

# Dry Hire Agreement



## DRY HIRE AGREEMENT

### BACKGROUND

- A. Party Light Up Letters (ACN 659177965) hereafter referred to as PLUL is the proprietor of the Equipment.
- B. The Hirer agrees to hire the Equipment from PLUL on the terms and conditions set out in this Agreement.

### OPERATIVE PROVISIONS

#### 1. Schedule of Definitions

**Agreement** means this Equipment Rental Agreement and the terms contained herein including any annexures or schedules.

**Claim** means any demand, action or proceeding arising under these Terms.

**Contract** means this Equipment Rental Agreement and the terms contained herein including any annexures or schedules.

**Damage Excess Fee** means the fee of \$X payable for any Equipment returned that is damaged.

**Deposit** means the non-refundable holding fee for the hire of Equipment arising out of an order accepted by PLUL.

**Delivery** means the Equipment has been:

- (a) Handed to the Hirer or the Hirer's Representative; or
- (b) Delivered to the carrier or site nominated by the Hirer.

**Delivery Service Providers** means third party delivery companies.

**Dispute** means an unresolved claim which arises under these Terms.

**Equipment** means the letters supplied for rent by PLUL.

**Force Majeure Event** shall include but is not limited to an Act of God, war, natural disaster (including but not limited to an earthquake, flood, hurricane or volcano event, wildfire/bushfire or landslide) accident, fire, storm, pandemic, COVID lockdown and/or transport delays as a result, terrorism, strike, embargo, civil disasters, change of legal/political environment, business disruption, revolt, energy failure and/or external telecommunications failure.

**GST** means Goods and Services Tax as provided for in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Hirer** means the person who is hiring the Equipment from PLUL, who will be liable to pay the associated Hire Fee.

**Hire Fee** means the amount paid by the Hirer for the hire of the Equipment.

**Hire Period** means the period for which the Equipment is hired under this Agreement.

**Loss** includes any and all claims for loss or injury, whether to a person or property, and whether incurred by PLUL, the Hirer or any other person, and including any claims for compensation, damages, legal costs, the costs of investigation and/or litigation costs.

**Overtime Hourly Rate** means the hourly rate of \$60 per hour, payable for any overtime or late return of the Equipment after the Hire Period ends.

**Party Light Up Letters or PLUP** means Party Light Up Letters (ACN 659177965) of B704/3 Blake Street, Kogarah NSW 2217

**Parties** means the Hirer and the PLUP.

**Terms** means the Terms and Conditions set out in this Contract.

**We** or **Our** refers to Party Light Up Letters.

**You** or **Your** refers to the Hirer.

## 2. Interpretation

In this Agreement, unless the context otherwise requires:

- (a) A reference to the singular includes the plural and vice versa.
- (b) Capitalised words are defined terms and shall have their defined meaning.
- (c) A reference to any party to this Agreement includes the party's executors, administrators, successors or permitted assigns, and where applicable, its servants and agents.
- (d) A reference to an individual will include corporations and vice versa.
- (e) A reference to \$ or dollars means Australian dollars.
- (f) A reference to a "party" or "parties" shall mean a party or parties to this Agreement.
- (g) If a word or expression is defined, its other grammatical forms have a corresponding meaning.
- (h) Headings are for convenience only and do not affect interpretation.
- (i) The terms and conditions shall constitute the entire agreement between the parties and supersedes all previous agreement, understanding, representations and negotiations.

## 3. Hire of Equipment

- (a) The hiring of the Equipment will commence from the commencement date specified in the Hire Period and continue for the term specified.
- (b) The Hirer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these Terms if they place an order to hire the Equipment.

- (c) The Hirer is entitled to use the Equipment for the Hire Period and for any agreed extension of the period.
- (d) The Hirer agrees to return the Equipment to the address of PLUL on or before the end of the Hire Period unless otherwise agreed in writing between the parties. If the Equipment is to be picked up by PLUL, the Hirer agrees to grant PLUL access to the Hirer's premises at the time agreed between the Parties, for the Equipment to be picked up.
- (e) PLUL will not refund any Hire Fee monies if the Hirer elects to return the Equipment prior to the end of the Hire Period, regardless of the reason.

