (seizing collateral); section 126 (apparent possession); section 128 (secured party may dispose of collateral); section 129 (disposal by purchase); and section 134(1) (retention of collateral) confer rights on TFB. Hirer agrees that in addition to those rights, TFB shall, if there is default by the Hirer, have the right to seize, purchase, take possession or apparent possession, retain, deal with or dispose of any goods, not only under those sections but also, as additional and independent rights under this document and the Hirer agrees that TFB may do so in any manner it sees fit including (in respect of dealing and disposal) by private or public sale, lease or licence.
- 9) The Hirer waives its rights to receive a verification statement in relation to registration events in respect of commercial property under section 157 of the PPS Law.
- 10) TFB and the Hirer agree not to disclose information of the kind that can be requested under section 275(1) of the PPS Law. The Hirer must do everything necessary on its part to ensure that section 275(6)(a) of the PPS Law continues to apply. The agreement in this sub-clause is made solely for the purpose of allowing to TFB the benefit of section 275(6)(a) and TFB shall not be liable to pay damages or any other compensation or be subject to injunctions in respect of any actual or threatened breach of this sub-clause.
- 11) The Hirer must not dispose or purport to dispose of, or create or purport to create or permit to be created any “security interest” (as defined in PPS Law) in the Equipment other than with the express written consent of TFB.
- 12) The Hirer must not, hire, bail or give possession (sub-hire) of the Equipment to anyone else unless TFB (in its absolute discretion) first consents in writing and has specifically approved the terms of any proposed sub-hire.
- 13) To assure performance of its obligations under this agreement, the Hirer hereby gives TFB an irrevocable power of attorney to do anything TFB considers the Hirer should do under this agreement. TFB may recover from the Hirer the cost of doing anything under this clause, including PPSR registration fees.

SUBLETTING AND LOCATION

- 1) The Hirer must inform TFB of the location of the Equipment during the rental period.
- 2) The Hirer must not:
 - 1) Part with the Equipment,
 - 2) Permit removal of the Equipment from the location at which the Hirer represented it would be located at without the prior written consent of TFB; and
 - 3) The Hirer must store the Equipment in a safe place and do all other things necessary to ensure the continued safety and preservation of the Equipment.

HIRERS WARRANTIES

- 1) Any person signing any documentation on behalf of the Hirer in respect of the hire of the equipment:
 - 1) Warrants that they have the authority of the Hirer to contract with TFB on the Hirer’s behalf,
 - 2) Warrants that they have been authorised by the Hirer to bind the Hirer to hire the equipment under these terms and conditions, and
 - 3) Agrees to indemnify TFB against all losses, costs and claims incurred by TFB if that person does not have that authority.
- 2) If there is any variation to,
 - 1) Any of the information supplied by the Hirer to TFB including in any account application, or
 - 2) In the legal structure or management of the Hirer,the Hirer must notify TFB in writing within 7 days providing details of that change.
- 3) Unless notice of variation or change is given and confirmed in writing by TFB that such information has been received and the changes have been agreed by TFB, the Hirer and guarantors on the account application will remain liable to TFB as though any products or services supplied by TFB were supplied to the original Hirer.

CHANGES TO TERMS AND CONDITIONS

TFB may amend these terms and conditions at any time by publishing them on its website www.tempranfencinghirebrisbane.com.au or by notifying the Hirer. Notice is deemed to be given when TFB:

- 1) gives notice to the Hirer at any address (including an email address) supplied by the Hirer;
- 2) publishes the amended terms on its website www.thefencebloke.com.au; or
- 3) displays the amended terms at the TFB depot.

PAYMENT TERMS

- 1) TFB’s payment terms are based on the Rates. Initial billing is submitted on installation at which point recurring billing is initiated.
- 2) If original payment is paid by credit card, then recurring payments will be deducted from card as each recurring Hire Period begins. All payments are to be in advance of each Hire Period. Payments by direct deposit or any other agreed upon payment type are to be in advance of the Hire Period at all times. Payment of the Hire Fee, irrespective of whether an invoice has or has not been issued, indicates that the Hirer has read, understood and accepted these terms and conditions, the relevant Conditions of Supply and TFB’s “Credit Application – Terms and Conditions” (if applicable) TFB hire terms and conditions.

CANCELLATION TERMS

All cancellations are to be submitted in writing giving 7 days’ notice of cancellation, and it is the Hirer’s responsibility to ensure that the written notice has been received by TFB. All hires will continue at agreed upon rates until the date listed in the written notice.

DEFAULT

If the Hirer in any way fails to perform, observe or abide by any provision of this agreement, TFB may at its discretion do all or any of the following.

- 1) Terminate the agreement,
- 2) Declare the entire Hire Fee immediately due and payable and to commence legal action,
- 3) Retake possession of the Equipment holding the Hirer fully liable for all Hire Fees, and
- 4) Pursue any other remedies available to TFB at law, equity or under statute.

GENERAL

Any failure of TFB to insist upon strict performance by the Hirer of the conditions and terms of this agreement will not be construed as a waiver of TFB’s right to demand strict compliance. TFB does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy against the Hirer. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy by TFB must be in writing and signed by TFB.

COLLECTION, STORAGE AND USE OF INFORMATION

- 1) The Hirer authorises TFB to collect, store, use and disclose information about the Hirer for the purposes related to the provision of hire services (including whether to allow credit on Hirer’s account), reporting information to any credit agency, marketing TFB’s products and services, and enforcing any rights under this Agreement.
- 2) The Hirer expressly consents to receiving commercial electronic messages from TFB and its agents for the purposes of the Spam Act 2003. Hirer may withdraw its consent at any time by notifying TFB in writing.
- 3) Where personal information is collected, stored or used by TFB, it will be dealt with in accordance with the Privacy Act 1988. In particular, any individual may access personal information held about him or her (subject to the permissible limitations contained in the Privacy Act 1988), and may request correction of that personal information.