

# Short Term Goods Hire Agreement

## TERMS AND CONDITIONS

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### 1 Definition and Interpretation

- 1.1 In this Agreement, unless the contrary intention appears the following words have the following meanings (in addition to terms defined in the Agreement Details):

**Agreement** means the agreement and terms and conditions embodied in this document.

**Documentation** means any supporting documentation provided by the Owner with the Goods.

**Insolvent** means insolvent or insolvent under administration each as defined in the *Corporations Act 2001* (Cth) in receivership, in receivership and management, in liquidation, in provisional liquidation, wound up, subject to any arrangement, assignment or composition, or other protection from creditors (in each case other than to carry out a solvent reconstruction).

**PPSA** means the *Personal Property Securities Act 2009* (Cth).

**Law** means any statute, regulation, by-law, ordinance or subordinate legislation in force from time to time, and includes the common law as applicable from time to time.

- 1.2 In this Agreement, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (d) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (e) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this Agreement or any part of it; and
- (f) headings are for ease of reference only and do not affect interpretation.

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### 2 Introduction

- 2.1 This Agreement commences on the Effective Date. Hiring of the Goods commences on the Hire Start Date and (subject to the rights of termination provided for in this Agreement and any rights or obligations which survive) continues until the End Date (the **Term**).
- 2.2 The Owner will provide the Customer with the Goods by hiring the Goods to the Customer for the Term during which period the Customer has the right to use the Goods.
- 2.3 At the end of the Term (or sooner, if this Agreement is terminated in accordance with clause 13), Customer must deliver possession of the Goods to the Owner.

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### **3 Supply, Delivery and Installation**

- 3.1 After this Agreement is signed by the Customer, unless prior alternate arrangements are made with Owner, Owner will:
- (a) deliver the Goods to the Delivery Address;
  - (b) install the Goods at the Delivery Address; and
  - (c) commission the Goods and confirm to the Customer that they are operational and ready for use.
- 3.2 The Owner has discretion as to the mode of delivery and the Customer must, pay costs of delivery, unless otherwise agreed in writing by the Owner. Delivery (including for the purposes of risk of loss) of the Goods to the Customer is deemed to take place when the Goods are placed on the vehicle or with a carrier which is to take it from the Owner's place of business to the Customer's Delivery Address.
- 3.3 Once the Goods are delivered to the Delivery Address the Customer must not move the Goods to any other location during the Term, unless the Customer has obtained the prior written consent of the Owner.
- 3.4 The Customer must return the Goods at the Customer's expense to the Owner's place of business in the same condition as when received by the Customer, subject to reasonable wear and tear.
- 3.5 The Goods are at the Customer's risk from Delivery until Return, except that acceptance of Goods by the Owner's staff upon Return does not release the Customer from responsibility for loss or damage to Goods pursuant to this Agreement.
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### **4 Maintenance and Support**

- 4.1 During the Term the Owner will provide to the Customer support in relation to the Customer's use of the Goods. If the Owner provides Documentation to the Customer then Customer shall make reasonable efforts to review and familiarise themselves with that Documentation. Where the Customer, acting reasonably, is unable to resolve an issue with its use of the Goods after reviewing Documentation, the Owner will provide email support and respond to a request for assistance through its help desk. This support will be provided by email/phone helpdesk to the Customer between the hours of 9am and 5pm Monday to Friday AEST.
- 4.2 During the Term, the Owner may need to conduct preventative and remedial maintenance of the Goods to ensure they are in optimal working condition. The Owner will notify the Customer of the times at which such maintenance is required and the Customer will provide access for Owner (or Owner's authorised representatives) to enable maintenance to be performed on the Goods.
- 4.3 If the Owner is required to repair the Goods additional costs may be incurred by the Customer, if the repair was attributable to damage caused by the Customer's use of the Goods other than in accordance with this Agreement.
- 4.4 The Owner reserves the right to inspect the Goods at any time during the Term and Customer will, if requested, provide access to the Goods on request for that purpose.
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### **5 Invoicing, Payment and Cancellation**

- 5.1 The Customer must pay the Hiring Fee and the Security Deposit to the Owner at the time and in the manner described in the Order Form and in any event, on or