## **2. Payment for rental**

- (a) The Hirer agrees to pay PLUL the Hire Fee specified for the Equipment for the Hire Period, which includes any applicable GST.
- (b) The Hire Fee must be paid in full to PLUL prior to the commencement of the Hire Period, unless otherwise agreed between the parties.
- (c) Equipment not returned on time and in accordance with this Agreement will be subject to a continuance of the agreed hire at an overtime hourly rate until return is complete. In the event of late return the Hirer will be liable to pay for the Equipment on an overtime basis, at a rate of \$60 per hour.
- (d) The Hirer authorises PLUL to charge any excess or unpaid monies arising from the hire of the Equipment to the credit card provided by the Hirer to settle any charges and obligations payable under this Agreement.

## **3. Use, operation and maintenance**

- (a) The Hirer agrees that the use of the Equipment carries with it dangers and risks of injury and the Hirer agrees to accept all dangers and risks.
- (b) The Equipment must not be used by anyone other than the Hirer. The Hirer will use the Equipment in a good and careful manner and will comply with all of the manufacturer's requirements and recommendations and with any applicable law, whether local, state or federal regarding the use of the Equipment, including, but not limited to, environmental and copyright law.
- (c) The Hirer will use the Equipment for the purpose for which it was designed and not for any other purpose.
- (d) The Hirer agrees to comply with all occupational health and safety laws relating to the use of the Equipment and related operations.
- (e) The Hirer must ensure the Equipment is returned to PLUL in the same condition as it was provided by PLUL at the start of the Hire Period. PLUL will take detailed photos prior to releasing the Equipment, as a reference upon return, to identify any damage by the Hirer.

- (f) Unless the Hirer obtains the prior written consent of PLUL, the Hirer must not alter, modify or attach anything to the Equipment. The Hirer agrees that:
- (i) the Hirer will protect and secure the Equipment throughout the Hire Period . The Hirer will retain possession, not remove or allow the Equipment to be removed from the location stated in the Terms without PLUL's written consent.
  - (ii) the Hirer shall indemnify PLUL against all costs, losses and liability due to damage, loss or incident relating to the Equipment during the Hire Period, including the Hirer's breach of the Terms, loss of possession, theft, vandalism, negligence, legal process or otherwise.
  - (iii) the Hirer will commit and grant access to PLUL to any location or premises where the Equipment is located for prior inspection of the Equipment, audit purposes or for any other reasonable purpose required by PLUL. The Hirer will indemnify PLUL in respect of any claims, damages or expenses arising out of any action taken pursuant to this condition.

#### **4. Hirer's warranties**

The Hirer warrants that:

- (a) the Equipment will be used in accordance with the conditions outlined in this Agreement;
- (b) the Equipment will not be used for any illegal purpose;
- (c) the Hirer's vehicle is suitable for towing or transporting the Equipment;
- (d) the Hirer will not, without prior written consent of PLUL, modify, or permit any modification of, the Equipment in any way;
- (e) the Hirer agrees that the Equipment complies with its description, is in merchantable condition and is fit for the Hirer's purpose;
- (f) the Hirer will not encumber the Equipment or allow the Equipment to be encumbered or pledge the Equipment as security in any manner.
- (g) the Hirer agrees not to sub-let the Equipment to any third party for commercial gain;
- (h) the Hirer will ensure the Equipment is in a safe, suitable location and placed on a flat ground surface, away from risk of falling and/or damage; and
- (i) the Hirer agrees that in the event of rain or inclement weather, the Equipment will be kept indoors and not exposed to any damaging weather conditions.

#### **5. Cancellation**

- (a) If the Hirer cancels a minimum of 7 days prior to the commencement of the Hire Period, PLUL will refund the total monies paid by the Hirer.

