

## Terms and Conditions of Hire

### Interpretation

1. In these terms & conditions:

**Site Safe** means Site Safe (Vic) Pty Ltd ACN 004 874 015 and Site Safe (Qld) Pty Ltd ACN 150 602 645.

**Goods** means the products including Third Party Goods and all associated services supplied by Site Safe to the Hirer.

**Hire Agreement** means the agreement between Site Safe and the Hirer for the hire of Goods which includes:

- (a) any Credit Application;
- (b) these terms and conditions of Hire, and
- (c) any Hire Agreement provided to the Hirer by Site Safe, whether signed or not.

**Hire Charges** means the rates and charges payable by the Hirer for the hire of the Goods and/or Services and set out in the Quotation and as adjusted from time to time pursuant to the terms of the Hire Agreement.

**Hirer** means the party or parties entering into this Hire Agreement with Site Safe and being the hirer of the Goods and/or Services as identified in the Hire Agreement.

**Hire Period** means the period described in clause 3.

**Insolvency Event** means a party is declared bankrupt or commits an act of bankruptcy, enters into an arrangement or composition with creditors, signs an authority under Part IX or X of the Bankruptcy Act or suffers the appointment of a controller, administrator, receiver, receiver and manager, provisional liquidator or liquidator or has winding up proceedings initiated against it or any execution is levied against his or its property.

**PPSA** means the *Personal Property Securities Act 2009 (Cth)* and any regulations or other instruments under it.

**Quotation** means the written quotation prepared by Site Safe and submitted to the Hirer, with all nominated attachments, for the supply of the Goods at a specified price and is subject to the terms of the Hire Agreement.

**Services** means all services associated with the supply of the Goods by Site Safe to the Hirer;

**Site** means the address where the Goods will be installed or housed and being the address specified in the Hire Agreement or such other location where the Goods are relocated by agreement.

**Third Party Goods** means any goods hired to the Hirer under the Hire Agreement that are not owned by Site Safe but are on-hired from one of its suppliers to the Hirer under the Hire Agreement.

### Terms of Hire

2. Each supply of Goods and/or Services by Site Safe to the Hirer is made under these terms & conditions.

### Hire Period

3.1 The Hire Period shall commence on the Commencement date shown in the Hire Agreement.

3.2 The Hire Period shall continue for the period set out in the Hire Agreement and otherwise until the Goods are back in the possession or control of Site Safe or the Hire Agreement is otherwise terminated in accordance with clause 11 hereof.

3.3 The Hire period includes weekends and public holidays.

3.4 A minimum hire period will apply of two weeks (**Minimum Hire Period**). If the Goods are returned before the expiration of the Minimum Hire Period, the Hirer must pay all Hire Charges in respect of the Minimum Hire Period.

### Prices & Quotations

4.1. Subject to clause 4.4 and 4.5, the Hire Charges for hire of the Goods and Services shall be the price stated in Site Safe's Quotation to the Hirer.

4.2 Unless otherwise expressly specified, all prices quoted are exclusive of GST.

4.3 Site Safe will issue a tax invoice and the Hirer must reimburse Site Safe for any GST payable by it on each taxable supply it makes to the Hirer at the same time as the amount the subject of the invoice is payable.

4.4. Site Safe's Quotations are open for acceptance within the period stated in them or, when no period is stated, within 14 days only after the date of the Quotation and may be withdrawn by Site Safe before acceptance, for any reason.

4.5 Site Safe reserves the right to adjust the Hire Charges by giving written notice to the Hirer in case of any price or cost increases due to:

- (a) any factor beyond its reasonable control, including but not limited to, increases in labour costs or material costs or increases to Third Party Goods;
- (b) any changes in delivery dates, quantities or specifications requested by the Hirer;
- (c) any delay or expense caused by the Hirer's instructions or lack of instructions or the Hirer's failure to give Site Safe access to the Site; or
- (d) any unanticipated Site conditions or access that makes the supply of the Goods more complex than anticipated by the parties.

4.6 The Hirer may within 7 days of Site Safe notifying the Hirer of the adjusted price or cost increase, terminate the Hire Agreement and return the Goods to Site Safe.

#### **Payment**

5. Invoices issued by Site Safe to the Hirer must be paid in full within 14 days of the date of the invoice (**the due date**).

6. The Hire Charges shall be payable by the Hirer to Site Safe during the Hire Term in accordance with clause 5 and in the manner specified in the Quotation or invoice .

7. If the Hirer fails to pay any amount it owes to Site Safe by the due date, then, in addition to any other rights Site Safe may have, it may charge daily interest on the outstanding amount at the rate 2% higher than the rate from time to time fixed by the Penalty Interest Rates Act 1983 (Vic) from the due date until such time that it is paid in full.