- before the Hire Start Date.
- 5.2 Any fees specified in this Agreement are expressed on a GST exclusive basis unless otherwise expressly stated.
- 5.3 The Customer agrees to the following terms in relation to Hiring Fee and the Security Deposit:
- (a) The Hiring Fee for Goods is calculated from Delivery until the Goods are returned to the Owner's place of business and accepted by the Owner.
  - (b) If the Customer fails to Return the Goods on or before expiry of the Term, the Customer is liable for additional fees at the full daily rental rates set out in the Agreement for Hire of Goods for each day until the Goods is returned.
  - (c) Unless Owner has a claim for outstanding monies payable to owner arising from this Agreement, (in which case owner may retain a sum equal to those outstanding monies from the Security Deposit), the Security Deposit will be repaid to Customer within 14 days after the satisfactory return of the Goods. Owner may deduct any outstanding monies from the Security Deposit and pay the residue of the Security Deposit to Customer and any such payment is without prejudice to any claim (whether under indemnity or otherwise) which Owner may have against Customer arising from this Agreement.
- 5.4 Customer may cancel this agreement by notice in writing to Owner and owner will promptly refund the Hiring Fee which has been received by Owner, subject to clause 5.4 and also subject to the following refund policy (which represents a fair and reasonable assessment of the loss suffered by Owner due to cancellation):
- (a) Hiring Fee will be refunded in full if cancellation notice is received when more than 90 days remains before the (Hiring) Start Date;
  - (b) 50% of Hiring Fee will be refunded if cancellation notice is received between 30 and 90 days before the (Hiring) Start Date.
  - (c) No refund is payable if cancellation notice is received less than 30 days before the (Hiring) Start Date;
- 5.5 In all cases where Owner has made a non-refundable payment to an unrelated third party supplier on account of and in order to facilitate the hire of the Goods to the Customer then, to the extent the payment (or the aggregate of those payments) exceeds the amount of the Hiring Fee retained by Owner under clause 5.5, then Owner shall be entitled to retain that excess amount.
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## **6 Customer Obligations**

### **6.1 The Customer must:**

- (a) only use the Goods as part of its business operations and for the purpose for which the Goods is designed;
- (b) take proper care of the Goods and keep them in working order;
- (c) comply with all Laws;
- (d) comply with the policies and any instructions given to the Customer by the Owner, including in the Documentation;
- (e) notify the Owner in writing if any third party makes a claim in connection with the Goods which is inconsistent with the Owner's interest in the Goods;
- (f) protect the Owner's interest in the Goods including by not removing any

**label affixed to the Goods identifying them as the property of the Owner prior to the end of the Term;**

- 6.2 The Customer acknowledges and agrees that, from Delivery until Return, it bears the risk of loss arising in connection with the possession, use, storage, seizure and repair (arising from mistreatment or ill-use) of the Goods, including any theft, destruction or damage and loss arising out of claims of injury.**
- 6.3 The Customer must not assign or novate this Agreement without the prior written consent of the Owner.**
- 6.4 The Customer must not create another security interest over the Goods or any security interest over this Agreement or allow one to arise (including a lien for repairs or storage) without the prior approval of the Owner.**
- 6.5 The Customer must:**
- (a) not use the Goods for any purpose or in any manner other than as described in the Documentation or as directed by the Owner;
  - (b) not lend, sublet, pledge, or otherwise dispose of or encumber the Goods, or permit anyone other than the Customer, people under the Customer's direction and control (having appropriate qualifications and experience), or the Owner, to have possession of, use, examine or evaluate the Goods;
  - (c) not modify or disassemble the Goods ;
  - (d) take all reasonable precautions to avoid injury to people or property and to avoid loss or damage to the Goods during the Term and, for that purpose, ensure that the Goods are used and operated in a skillful and proper manner by or under the supervision of persons with adequate experience and familiarity with the Goods and the Documentation;
  - (e) advise the Owner of any fault in the Goods, within 24 hours of the Customer's discovery of such fault; and
  - (f) not, without the prior written consent of the Owner:
    - (i) use the Goods on any abnormal or hazardous assignment;
    - (ii) remove the Goods from the Delivery Address, without the prior written consent of the Owner;
    - (iii) use the Goods in or near water;
    - (iv) use the Goods where they could be affected by climactic conditions including but not limited to excessive exposure to sunlight, heat, cold, corrosion, contamination, pollution or temperature variations (unless the Goods have been specifically approved by Owner for outdoor use);
    - (v) expose the Goods to excessive dust or sand;
    - (vi) use the Goods in the rain;
    - (vii) clean or maintain the Goods otherwise than in accordance with the Documentation.

