

POSmate Rental Agreement Terms And Conditions

In the following terms and conditions, the words "you" and "your" refer to the renter and the words "we", "us" and "our" refer to the owner.

1. DELIVERY OF GOODS

- (1) You shall take possession of the goods on the commencement date at your expense.
- (2) Before executing this rental agreement you inspected the goods and were satisfied as to the condition, quality and safety of the goods and their fitness for your purposes and their compliance with their description. We give no warranties as to any of these matters other than those implied by law.

2. OWNERSHIP OF THE GOODS

- (1) We retain full title to the goods notwithstanding you:
 - (a) taking delivery of the goods; and
 - (b) possession and use of the goods,subject only to your rights as a mere bailee of the goods with a right only to use them in accordance with this rental agreement.
- (2) You acknowledge that this rental agreement does not contain any express or implied right or obligation to purchase the goods on the expiry or earlier determination of the rental agreement or at any other time.

3. LOCATION OF THE GOODS

You must:

- (a) not remove the goods from the premises without obtaining our prior written consent;
- (b) inform us where the goods are located; and
- (c) give us all information in your possession that may assist us in tracing the goods.

4. RENT AND OTHER PAYMENTS

- (1) You must pay:
 - (a) an instalment of rent on the commencement date and on each rent payment date;
 - (b) an instalment of stamp duty on the commencement date and on each rent payment date;
 - (c) an instalment of GST on the commencement date and on each rent payment date;
 - (d) all rates, taxes, fees, outgoings, penalties, fines, demands, charges or costs, stamp and other duties, registration fees and assessments imposed by any court or by any authority at any time directly or indirectly upon the goods, us or you;
 - (e) all premiums and any other amounts of whatever nature necessary or desirable in our opinion to maintain the insurances required by clause 7. Upon our request you must produce to us certificates of currency of the insurance policies; and
 - (f) all repair and operating expenses relating to the goods including the cost of replacement parts and accessories. However you do not have any authority to pledge our credit.
- (2) If you fail to pay any outgoing referred to in sub-clause (d), (e) or (f) by its due date for payment we may, at our discretion, pay that outgoing. If that occurs, you must on demand reimburse us for the amount paid.
- (3) You must on demand reimburse us for all costs, charges, expenses, fees, disbursements (including all reasonable legal costs on a full indemnity basis) paid or incurred by us relating to:

- (a) any breach, default or repudiation of this rental agreement by you; and
- (b) the exercise or attempted exercise of any right, power, privilege, authority or remedy of ours under or by virtue of this rental agreement, including all amounts incurred in repossessing the goods from you and in enforcing this rental agreement.

- (4) You must make all payments to us in immediately available funds by 12.00pm on its due date at such place as we may from time to time nominate in writing.

- (5) Where any, or any part of any, rent or other money payable by you under this rental agreement is not paid to us in the manner required by sub-clause (4) on or before its due date for payment, default interest at the rate of 22% per annum will be payable on the outstanding amount. Default interest will:

- (a) accrue on and from the date following the due date for payment of the outstanding amount up to and including the date of its payment; and
- (b) be calculated at the default rate on a daily basis.

- (6) (a) Your obligation to make all payments due under this rental agreement and our rights in and to such payment is absolute and unconditional.

- (b) Notwithstanding any express or implied term of this rental agreement or any law to the contrary, payments will not be subject to any abatement, reduction, set-off, defence, counterclaim or recoupment of any kind whatsoever.

5. EXCLUSION OF LIABILITY

- (a) To the extent permitted by the Trade Practices Act 1974 and other legislation, all express and implied terms, conditions and warranties (other than those set out in this agreement) are excluded and our liability for breach of conditions and warranties mandatorily implied by law are limited to the repair or replacement of the relevant goods (at our option).

- (b) No agent of ours or the supplier is authorised to change any term of this rental agreement or make any warranties or representations about it, oral or otherwise.

- (c) Subject to clause 5(a), we exclude all liability to you or any other person for any loss, liability or damage (whether direct or consequential) arising out of this rental agreement, or the supply of the goods by us.

6. POSSESSION AND USE OF THE GOODS

- (1) You must at all times keep and maintain the goods properly serviced, in proper working order and condition and in good and substantial repair. You will be fully responsible to us for any loss of or damage to the goods (however caused). You must give reasonable notice to us in writing of any such loss or damage.