8. The Hirer agrees to pay an amount for each day during which the Goods are retained by the Hirer after the expiry of the Hire Term (or earlier termination of the Hire Agreement) equal to one seventh of the weekly Hire Charge.

9. All outstanding Hire Charges and any other amounts payable by the Hirer must be paid in full upon termination or expiry of the Hire Period.

#### **Default**

10.1 The Hirer shall be in default if:

- (i) any Hire Charges or any other money payable under this agreement is not made by the due date;
- (ii) the Hirer suffers an Insolvency Event; or
- (iii) the Hirer breaches any of its other obligations under this Agreement and fails to remedy that breach within 7 days of being given a notice by Site Safe requiring the breach to be remedied;
- (iv) Site Safe ascertains that any warranty, representation or statement made by the Hirer under or in connection with this Agreement has been false or misleading in any material respect;
- (v) there is a material adverse change in the business or financial condition of the Hirer which could adversely affect the ability of the Hirer to meet its obligations under this Agreement;
- (vi) the Hirer purports to terminate the Hire Agreement or return the Goods before the end of the Minimum Hire Period.

10.2 In the event of default, Site Safe will be entitled (without the obligation to give any notice to the Hirer and in addition to any other rights it may have) to:

- (a) charge daily interest pursuant to clause 7
- (b) payment from the Hirer of any recovery agents fees and actual legal costs incurred by Site Safe in recovering due amounts;
- (c) terminate or suspend supply of any further Goods or Services under the Hire Agreement or the supply of any order which is the subject of any other hire agreement between Site Safe and the Hirer;
- (d) treat the Hirer's default as a repudiation of any existing contract for the hire of Goods or Services;
- (e) declare all amounts due by the Hirer to Site Safe under the Hire Agreement to be due and payable;
- (f) recover all amounts due and payable including any interest payable pursuant to clause 10.2(a) and any fees and costs pursuant to clause 10.2(b) from the Hirer by way of liquidated damages; and
- (g) retake possession of the Goods pursuant to these terms and conditions and for this purpose may enter any Premises where Site Safe believes the Goods are situated pursuant to clause 18.5 hereof; and
- (h) cease providing the Services immediately.

#### **Termination**

11.1 Site Safe may terminate the Hire Agreement immediately by notice in writing to the Hirer on the happening of a default event set out in clause 10.1 above.

11.2 Either party may terminate the Hire Agreement and any Hire period immediately by giving notice to the other party, if:

- (a) the other party breaches any term of the Hire Agreement and fails to remedy the breach within seven days of written notification of the breach; or
- (b) the other party suffers an Insolvency Event.

11.3 Either party may terminate the Hire Agreement and any Hire Period for any reason by 72 hours notice.

### **Delivery**

12. Site Safe shall arrange delivery of the Goods to the Site at the Hirer's cost unless the Hirer has arranged to collect the Goods from Site Safe.

13. The Hirer must ensure there is clear and safe access at the Site for delivery of the Goods and unless otherwise previously agreed between the parties, that a person is present at the Site who is authorised to accept delivery, failing which the Goods may be returned to Site Safe's depot and the Hirer may be required to pay for redelivery at a later date.

14. The Hirer acknowledges that delivery times for the Goods and completion times for the Services made known to the Hirer are estimates only and, subject to any rights the Hirer has under the Australian Consumer Law, Site Safe is not liable for any loss, damage or delay occasioned to the Hirer or anyone else arising from:

- (a) late delivery or non-delivery of the Goods;
- (b) late completion of the Services;
- (c) any damage or loss due to unloading or packaging of Goods; and
- (d) any damage to property caused upon entering a Site to deliver the Goods.

15. The Hirer may not refuse to accept delivery of the Goods and shall not be relieved of any obligation to accept or pay the Hire Charges for the Goods or Services by reason of any delay in delivery or partial delivery by Site Safe where Site Safe has kept the Hirer informed as to the delay and the Hirer has not exercised their rights pursuant to clause 17.

16. Where there has been no breach of the Hire Agreement by Site Safe and the Hirer refuses to accept delivery of the Goods, the Hirer remains liable for delivery and collection costs of the Goods if the Hirer does not proceed for the entire Hire Period.

17. Site Safe will vary or cancel the date for delivery of Goods at the Hirer's request if the Hirer has given Site Safe three business days' prior notice in writing.

### **Title & Risk**

18.1 The Hirer acknowledges that subject to clause 18.3, in all circumstances Site Safe retains title to the Goods (even if the Hirer goes into liquidation or becomes bankrupt in the Hire Period) and in no circumstances will the Goods be deemed to be a fixture.