- (g) Customer must not remove or obscure the Owner's branding and trademarks which may appear on the Goods. Notwithstanding the foregoing, subject to the prior written consent of Owner, Customer may apply its own branding or trademarks to the Goods provided that:
- (i) Customers branding or trademarks are removed by Customer prior to returning the Goods to Owner; and
  - (ii) a "make good" fee may be charged (and deducted from the Security Deposit, if applicable) by Owner if any repairs or cleaning are required as a result of Customers application of branding or trademarks to the Goods.

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## **7 Loss or Damage**

- 7.1 **The Customer must promptly notify the Owner immediately in writing if any of the Goods are stolen, lost, seized, destroyed, or damaged or impaired to such an extent that repair is impractical or uneconomic.**
- 7.2 **If any of the events subject to clause 7.1 happen, and if the Owner agrees to replace the Goods', then Customer agrees to the affected Goods being replaced (which Agreement must be acknowledged in writing) and the replacement Goods will then be the subject of this Agreement.**
- 7.3 **The Owner is entitled to receive all amounts which are payable to the Customer by any insurer or other person in which is attributable to any of the events in clause 7.1.**

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## **8 Insurance**

- 8.1 **The Customer will effect and maintain, at its cost, during the Term insurance to cover the following (the **Required Insurances**):**
- (a) **loss or damage to the Goods caused by fire, theft or accident for no less than the then termination value of the Goods (or such other amount as agreed by us); and**
  - (b) **public liability for bodily injury or damage to property arising in connection with the Goods for no less than \$10 million or any other amount notified by us; and**
  - (c) **any other risk which the Owner reasonably directs to protect, directly or indirectly, the Owner's interest in the Goods.**
- 8.2 **The Customer will pay any excess/deductible under the Required Insurances.**
- 8.3 **The Customer will not do or allow anything which would prejudice any of the Required Insurances, or cause them to be terminated.**
- 8.4 **The Required Insurances must note the Owner's interest as owner of the Goods.**
- 8.5 **The Customer must provide the Owner with the certificates of currency and evidence of payment of the premiums of the insurance policies on request of the Owner.**

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## **9 Limitation of Liability**

- 9.1 **Terms, conditions and warranties implied by Law which cannot be excluded, restricted or modified apply to this Agreement to the extent required by Law.**
- 9.2 **The total and aggregate liability of the Owner for loss suffered or sustained by the**

**Customer in connection with the provision of the Goods under this Agreement:**

- (a) whether arising as a result of breach of contract, in tort (including negligence) or under statute; and
- (b) whether or not arising pursuant to an indemnity in this Agreement,  
is limited:
- (c) in those cases where the Law (including the Australian Consumer Law) restricts the Owner's ability to limit its liability, to:
  - (i) supplying the Goods again; or
  - (ii) the payment of the cost of having the Goods supplied again.
- (d) in other cases, to the sum of AU\$100.

9.3 The Customer does not rely on any representation, warranty or other provision made by the Owner or on its behalf which is not expressly stated in this Agreement.

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## **10 Indemnity**

- 10.1 The Customer indemnifies the Owner, its employees agents and contractors (those indemnified) against any liability or loss and any reasonable costs (including on account of funds borrowed, contracted for or used to fund the Owner's purchase of the Goods), excluding liability or loss caused by the Owner's negligence, fraud or wilful misconduct, arising from or in connection with:
- (a) any action the Owner does which the Customer should have done under this Agreement;
  - (b) the Customer not fulfilling its obligations under this Agreement;
  - (c) the death or illness of, or personal injury to, any individual;
  - (d) the loss or destruction of, or damage to, any tangible property.
- 10.2 Each indemnity in this Agreement is a continuing obligation, separate and independent from the Customer's other obligations (including the Customer's obligation under clause 13.4). It continues after the Agreement ends or is terminated.
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## **11 Warranties**

11.1 The Owner warrants to the Customer that:

- (a) the execution, delivery and performance by the Owner of its obligations under this Agreement are within the Owner's corporate powers and have been authorised by all necessary corporate action on its part; and
- (b) this Agreement is a legal, valid and binding obligation of the Owner, enforceable against the Owner in accordance with its terms.