- (2) You must replace all parts which may from time to time become worn out, lost, stolen, destroyed, damaged beyond repair or permanently rendered unfit for use by damage or obsolescence. All replacement parts will be our sole property.

You must not, without our prior written consent, make any replacement, alteration or addition to the goods of any nature which may lead to a material reduction in their value.

POSmate Rental Agreement Terms And Conditions

- (3) You grant us the right, at all reasonable times upon our giving you reasonable notice to enter upon the premises to:
- (a) inspect the state of repair of the goods and to observe their use or operation; and
 - (b) do any act, matter or thing which may be required to be done to give proper effect to the terms of this rental agreement or to protect our rights in the goods.
- (4) We may serve on you a notice in writing of any defect or deficiency in the goods or their operation requiring repair or replacement for which you are responsible under this rental agreement.
- (5) You must notify any person seizing the goods of our ownership and must give immediate written notice to us of such seizure.
- (6) You must not without our prior written consent:
- (a) sell, assign, sublet, let on hire or otherwise part with or attempt to part with the personal possession of or otherwise deal with the goods; or
 - (b) change, alter, deface or conceal the goods or make any addition to the goods except as required by this clause.
- (7) You must not without our prior written consent, allow any pledge, mortgage, encumbrance, charge or lien of any kind to arise or remain on the goods or any part thereof.
- (8) You agree to indemnify us against any liability, costs, expenses or loss directly or indirectly suffered or incurred by us resulting from:
- a. any breach of this rental agreement by you;
 - b. our exercising any right under this rental agreement;
 - c. the use or misuse of the goods by you;
 - d. loss of or damage to the goods due to any cause including lawful confiscation; or
 - e. any damage to any property or death of or injury to any person caused directly or indirectly by the goods or their use or operation.

You agree to pay us on demand any amount payable under this indemnity

7. INSURANCE

You must arrange and keep the goods insured against loss and all other normally insured risks for their full replacement value during the term. You must ensure that we are named as an additional insured party and loss payee under the insurance policy and provide us with evidence that the goods are insured if we ask for it. You must not do, or fail to do, anything which would allow the insurer to refuse or reduce a claim; or enforce, conduct, settle or compromise any claim without our consent. We are entitled to receive any amounts paid by an insurer relating to the goods. If you receive them, you hold those amounts on trust for us.

8. CORRECTION OF ERRORS

You authorise us to complete any blanks or correct any errors in this rental agreement or the schedule, (including inserting serial numbers, model numbers, the commencement date and the rent payment date) provided we subsequently notify you.

9. DEFAULT AND TERMINATION

- (1) Each of the following events is an event of default, namely if:
- (a) you fail to pay rent or other money payable under this rental agreement on the due date for payment and that failure continues for more than 5 business days;
 - (b) you fail to perform any of the other provisions of this rental agreement and (if capable of remedy) that default continues for more than 10 business days (or such longer period permitted by us) after notice from us requiring you to remedy the same;
 - (c) any application for your bankruptcy or liquidation is presented and you cannot within 10 business days reasonably satisfy us that the application is frivolous or vexatious;
 - (d) any execution or other process of any court or authority is issued against or levied upon the goods (other than as a result of any act or omission of ours);
 - (e) you suspend payment of your debts generally; or
 - (f) the goods are abandoned or condemned or are seized or appropriated by any lawful authority and not released within 21 days or are attached, sequestered, impounded or restrained upon and not released within 21 days.
- (2) If any event of default occurs we may at our option:
- (a) institute proceedings, either at law or in equity, to enforce specific performance by you of the provisions of this rental agreement or recover damages for the breach concerned; or
 - (b) terminate this rental agreement and your right to possession of the goods by notice in writing to you. Upon service of that notice all your rights to or in the use of the goods will terminate and we may, directly or by our agent, take possession of the goods.
- (3) (a) Your obligations under the following clauses are essential and fundamental terms of this rental agreement such that failure to comply with them will constitute a repudiation of this rental agreement entitling us to accept that repudiation: clauses 4, 6 and 7.
- Should any event of default occur, its occurrence will be a breach of an essential and fundamental provision of this rental agreement by you amounting to a repudiation by you of this rental agreement.
- (b) If we terminate this rental agreement following any such repudiation by you then without prejudice to any other right or remedy available to us we may recover from you by way of liquidated and ascertained damages for such breach the aggregate amount determined under clause 10(2).