18.2 The Hirer will not be entitled to offer, sell, assign, sub-let, mortgage, pledge or otherwise deal with the Goods in any way which is inconsistent with the rights of Site Safe as owner of the Goods unless otherwise agreed to by Site Safe in writing.

18.3 Site Safe may hire or lease Third Party Goods from a third party (**a Third Party Owner**). Title in the Third Party Goods remains with the Third Party Owner at all times.

18.4 At the commencement of the Hire Term the Hirer shall assume all the risks and liabilities for and in respect of the Goods and for injuries to or death of persons and damage to property (including the Goods) howsoever arising from the possession, use, maintenance, repair or storage of the Goods.

18.5 If the Hirer does not pay the Hire Charges by the due date for payment or on the happening of a default event set out in clause 10.1 above. Site Safe and its agents are irrevocably authorised by the Hirer to enter the Site, the Hirer's premises (or any premises under the control of the Hirer or as agent of the Hirer if the Goods are stored at such premises) and use reasonable force to take possession of the Goods without liability for the tort of trespass, negligence or payment of any compensation to the Hirer or anyone claiming through the Hirer whatsoever for any damage or loss including loss or damage to any goods or possessions of the Hirer's contained or stored in the Goods. Furthermore, the Hirer agrees that Site Safe may exercise a lien over any such stored possessions until payment in full is made by the Hirer of any monies outstanding to Site Safe.

### **Hirer's Responsibility**

19.1 The Hirer warrants that the Hirer owns or has express legal authorisation to have the Goods installed or placed upon the Site and irrevocably authorises Site Safe to access the Site for the purposes of the Hire Agreement.

19.2 The Hirer agrees that before accepting the Goods it has satisfied itself as to the suitability, condition and fitness for purpose of the Goods. Subject to clause 21, Site Safe gives no warranty that the Goods are suitable for the Hirer's purpose. To the extent permitted by law, Site Safe shall not be liable in any way for any loss or damage (including direct, indirect, or consequential) arising from the failure of the Hirer to so satisfy itself.

19.3 The Hirer must ensure that during the Hire Period the Goods are stored safely and securely and are protected from theft, seizure or damage.

19.4 The Hirer must not alter, deface, remove or erase any notices, safety information, identifying mark, plate or number on the Goods.

19.5 The Hirer grants Site Safe the right to enter the Site and inspect the Goods at any time during the Hire Period.

19.6 Notwithstanding any other rights under the Hire Agreement, Site Safe has the right to remove the Goods if, within the course of its inspection, it discovers that the Goods are being used contrary to the provisions of the Hire Agreement or there is a risk that the continued use of the Goods may result in damage to the Goods, third party property or the safety or health of individuals using the Goods.

19.7 The Hirer will be liable for all costs and expenses incurred by Site Safe exercising its rights under this clause.

19.8 The Hirer agrees to return the Goods to Site Safe at the expiry of the Hire Term or upon sooner determination of the Hire Period pursuant to clause 11 hereof in the same order and condition in which they were delivered fair wear and tear only excepted.

19.9 The Hirer undertakes that the Goods will be and remain at all times under the Hirer's control and that the goods will be installed or housed at the Site, and the Hirer undertakes that the Goods will not be removed from that address without prior approval in writing from Site Safe.

#### **Charging interest in personal property**

20. In consideration of Site Safe approving the Hirer's application for credit and to secure the repayment of any monies owed at any time by the Hirer to Site Safe, the Hirer charges the interest the Hirer has now or in the future either solely or jointly or as tenant in common in all present and after acquired personal property. The Hirer acknowledges that the security interest herein granted to Site Safe in respect of personal property is capable of registration pursuant to the PPSA and that the security interest will continue until Site Safe gives a final release in relation to the secured goods. The Hirer acknowledges that Site Safe will take all necessary steps to register its security interest under the PPSA, and hereby consents to Site Safe doing so. The Hirer further undertakes to promptly provide any information and do all things as required by Site Safe to enable Site Safe to perfect its security interest in the Goods and agrees to pay Site Safe's legal costs (calculated on an indemnity basis) of and incidental to the security hereby given and its subsequent discharge.

#### **Limitation of Liability**

21.1 Notwithstanding anything to the contrary in the Hire Agreement, to the extent permissible by law:

- (a) Site Safe's total aggregate liability to the Hirer under the Hire Agreement is limited to an amount equal to the Hire Charges paid by the Hirer under the Hire Agreement;
- (b) The Hirer's liability for any loss, damage, or claims arising out of or in connection with the Hire Agreement, shall be limited to the replacement value of the Goods plus the aggregate price payable by the Hirer for the Minimum Hire set out in the Quotation; and
- (c) Site Safe shall not be liable to the Hirer for any consequential loss whatsoever arising out of or relating to the Hire Agreement or for any loss suffered by third parties under or in connection with the Hire Agreement.