- (b) If the Hirer cancels less than 7 days prior to the commencement of the Hire Period, the Hirer will forfeit the Deposit payable for the Equipment. PLUL will refund any other monies payable, excluding the Deposit.

## 6. Delivery

- (a) If the Hirer has elected to transport the Equipment from PLUL's premises to the Hirer's premises, risk will transfer to the Hirer from the time that possession of the Equipment is transferred to the Hirer, it's employees, agents, contractors, or subcontractors.
- (b) If the Hirer has elected for PLUL to transport the equipment from PLUL's premises to the Hirer's premises, risk will transfer to the Hirer at the time the Equipment is delivered to the Hirer's premises by PLUL.
- (c) If the Hirer has elected for PLUL to transport the equipment from PLUL's premises to the Hirer's premises, a delivery fee may apply.
- (d) Where PLUL is unable to deliver the Equipment due to the fault of the Hirer, it may charge the Hirer all costs and expenses associated with the delayed delivery.
- (e) PLUL will be deemed unable to deliver the Equipment including where (without limitation):
  - (i) the Hirer is unable or unwilling to accept the delivery;
  - (ii) the site where the delivery is to take place is deemed unsafe or unsuitable by PLUL;
  - (iii) the Hirer does not pay the price for the Equipment in cash or by cheque or by credit card.
- (f) The Hirer will not be relieved of any obligation to accept the Equipment and to pay PLUL for the Equipment by reason of any delay in delivery caused by the Hirer.
- (g) PLUL has no liability for any loss or damage consequential or otherwise for failure to deliver the Equipment or for late delivery of the Equipment.
- (h) If PLUL delivers the Equipment and deems the environment unsuitable or unsafe for the Equipment, in breach of the Hirer's warranties, they will notify the Hirer to provide an alternative location within the premises. If the Hirer fails to provide a suitable alternative, PLUL reserves the right to immediately cancel the Agreement and the Hirer forfeits the total Hire Fee in such circumstances.
- (i) You acknowledge and agree that PLUL's delivery drivers are not authorised representatives of PLUL for any purposes arising under this clause. PLUL may integrate delivery through the use of third-party delivery companies. These third-party delivery service providers and delivery companies are not authorised representatives of PLUL for any purposes arising under these Terms. You acknowledge that PLUL is not the provider of these third-party delivery options and merely facilitates your interaction with the third party delivery service providers and delivery companies.

**7. Loss, damage or breakdown of Equipment**

- (a) The Hirer will be responsible for any loss or damage to the Equipment irrespective of how the loss or damage occurred (normal wear and tear excepted) during the Hire Period. In the event the Hirer returns the Equipment damaged, the Hirer will be liable for a set Damage Excess Fee of \$X.
- (b) If there is a breakdown or failure of the Equipment, then the Hirer must immediately notify PLUL and return the Equipment to PLUL at the Hirer's expense and the Hirer must not attempt to repair the Equipment.

**8. Insurance**

PLUL will maintain current insurance policies, if applicable, in respect of the Equipment to its full insurable value.

**9. Indemnity**

- (a) To the full extent permitted by law, the Hirer releases, discharges and indemnifies and holds harmless PLUL against any and all claims, actions, suits, proceedings, costs, expenses, damages and liabilities, arising out of or related to the Hirer's use or misuse of the Equipment during the hire period.
- (b) To the full extent permitted by law, the Hirer releases, discharges indemnifies and holds harmless PLUL against any and all claims, actions, suits, proceedings, costs, expenses, damages and liabilities, including but not limited to loss of profits or commercial loss suffered, arising out of or related to the Equipment failing to be fit for purpose when delivered to the Hirer's premises.
- (c) Without limiting anything to the contrary in this Agreement, the Hirer agrees to the full extent permitted by law, no warranties are given by PLUL in respect of the Equipment.
- (d) Any liability of PLUL pursuant to any warranty which cannot be excluded by law, will not exceed the cost of re-supplying the Equipment for hire.