10. AMOUNTS DUE UPON EXPIRY AND EARLY TERMINATION

- (1) Upon expiry of the term, you must pay to us the balance due if any.
- (2) Upon early termination of this rental agreement under clauses 9(1) or 9(2), we may:
- (a) retain all rent and other money previously paid by you to us under this rental agreement; and

POSmate Rental Agreement Terms And Conditions

- (b) recover from you as liquidated and ascertained damages, the balance due with respect to the goods less the net proceeds of sale of the goods.

If the payment of any amount included in a payment required by this clause 10(2) to be made by you to us is held to be unenforceable the payment will be unenforceable only to the extent of that amount. Your obligation to make the balance of the payment will remain unaffected by any unenforceability.

- (3) If the net proceeds of sale have:
- (a) been ascertained at the date upon which the payment required by sub-clause (1) or sub-clause (2) (as the case may be) is due to be made and such proceeds are less than the amount of such payment, you must pay the difference between the net proceeds of sale and that amount to us on the last day of the term or on the early termination date (as the case may be); and
- (b) not been ascertained at the date upon which the payment required by sub-clause (1) or sub-clause (2) (as the case may be) is due to be made, you must pay the amount of such payment to us on the last day of the term or on the early termination date, as the case may be. When the net sales proceeds have been ascertained we will pay to you an amount equal to the lesser of the net proceeds of sale and the payment required by sub-clause (1) or sub-clause (2) (as the case may be).

11. RETURN OF GOODS

- (1) Upon the expiry of the term or early termination of this rental agreement, you must immediately deliver the goods, at your expense appropriately protected and in the condition required by clause 6(1), to the return address.
- (2) If the goods are not returned to us as and when required by sub-clause (1), we may retake possession of the goods. For that purpose we and our employees and agents may, without notice, enter upon or into the premises and detach or dismantle the goods from any part of the premises to which the goods have been affixed.

12. SALE OF GOODS UPON EXPIRY OR TERMINATION

When we obtain possession of the goods under clause 11, we may sell or otherwise dispose of the goods in whole or in part by public auction, by tender, by private treaty or to or through persons dealing in equipment of the same or similar description or in any other manner and upon such terms and conditions as we think fit.

13. END OF TERM AND RENEWAL

On the expiry of the term, you may by giving us at least 30 days written notice:

- (a) return the goods to us; or
- (b) negotiate with us to extend the term of this rental agreement at a fair market rental.

If you do nothing, or fail to give us notice under this clause, the rental agreement will continue on a monthly basis, at the monthly rent specified in the schedule, until such time as you do either (a) or (b) above.

14. APPLICATION OF MONEY

All money received by us under or by virtue of clauses 10 or 12 will be applied as follows:

- (a) first, in payment of all costs, charges and expenses incurred in or incidental to the exercise of any of the powers of authorities conferred on us by this rental agreement or otherwise arising in relation to this rental agreement;
- (b) secondly, in or towards payment of such other expenses relating to the goods as we are empowered under this rental agreement to appropriate and think fit to pay; and
- (c) thirdly, in or towards payment to us of the amounts due to us under this rental agreement.

15. POWER OF ATTORNEY

For valuable consideration and by way of security for our interest in the goods and for the performance of the obligations owed by you to us under this rental agreement, you irrevocably appoint us, and every director, secretary and officer of ours severally your attorney for the purpose of doing all acts and things which you are obliged to do or which we are empowered or authorised to do under this rental agreement.

16. GENERAL PROVISIONS

(1) Acceptance of Rent after Default or Repudiation

Our acceptance of any rent after we become aware of an event of default or an event constituting a repudiation of this rental agreement by you will be without prejudice to our exercise of the powers conferred upon us by this rental agreement. The acceptance will not operate as an election by us either to exercise or not to exercise any of our rights, powers or privileges under this rental agreement.

(2) Remedies Cumulative

The remedies provided in this rental agreement in favour of us arising pursuant to an event of default or after a repudiation of this rental agreement by you will not be deemed to be exclusive but will be cumulative and will be in addition to all other remedies in our favour existing at law or in equity. Our election at any time to enforce any such remedies will in no way bar the later enforcement from time to time of any other remedies.