11.2 The Customer warrants to the Owner that:

- (a) the execution, delivery and performance by the Customer of its obligations under this Agreement are within the Customer's corporate powers and have been authorised by all necessary corporate action on its part;
- (b) it will use reasonable endeavours to not become Insolvent during the Term;
- (c) it will pay on time any amount due under this Agreement or other agreement with the Owner;

- (d) the Customer has the ability to meet its obligations under this Agreement; and
  - (e) it will promptly comply with the Owner's reasonable direction in respect of remedial action if, the Goods become inoperable for any reason, or are lost or stolen, seized or destroyed.
- 11.3 The Customer warrants and represents to the Owner that all material information provided to the Owner prior to the Start Date is true, accurate and complete.
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## **12 PPS Law**

12.1 The Customer must do anything (such as obtaining consents, signing and producing documents, and getting documents completed and signed) which the Owner reasonably requests for the purposes of:

- (a) providing more effective security over the Goods, or any other personal property over which the Owner has a security interest for payment of money owing to the Owner in connection with this Agreement;
- (b) ensuring that a security interest created under this Agreement is enforceable, perfected (including, where possible, by control in addition to registration) and otherwise effective;
- (c) enabling the Owner to apply for any registration, or give any notification, in connection with a security interest created under this Agreement so that the security interest has the priority the Owner requires;
- (d) enabling the Owner to exercise the Owner's rights in connection with the Goods;
- (e) binding the Customer and any other person intended to be bound under this Agreement;
- (f) showing whether the Customer is complying with this Agreement.

12.2 If:

- (a) the Owner holds any security interest for the purposes of the PPSA and if the Owner's failure to perfect such security interest would materially adversely affect the Owner's business or the Owner's security interest over the Goods; or
- (b) a security interest in the Owner's favour arises over the Goods (whether or not as a result of a breach by the Customer under this Agreement),

the Customer agrees to implement, maintain and comply in all material respects with, procedures for the perfection of those security interests. These procedures must include procedures designed to ensure that the Customer takes all reasonable steps to assist the Owner under the PPSA to continuously perfect any such security interest including all steps reasonably necessary:

- (c) for the Owner to obtain the highest ranking priority possible in respect of the security interest (such as perfecting a purchase money security interest or perfecting a security interest by control); and
- (d) to reduce as far as possible the risk of a third party acquiring an interest free of the Owner's security interest (such as including the serial number in a financing statement for personal property that may or must be described by a serial number).

If requested by the Owner the Customer must arrange at the Customer's expense an audit of the PPSA procedures if the Owner reasonably suspects that the

**Customer is not complying with this clause.**

- 12.3 **The Owner may, at the Customer's expense, apply for any registration, or give any notification, in connection with a security interest created under this Agreement.**
  - 12.4 **The Customer must provide 14 days' prior written notice to the Owner of any change in the Customer's name or business structure.**
  - 12.5 **The Customer acknowledges and agrees the Owner:**
    - (a) **does not need to comply with sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4) and 135 of the PPSA, or any other provision of the PPSA notified to Customer after the date of this Agreement, to the extent the law permits them to be excluded;**
    - (b) **may not exercise rights under to the extent the law permits them to be excluded; and**
    - (c) **does not need to provide notice required under the PPSA (including a notice of a verification statement) unless the requirement to give the notice cannot be excluded.**
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### **13 Repudiation**

