

## ACES Temporary Fencing Terms & Conditions

1.1 In these Terms and Conditions:

(1) Agreement means the contract between ATF and Hirer in relation to the hire of Equipment, which is governed by these Terms and Conditions together with the Hirer's Trade Account Application and quotation provided by ATF (if any).

(2) ATF means Aces Holdings (Qld) Pty Ltd trading as Aces Temporary Fencing Hire and Sales (ATF) - ABN 83615560891

(3) Business Hours are 7.00am to 3.00pm on weekdays other than public holidays.

(4) Cycle Billing Period (Rehire) means the period between the expiry of the Initial Period and the return or collection of the Equipment, during which the Hirer will be billed on a periodic basis for the hire of the Equipment, The Cycle Billing Period will commence automatically following the expiration of the Initial Period, and will continue indefinitely until the Equipment is returned or collected in accordance with this Agreement.

(5) Delivery of the Equipment is deemed to have occurred when it is collected by Hirer or transported to a location at the request of the Hirer and Delivered has a corresponding meaning.

(6) Equipment means the goods hired by Hirer from ATF in accordance with this Agreement.

(7) GST Act means (Goods and Services Tax) Act 1999

(8) Hirer means the person, company or other legal entity hiring the Equipment from ATF. Where the context permits, it includes Hirer's employees and contractors.

(9) Initial Period means the fixed initial hire period agreed between ATF and Hirer together with any agreed extension to this period.

(10) PPSA means the Personal Property Securities Act 2009 (Cwlth).

(11) Rates means the rates notified by ATF to Hirer from time to time.

(12) Rental Period means: (a) the Initial Period; and (b) the Cycle Billing Period.

(13) Use means use, installation, removal, storage, maintenance or transport by or on behalf of Hirer.

1.2 Every provision of this Agreement is independent of the others. Any provision which is prohibited or unenforceable in any jurisdiction will be deemed removed to the extent of the prohibition or unenforceability without invalidating the remaining provisions. Unless stated to the contrary, the rights under this Agreement are in addition to any rights that may be conferred by general law.

1.3 This Agreement will be governed by the laws of Queensland and New South Wales and ATF and Hirer submits to the non-exclusive jurisdiction of the courts of that place.

1.4 These Terms and Conditions supersede all previously issued Terms and Conditions. ATF is not bound by any Terms and Conditions contained in any document issued by the Hirer whether issued before or after this Agreement.

## **2 Rates and Rental Period**

2.1 During the Rental Period Hirer must pay ATF a hire fee calculated in accordance with the Rates quoted.

2.2 The hire fee must be paid in the manner and in accordance with the payment terms specified on any invoice issued by ATF or otherwise notified to Hirer from time to time. ATF may require payment of some or all of the hire fee prior to Delivery. Hirer must notify ATF within seven (7) days of any errors with the invoice.

2.3 Not receiving an invoice will in no way relieve Hirer of its responsibility for the payment of amounts due. Failure to pay amounts due within seven (7) days of a debt becoming due for payment or such term otherwise agreed to in writing by ATF will be considered a breach of this Agreement. Hirer must pay ATF on demand on a full indemnity basis, all costs incurred in recovering any amount owed to ATF by Hirer.

2.4 Hirer is not permitted to claim a reduction in hire fees for Equipment returned before the end of the Initial Period, and except as provided for in clause 8.1, ATF will not refund any hire fees prepaid by Hirer for any period outside of the Rental Period.

2.5 Hirers must not deduct any part of the hire fee as retention money.

2.6 The hire fees, and all other considerations payable under this Agreement, do not include GST (as defined in the GST Act). If a supply made under this Agreement, or as a result of any breach of a term of this Agreement, is subject to GST:

(1) the recipient of that supply must pay the supplier an amount equal to the GST payable by the supplier, at the same time as the consideration for that supply is given; and

(2) the supplier agrees to give the recipient a tax invoice (as defined in the GST Act) for that additional amount upon payment.

2.7 Hirer agrees to pay ATF a service charge on all past due balances at the rate of 1.5% per month or part thereof from the due date for payment until the payment is made.

## **3 Delivery Installation and Pickup**

3.1 If ATF is delayed or prevented from delivering or removing the Equipment to or from any location for any reason beyond its reasonable control, it may, acting reasonably, charge Hirer additional delivery charges. The additional delivery charges will be based on the duration of delay or the time spent by ATF in unsuccessfully attempting to deliver, install or remove the Equipment, and will be calculated for every period of 15 minutes (or part thereof)

## **4 Receipt of Equipment**

4.1 On Delivery of the Equipment, Hirer must satisfy 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 understands its proper use and means of installation and removal; and

(3) the Equipment is suitable and fit for the purpose for which Hirer intends to use it, and must notify ATF within 24 hours if it is not so satisfied. Failing such notification, the Hirer will be deemed to have accepted the Equipment in the condition in which it was provided and as suitable and fit for the purpose for which Hirer intends to use the Equipment.