(3) Non-Merger

None of the terms or conditions of this rental agreement, nor any act, matter or thing done under or by virtue of, or in connection with, this rental agreement will operate as a merger of any of our rights and remedies in or under this rental agreement or otherwise. All our rights and remedies will continue in full force and effect.

(4) Statutes not to abrogate rental agreement

No statute, regulation or by-law present or future will apply to this rental agreement so as to abrogate, impair, diminish, fetter, delay or otherwise prejudicially affect any of our rights, powers, remedies or discretions given or accruing under this rental agreement.

(5) Assignments

We may at any time assign, charge or otherwise deal with the goods or our right, title and interest pursuant to this rental agreement. You must not assign or charge this rental agreement or any of your rights or obligations under this rental agreement without our prior written consent.

(6) Statement by Owner

A statement in writing signed by a director, secretary or officer of ours stating the amount due or owing by you to us, or any other act, matter or thing arising under this

POSmate Rental Agreement Terms And Conditions

- rental agreement as at any date set out in that statement will be prima facie evidence of the facts so stated.
- (7) Severability and Survival of Covenants
If any provision of this rental agreement is or at any time becomes void or unenforceable the remaining provisions will continue in full force and effect. All your obligations under this rental agreement will survive the expiry or termination of this rental agreement to the extent required for their full observance and performance.
- (8) No Waiver
No failure or delay on our part to exercise any power or right under this rental agreement will operate as a waiver of that power or right. Nor will any single or partial exercise of any power or right under this rental agreement preclude any other or further exercise of that power or right.
- (9) Further Assurances
You must at your expense do any further act and execute any further document which we may reasonably request in order to protect our title to the goods and our rights, powers and remedies under this rental agreement.
- (10) Notices
Any notice or demand to be given under or in relation to this rental agreement will be deemed to be duly given or made if it is in writing and
- (a) in the case of you, by:
- (i) delivering it to you personally; or
- (ii) leaving it at, or sending it by pre-paid post, facsimile or similar electronic facility to the address of the place of your residence or business last known to us; and
- (b) in the case of us, by:
- (i) leaving it at our registered office with an officer of ours; or
- (ii) sending it by post, facsimile or similar electronic facility to our registered office.
- (11) Governing Law
This rental agreement will be governed by the laws of Western Australia and the laws of that State will be the proper law of the contract. You submit to the non-exclusive jurisdiction of the courts of Western Australia and any courts which may hear appeals therefrom.
- (12) Caveatable Interest
You and the guarantor charge all of your respective estate, title and interest in all land and other property which you may now have or at any time during the term acquire including (without limitation) the land and other property described (if any) in the schedule (together "property") with repayment of the rent and other moneys payable under this rental agreement and consent to our registering a caveat over the property as further security for the performance of your respective obligations under this rental agreement.
- (13) No Variation
No variation of this rental agreement shall be binding upon us unless produced in writing and signed on our behalf.
- (14) Entire Agreement
This rental agreement constitutes the entire agreement between the parties with respect to the hire of the goods and contains all the representations, warranties, covenants and agreements of the parties and there are no oral statements, representations, undertakings, covenants or agreements between the parties expressed or implied except as are specified in this rental agreement.
- (15) Time of the Essence
Time is of the essence with respect to the performance of your obligations under this rental agreement.
- (16) Trust
Where you or the guarantor have executed this rental agreement as trustee of a trust, you acknowledge that this rental agreement is binding upon you personally and in your capacity as trustee of the trust and that our right of recourse extends to both your personal assets and to any assets of the trust. You will not revoke or vary the trust without our prior written consent.
- (17) Agency
The renter acknowledges that the owner may enter into this rental agreement as nominee and agent for another party. The provisions of the Agency Agreement are hereby incorporated into and shall form part of this rental agreement. If any inconsistency arises between this rental agreement and the Agency Agreement then this rental agreement shall prevail to the extent only of the inconsistency.
- (18.) GUARANTEE
The guarantor jointly and severally unconditionally guarantees to us the due and punctual payment by you of the rent and other moneys payable by you under this rental agreement and the due and punctual performance by you of all your liabilities, obligations and agreements to us pursuant to or in connection with this rental agreement and the guarantor agrees with us that:
- (a) if you default in the due and punctual payment of any money due to us the guarantor shall immediately pay the amount due to us without any deduction whatsoever without the need for us to make any demand;
- (b) this guarantee is a principal obligation and may be enforced by us without first exhausting any other remedy;
- (c) this guarantee is a continuing guarantee and will remain in full force and effect until discharged;
- (d) the liability of the guarantor is absolute and will not be affected by any act omission time indulgence lack of or non-consent matter or thing which might otherwise release or exonerate the guarantor from its obligations under this rental agreement or in part;
- (e) any settlement discharge or release of the guarantor is conditional upon any security or payment to us not being avoided or reduced or any provision relating to insolvency and if any payment is so avoided or is deemed a preference the guarantor's liability under this guarantee shall be as if no payment were made or be reinstated to the extent that we were obliged to repay the payment;
- (f) the guarantor will indemnify us against any loss suffered by us by reason of any avoidance by you or any guarantor of liability under this rental agreement or by reason of non-payment or non-performance by you or any guarantor or by reason of any bankruptcy liquidation arrangement assignment or composition by you or that person;