**10. Liability**

- (a) The Hirer will assume all risks and liabilities for and in respect of the Equipment and for all injuries to or deaths of persons and any damage to property however arising from the Hirer's possession, use, maintenance, repair or storage of the Equipment.
- (b) The assumed risks and liability mentioned in clause (a) includes, but is not limited to:
  - (i) Death and/or injury;
  - (ii) Electrocution;
  - (iii) Damage to property;
  - (iv) Damage to Equipment;



- (v) Theft or attempt of theft;
- (vi) Failure of contract performance;
- (vii) Instances where the Hirer or any associated party sells the equipment without the consent of PLUL;
- (viii) Fraud or fraudulent misrepresentations;
- (ix) Paint, adhesive or any other corrosive material found on the equipment arising from the Hirer's use, possession, repair or storage of the Equipment.

#### **11. Disclaimer**

To the extent permitted by law PLUL disclaims all liability for and does not give any warranties to the Hirer as to the condition of the Equipment.

#### **12. Title**

- (a) The Hirer acknowledges that PLUL retains title to the Equipment and that the Hirer has rights to use the Equipment as a mere bailee only. The Hirer does not have any right to pledge PLUL's credit in connection with the Equipment and agrees not to do so.
- (b) The Hirer agrees not to agree, offer or purport to sell, assign, sub-let, lend, pledge, mortgage let, hire or otherwise part with or attempt to part with personal possession or otherwise not to deal with the Equipment and not to conceal or alter the Equipment or make any addition or alteration to, or repair of, the Equipment.

#### **13. Repossession**

- (a) PLUL may retake possession of the Equipment if the Hirer breaches any provision of this Agreement, notwithstanding anything else contained in this Agreement.
- (b) If repossession occurs due to a breach of this Agreement, the Hirer will be liable for the total Hire Fee.
- (c) All costs incurred by PLUL in the course of repossession of the Equipment, due to a breach are to be paid by the Hirer.
- (d) In the case of repossession due to a breach of this Agreement, the Hirer agrees to grant PLUL permission to enter any premises where the Equipment is situated to disconnect and remove that Equipment.
- (e) In addition to PLUL's right to retake possession, PLUL is entitled in its discretion, following any breach of any provision of this Agreement by the Hirer, to terminate this Agreement and/or sue for recovery of any damages or charges, or loss suffered by PLUL.

#### **14. Completion of the Hire Period**

- (a) The Hire Period is completed when the Equipment has been returned to PLUL:



- (i) in the same condition as when it was hired; and
  - (ii) on or by the date and time the Hire Period ends.
- (b) Where pick up by PLUL is agreed, PLUL will arrange to pick up the Equipment within a reasonable period and the Hirer agrees to have the Equipment ready for collection and possession by PLUL.
- (c) The Hirer agrees to maintain the responsibility for the Equipment whilst it is awaiting pick up by PLUL.

#### **15. Ownership Rights**

- (a) If the Agreement is terminated by PLUL, and the Equipment is returned to PLUL on the agreed time, and the Hirer has not already paid in full for the Hire Period, the Hirer is liable for the days in which the Equipment has been used.

#### **16. Default**

The occurrence of any one or more of the following events will constitute an event of default ("**Event of Default**") under this Agreement:

- (a) The Hirer fails to pay any amount provided for in this Agreement when such amount is due or otherwise breaches the Hirer's obligations under this Agreement.
- (b) The Hirer becomes insolvent or makes an assignment of rights or property for the benefit of creditors or files for or has bankruptcy proceedings instituted against it under the bankruptcy law of Australia or another competent jurisdiction.
- (c) A writ of attachment or execution is levied on the Equipment and is not released or satisfied within 10 days.