4.2 Hirer acknowledges that it is responsible for properly securing the Equipment for the purpose of transportation so as to ensure its safe transport to and from the location where the Equipment will be used by Hirer.

## **5 Use of the Equipment**

5.1 Hirer must ensure that the Equipment is used strictly in accordance with ATF's instructions and any procedures recommended by ATF from time to time.

5.2 Hirer must at all times keep the Equipment in good condition and must not, without ATF's prior written consent, alter or make additions to the Equipment, or deface, remove or conceal any ATF logo, identifying mark or number, or indication of ATF's ownership of the Equipment.

5.3 Hirer must at all times ensure that the Equipment is used in a safe manner, and must not deliberately damage, abuse or mistreat Equipment or allow Equipment to be deliberately damaged, abused or mistreated.

5.4 If any damage, loss, theft or destruction of the Equipment occurs, whether Hirer was responsible or not, Hirer must immediately notify ATF and provide full details of the damage, loss, theft or destruction.

5.5 Hirer must ensure that the Use of the Equipment is at all times strictly in accordance with:

(1) all applicable laws, and

(2) any relevant industry usage, custom and standards for goods similar to the Equipment.

5.6 Hirer must obtain and maintain, at its own expense, any insurance, permit or license that may be required under any law or by any statutory or other authority for the Use of the Equipment, including its installation or removal. Without limiting Hirer's obligations under this clause, Hirer must obtain all permits required under any relevant planning, environment or health and safety legislation, and must ensure that its personnel are appropriately inducted, trained and supervised so as to ensure the safe and lawful Use of the Equipment.

## **6 Damaged and Missing Equipment**

6.1 If Equipment is returned or collected in a condition which in the reasonable opinion of ATF renders it unusable for hire, or if the Equipment is stolen or missing, Hirer must pay ATF on demand the cost of replacement or repair of the Equipment calculated in accordance with the relevant Materials Price List as published on ATF's website, from time to time or request in writing to be provided ATF Materials Price List. In the event of damaged material the Hirer must pay for repair or replacement whichever is the least. In no circumstances will title to the Equipment or any part of it pass to Hirer.

6.2 Other than for the cost of replacing or repairing the Equipment, which will be dealt with under clause 6.1, the Hirer will be liable for all costs, expenses, damages and loss (including consequential loss), incurred by ATF arising out of the Equipment not being returned or collected, including where the Equipment has been stolen or is missing.

## **7 Damage Waiver**

7.1 When a damage waiver charge is paid by the Hirer, ATF will not make a claim against the Hirer for any accidental damage to the Equipment during the period covered by the charge. This damage waiver is conditional upon the Hirer paying a \$1000 excess per claim event, and only applies when the Hirer has used the Equipment in accordance with this Agreement.

## **8 ATF's Rights**

8.1 ATF may terminate this Agreement and recover the Equipment at any time on 7 days written notice to Hirer. If ATF exercises this termination right, ATF will refund Hirer for any hire fees received by ATF which relate to Equipment hired outside the Rental Period, less a deduction for reasonable expenses incurred by ATF in connection with the recovery and/or transport of the Equipment.

8.2 ATF may enter any premises where the Equipment or any part of it is, or believed to be located for the purpose of:

- (1) inspecting or testing the Equipment,
- (2) protecting ATF's rights or interest 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.

8.3 If Hirer in any way fails to perform, breaches any provision of this Agreement, becomes insolvent or in ATF's reasonable opinion is likely to become insolvent, ATF may at its discretion do all or any of the following:

- (1) terminate this Agreement upon 7 days written notice;
- (2) retake possession of the Equipment, holding Hirer fully liable for all hire fees; and
- (3) require Hirer to pay liquidated damages equal to 2 weeks hire fees (which the parties agree to be a reasonable estimate of the costs incurred by ATF in order to retake possession of the Equipment).

8.4 Nothing in this clause 8 limits any rights ATF may have:

- (1) in respect of the Equipment;
- (2) against Hirer; or
- (3) against any other person, at any time.

## **9 Warranties and guarantees**

9.1 ATF acknowledges that the Hirer may be a consumer for the purposes of applicable State or Federal law, with the consequence that:

- (1) certain warranties or conditions may be implied into this Agreement; and
- (2) certain guarantees may be conferred on Hirer and certain rights and remedies may be conferred on Hirer, which cannot be excluded, restricted or modified. If so, then to the maximum extent permitted by law, ATF's liability to the Hirer is limited at ATF's option to:
  - (3) in the case of goods:
    - (a) replacement or repair of the goods; or
    - (b) payment of the cost of replacing or repairing the goods; and
  - (4) in the case of services:

- (a) resupply of the services; or
- (b) payment of the cost of resupplying the services.

9.2 Subject to clause 9.1 and to the maximum extent permitted by law:

- (1) ATF excludes all conditions, warranties, guarantees or representations (expressed or implied) in relation to this Agreement or its subject matter, including all warranties and guarantees as to the quality, suitability or fitness of the Equipment for any particular purpose;
- (2) ATF is not responsible to the Hirer or to any other person for any loss (including consequential loss), damage, or injury, caused by, resulting from or in any way connected with, the use of the Equipment, howsoever caused, including due to ATF's negligence, breach of contract, breach of any law, in equity, or under any indemnity; and
- (3) ATF will not be responsible for failure or delay in delivery, pick up, installation or removal and will have no liability to Hirer or any other person for any loss (including any consequential loss) arising out of such failure or delay.