POSmate Rental Agreement Terms And Conditons

- (g) we are not required to give to the guarantor or you any notice before proceeding against the guarantor; and
- (h) this guarantee and indemnity shall be binding on each person who signs it and each of their successors, legal representatives and assigns notwithstanding that any other person has not signed it.

(19.) DEFINITIONS AND INTERPRETATION

(1) Definitions

In these terms and conditions unless the contrary intention appears the following terms shall have the following meanings:

“balance due” means, in respect of the goods at the relevant time, that amount which is, at that time, the sum of:

- (a) all rent and other amounts due or accrued due under this rental agreement;
- (b) interest on the amounts in paragraph (a) calculated in accordance with clause 4(5); and
- (c) the present value of the balance of the total rent that would have been payable during the remainder of the term but which is not then due for payment (the present value being calculated by discounting at the implicit interest rate (as determined by us) in this rental agreement).

“commencement date” means the commencement date specified in item 2 of the schedule;

“event of default” means any of the events or omissions specified in clause 9(1);

“goods” means the equipment described in item 1 of the schedule as well as any replacement and all parts, accessories and other equipment which may from time to time be incorporated or installed in or attached to the goods and any part thereof;

“GST” has the same meaning as in the GST Law;

“GST Law” means A New Tax System (Goods and Services Tax) Act 1999 (Cth.);

“guarantor” means the guarantor specified in the schedule;

“net proceeds of sale” means the proceeds of sale or other disposal of the goods received by us under clause 12 after deducting all expenses including:

- (a) an amount for legal costs (on a full indemnity basis);
- (b) expenses incurred by us in repossessing, storing and valuing the goods;
- (c) costs and expenses of and incidental to the sale or other disposal of the goods by us; and
- (d) costs and expenses of and incidental to related enforcement advice or action or both;

“premises” means the address where the goods will from time to time be stored or any other place agreed in writing from time to time by us and you for the purposes of this rental agreement;

“owner” means the owner specified in the schedule;

“rent” or “rental” means each of the monthly instalments of rent payable under this rental agreement specified in item 2 of the schedule and the “total rent” means the total of those instalment amounts;

“rental agreement” means the hire or renting of the goods which comprises both these terms and conditions and the schedule, as varied from time to time;

“renter” means the renter specified in the schedule;

“rent payment date” means each of the dates upon which the rent is to be paid under this rental agreement specified in item 2 of the schedule;

“return address” means our address specified in the schedule or such other address as may be notified by us to you from time to time as the address to which the goods must be delivered by you upon the expiry or other termination of this rental agreement;

“schedule” means the schedule to these terms and conditions;

“term” means the period commencing on the commencement date and expiring on the date specified in item 2 of the schedule, being the term of this rental agreement; and

“terms and conditions” means these terms and conditions which must be read in conjunction with the schedule.

(2) Interpretation

(a) A reference to legislation includes all regulations, notices or other requirements under that legislation. It also includes any amendments, modifications or re-enactments of that legislation and any legislation substituted for, and any statutory instrument issued under, that legislation.

(b) A reference to any party to this rental agreement includes that party’s executors, administrators, substitutes, successors and permitted assigns.

(c) Reference to clauses are references to clauses of this these terms and conditions.

(3) Joint and Several Liability

Where the renter comprises more than one person, the covenants and agreements on their part contained or implied in this rental agreement bind them jointly and each of them separately.