#### **17. Remedies**

On the occurrence of an Event of Default, PLUL will be entitled to pursue any one or more of the following remedies ("**Remedies**"):

- (a) Declare the entire amount of the Hire Fee for the Hire Period immediately due and payable without notice or demand to the Hirer.
- (b) Commence legal proceedings to recover the Hire Fee and other obligations accrued before and after the Event of Default.
- (c) Take possession of the Equipment, without demand or notice, wherever the same may be located, without any court order or other process of law. The Hirer waives any and all damage occasioned by such taking of possession.
- (d) Terminate this Agreement immediately upon written notice to the Hirer.
- (e) Pursue any other remedy available in law or equity.

## 18. Force Majeure

- (a) PLUL will not be liable for any loss or inconvenience from a delay in delivery or pickup of the Equipment caused by a Force Majeure Event.
- (b) If PLUL is wholly or partially unable to perform its obligations under these Terms because of a Force Majeure Event, then:
  - (i) after the Force Majeure Event arises, PLUL will use reasonable endeavours to notify the Hirer of the extent to which the affected party is unable to perform its obligations;
  - (ii) PLUL will use its reasonable endeavours to mitigate the effect of the Force Majeure Event; and
  - (iii) PLUL will not be liable to the Hirer for any liability the Hirer suffers or incurs as a result of that Force Majeure Event.
- (c) If a Force Majeure Event occurs and has continued for a period of more than 30 days, and either party is unable to perform their obligations under these Terms, either party may terminate this Agreement and will not be held liable to the other party in respect of such inability.

## 19. Social Media

The Hirer expressly agrees to PLUL using client photos that include the Equipment at its discretion, for commercial use and digital marketing and advertising, including but not limited to uploading and posting the photos to PLUL's website and associated social media pages.

## 20. Dispute Resolution

### (a) Compulsory

If a dispute arising out of or relates to the Terms, neither party may commence any Tribunal or Court proceedings in relation to the dispute, unless the following clauses have been complied with (except where urgent interlocutory relief is sought).

### (b) Notice

A party to the Terms claiming a dispute has arisen under the Terms must give written notice to the other party detailing the nature of the dispute, the desired outcome and the action required to settle the Dispute.

### (c) Resolution

On receipt of that notice by that other party, the parties to the Terms must:

- (i) within 14 days of the receipt of notice endeavour in good faith to resolve the dispute expeditiously by negotiation or such other means upon which they may mutually agree;

(ii) if for any reason whatsoever, 14 days after the date of the notice, the dispute has not been resolved, the parties must either agree upon selection of a mediator or request that an appropriate mediator be appointed by the President of the Australian Mediation Association or his or her nominee;

(iii) the parties are equally liable for the fees and reasonable expenses of a mediator and the cost of the venue of the mediation and without limiting the foregoing undertake to pay any amounts requested by the mediator as a precondition to the mediation commencing. The Parties must each pay their own costs associated with the mediation;

(iv) the mediation will be held in Sydney, Australia.

(d) **Confidential**

All communications concerning negotiations made by the parties arising out of and in connection with this dispute resolution clause are confidential and to the extent possible, must be treated as “without prejudice” negotiations for the purpose of applicable laws of evidence.

(e) **Termination of Mediation**

If 2 weeks have elapsed after the start of mediation of the dispute and the dispute has not been resolved, either party may ask the mediator to terminate the mediation and the mediator must do so.

**21. Non-merger**

The covenants, agreements and obligations contained in this Agreement will not merge or terminate upon the termination of this Agreement and to the extent that they have not been fulfilled or satisfied or are continuing obligations they will remain in force and effect.

**22. Severance**

If any provision of this Agreement is wholly or partly invalid, unenforceable, illegal, void or voidable, this Agreement must be construed as if that provision or part of a provision had been severed from this Agreement and the parties remain bound by all of the provisions and part provisions remaining after severance.

**23. Governing law**

This Agreement will be construed in accordance with and governed by the laws of New South Wales. Each party submits to the exclusive jurisdiction of the courts of New South Wales there in connection with matters concerning this Agreement.

**24. Entire Agreement**

This Agreement constitutes the entire agreement between the parties, and supersedes all prior and contemporaneous agreements, proposed or representations, written or oral, concerning its subject matter.