## **10 Liability and Indemnity**

10.1 Hirer is liable for all costs, expenses, damages or loss (including consequential loss) whether caused by the Hirer or any other third party, arising directly out of the Use of the Equipment.

10.2 To the maximum extent permitted by law, the maximum amount recoverable by Hirer from ATF under or in connection with this Agreement is limited to the hire fees paid by the Hirer to ATF under this Agreement.

10.3 Hirer agrees to indemnify and keep indemnified ATF and ATF employees, agents and contractors from all damages, suits, actions, claims and demands which they may suffer or incur arising either directly or indirectly out of the use of the Equipment.

10.4 Hirer must not do or allow to be done any act matter or thing which may invalidate or prejudice any:

- (1) insurance policy affected by ATF,
- (2) ATF defence or prosecution of any claim, or
- (3) right ATF may have against any person, to the extent that the Hirer's compliance with this clause 10.4 is not contrary to law.

## **11 Title and Security**

11.1 Title to the Equipment remains with ATF at all times. Hirer must not grant or allow to subsist any security interest or encumbrance over the Equipment or allow ATF's title to be adversely affected in any way.

11.2 Hirer must not make any representation or do any thing that may tend to induce any person to believe the Equipment is not the property of ATF. If possession of the Equipment is taken by any third party for any reason, Hirer authorises ATF to take any action it deems necessary to protect its rights in the Equipment, at the cost of the Hirer.

11.3 If ATF determines that this Agreement (or a transaction in connection with it) is or contains a security interest for the purposes of the PPSA, Hirer agrees upon request to do anything (such as obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which ATF considers necessary for the purposes of:

- (1) ensuring that the security interest is enforceable, perfected and otherwise effective;

(2) enabling ATF to apply for any registration, or give any notification, in connection with the security interest so that the security interest has the priority required by ATF; and

(3) enabling ATF to exercise rights in connection with the security interest, and, the Hirer expressly waives any right it may have under PPSA section 175 to be given notice in relation to any registration event.

11.4 ATF is not obliged, before exercising a right under this Agreement or conferred by law, to give the Hirer any notice or demand, or allow a lapse of time, that is required by law unless the notice, demand or lapse of time cannot be excluded. A reference to a notice under this clause includes any notice under the PPSA.

## **12 Location and Use of Equipment**

12.1 Hirer must expressly inform ATF of the location of the Equipment during the Rental Period.

12.2 Hirer must not:

(1) part with possession of the Equipment;

(2) allow any other person to use the Equipment; or

(3) permit removal of the Equipment from the location at which Hirer represented it would be located; without the prior written consent of ATF.

12.3 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.

## **13 Collection, Storage and Use of Information**

13.1 Hirer authorises ATF to collect, store, use and disclose information about 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 ATF's goods and services, and enforcing any rights under this Agreement.

13.2 Hirer expressly consents to receiving commercial electronic messages from ATF and its agents for the purposes of the Spam Act 2003. Hirer may withdraw its consent at any time by notifying ATF in writing.

13.3 Where personal information is collected, stored or used by ATF, 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. Further information about the handling of personal information including requests for access to personal information may be obtained from ATF's Privacy Officer.

13.4 ATF and its agents will comply with the Privacy Act 1988 and the National Privacy Principles or successor principles. A copy of ATF's privacy statement can be obtained by visiting ATF's website from time to time.

## **14 Hirer's Warranties**

14.1 Any person signing any document on behalf of Hirer in respect of the hire of the Equipment warrants that they:

(1) have Hirer's authority to contract with ATF on Hirer's behalf; and

(2) have been authorised by Hirer to bind Hirer to hire the Equipment under this Agreement, and agrees to indemnify ATF against all losses, costs and claims incurred by ATF if this is not the case.

14.2 If there is any variation to the legal structure or management of Hirer, including (but not limited to) change in directors, senior management or trustee, or change in partnership or conversion to or from a company or to or from a trust, Hirer must notify ATF in writing within 7 days providing details of that change.

14.3 Hirer may not assign in whole or in part this Agreement or any benefit under this Agreement without ATF's prior written consent.

## **15 Changes to Terms and Conditions**

15.1 ATF may amend these Terms and Conditions at any time by publishing the amendments on its website [atfservices.com.au](http://atfservices.com.au) or otherwise notifying Hirer in writing. Such amended Terms and Conditions will govern each subsequent hire agreement between ATF and Hirer.

## **16 General**

16.1 Any failure of ATF to insist upon strict performance by the Hirer of the conditions and terms of this Agreement will not be construed as a waiver of ATF's right to demand strict compliance.

16.2 ATF may exercise its rights under this Agreement personally or through its agents.