- 13.1 **The Customer will have repudiated this Agreement, and the Owner may terminate this Agreement by giving the Customer writing notice, if the Customer:**
    - (a) **does not fulfil its fundamental obligations under this Agreement including the requirement to pay all money due on time and as required by this Agreement); or**
    - (b) **has acted fraudulently in connection with this Agreement.**
  - 13.2 **If the Owner terminates this Agreement under clause 13.1, on receipt of the termination notice the Customer must immediately:**
    - (a) **return the Goods to the Owner in good condition and repair (fair wear and tear excepted) to a location specified by the Owner;**
    - (b) **pay the Owner all amounts owing under this Agreement including:**
      - (i) **all unpaid Hiring Fees; and**
      - (ii) **any other costs in connection with repossession of the Goods.**
  - 13.3 **Without limitation to any of Owner's rights and Customer's obligations in this Agreement, the Owner may repossess the Goods without further notice to Customer if the Customer repudiates under clause 13.1. For the avoidance of doubt, if Customer does not return the Goods when they are required to under this Agreement, Owner may enter the place where the Goods are and take possession of the Goods without prior notice to Customer.**
  - 13.4 **If the Customer repudiates this Agreement, it must at Owner's request, provide the Owner with security over all the Customer's assets and an undertaking in a form and substance satisfactory to Owner.**
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### **14 Notice**

- 14.1 **A notice or other communication connected with this Agreement (Notice) must be in writing and in English. In this clause reference to a recipient's address means the address of the recipient set out at the start of this Agreement or to such other address as the recipient may have notified the sender from time to time.**
- 14.2 **A Notice must be:**



- (a) delivered to the recipient's address;
  - (b) posted to the recipient's address by prepaid ordinary post (or airmail, if posted to or from a place outside Australia); or
  - (c) emailed to the recipient's email address
- 14.3 Service of a Notice is deemed to have occurred, if sent:
- (a) as a delivered letter – at the time it is delivered;
  - (b) as a posted letter – on the fifth Business Day after posting (or the 12th, if posted to or from a place outside Australia); and
  - (c) by email – on the first Business Day after being despatched unless the sender receives an automated email to the effect that delivery of the email failed or that the recipient is 'out of office'.
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## **15 General**

- 15.1 This Agreement may only be varied or replaced by an Agreement executed by the parties.
- 15.2 A single or partial exercise or waiver by a party of a right relating to this Agreement does not prevent any other exercise of that right or the exercise of any other right.
- 15.3 Any part or all of any provision of this Agreement that is illegal or unenforceable will be severed from this Agreement and will not affect the continued operation of the remaining provisions of this Agreement.
- 15.4 The Owner may set off any money owed to it by the Customer or which it owes to the Customer under this Agreement.
- 15.5 Any rights and remedies that a person may have under this Agreement are in addition to and do not replace or limit any other rights or remedies that the person may have. In particular, Owner's rights, remedies and powers under this Agreement are in addition to any other rights, remedies and powers provided by law independently of it.
- 15.6 Each party must do or cause to be done all things necessary or reasonably desirable to give full effect to this Agreement and the transactions contemplated by it (including, but not limited to, the execution of documents).
- 15.7 Except as specifically provided in this Agreement, each party must bear its own legal, accounting and other costs for the preparation and execution of this Agreement.

### **General Usage and Care & responsibility**

1. The Hiring Party take full responsibility for the floors, bikes / gym equipment, other equipment rented to you & understand that it is up to the Hiring Party to look after the products and/or Equipment rented to them for the entire duration of the event and any period thereafter, and agree to replacing anything which is damaged while at their possession.
2. It shall remain the duty of the hirer to inspect the condition of the equipment on receiving the equipment.
3. The hirer shall return the equipment in the same condition in which it was received.
4. The Hirer shall not attempt to for any reason whatsoever to modify, service, repair, replace any part of the equipment/ product/s
5. Where Eco Renewable Energy attempts to deliver or collect but is unable due the fault of the Hirer, Eco Renewable Energy shall be entitled to charge a reasonable fee for transport costs and time wasted.
6. Ensure that the product is used and operated under adult supervision, at all times during the period of hire.
7. The hirer under takes to operate the equipment strictly according to the manufacturer's instructions.
8. No sharp objects or food are allowed on the products.
9. Ensure that the products, unless waterproof, and/or any equipment rented to you are not left in the rain

### **Technical Requirements**

#### **Access and installation Dimensions**

- Lift Access is required if the setup is not on the ground/ entry level
- Access is required as close to the setup location as possible.
- The customer should arrange loading bay access prior to setup.
- The setup location must be on a flat/ level surface.
- The relevant space must be provided for setup.

#### **Set up and breakdown access requirements**

- Setup & breakdown is available one day prior to the event/ activation starting & up to 1 day after the event/ activation has finished.
- The customer is to advise (prior to setup) if high vis vests are required on site.