21.2 Subject to clause 21.3, and except as expressly set out in the Hire Agreement, all guarantees, terms, conditions, warranties, undertakings or representations whether express or implied, statutory or otherwise, relating to the Hire Agreement are excluded to the maximum extent permitted by law.

21.3 To the extent permitted by law, Site Safe limits its liability under any condition or warranty which cannot be legally excluded in relation to the supply of Goods and Services to (at its election) the repair or replacement of the Goods or the supply of substitute Goods (or the cost of doing so).

#### **Indemnity**

22.1 The Hirer indemnifies and continues to indemnify Site Safe against any claim, actual or potential, that may be made against Site Safe or any liability, cost, loss or expense Site Safe may incur (including but not limited to reasonable solicitor fees) that arises out of or relating to a breach of any of the Hirer's obligations under the

Hire Agreement, except to the extent that such loss or expense was caused or contributed to by Site Safe's gross negligence.

22.2 Site Safe indemnifies and continues to indemnify the Hirer against any claim, actual or potential, that may be made against the Hirer or any liability, cost, loss or expense the Hirer may incur (including but not limited to reasonable solicitor fees) that arises out of or relating to a breach of any of Site Safe's obligations under the Hire Agreement, except to the extent that such loss or expense was caused or contributed to by the Hirer.

#### **Lost stolen or damaged Goods**

23. The Hirer is responsible for the Goods whilst on hire. If the Goods are lost, stolen or damaged during the Hire Period the Hirer will be liable for:

- (a) any costs incurred by Site Safe in repairing or the new replacement cost of the Goods, and
- (b) any other costs whatsoever incurred by Site Safe as a result of the loss, theft or damage to the Goods, including the continuation of Hire Charges; except where the Hirer pays the Damage Waiver fee, in which case its liability is subject to the Damage Waiver Fee Clause below.

#### **Damage Waiver**

24.1 Site Safe agrees to limit the Hirer's liability to it for loss, theft or damage to the Goods in certain circumstances (**Damage Waiver**).

24.2 Where Damage Waiver fees have been charged to the Hirer, Site Safe agrees, upon prompt submission of a written Police Report from the Hirer, to waive its rights to claim for loss or damage to the Goods caused by fire, storm, collision, accident, theft or burglary providing adequate precautions have been taken by the Hirer to safeguard the Goods.

24.3 Site Safe's waiving of rights is subject to payment by the Hirer of an excess for either the loss of the Goods or damage to the Goods, being the greater of \$500.00 per item or 15% of the cost of repairs or the new replacement cost of the Goods (as the case may be).

24.4 Expressly excluded from the above Damage Waiver are loss or damage as defined below:

- a. Damage due to misuse or abuse of the Goods.
- b. Mysterious disappearance of the Unit.
- c. Loss or damage in contravention of the conditions of this Hire Agreement.
- d. Loss or damage from use in violation of any statutory laws and regulations.
- e. Damage caused by exposure to any corrosive substance.
- f. Theft of the Unit unless reasonably locked and secured.
- g. Loss or damage during transport, except where transported by Site Safe.
- h. Loss or damage to Goods which the Hirer has elected not to pay Damage waiver premium and thereby the Hirer has accepted liability for the Goods and
- i. Any loss or damage caused by negligence of the Hirer.

24.5 The limitation on the Hirer's liability is only with respect to loss theft or damage to the Goods and does not apply to any liability of the Hirer with respect to the indemnity in clause 24.6.

24.6 The Hirer is liable for and indemnifies Site safe against all liability in respect of personal injury, damage to property or a claim by a third party in respect of the Hirer's hire or use of the Goods. The Hirer's liability under this indemnity is reduced to the extent that Site Safe's breach of the Hire Agreement or Site Safe's negligence causes the liability.

#### **Miscellaneous**

25. If the Hirer comprises two or more parties, they shall be bound by this Agreement jointly and individually and every reference to the Hirer shall be taken to apply to all such parties and each of them.

26. Any dispute arising under these terms and conditions shall be governed by and construed in accordance with the laws of the State of Victoria and Site Safe and the Hirer agree to submit to the jurisdiction of the courts and tribunals of that State.

27. Any provision of these terms & conditions which is void, illegal or unenforceable must be read down (if possible) to be valid, legal and enforceable and such provision shall not affect the validity, legality or enforceability of the remaining provisions.

28. Site Safe reserves the right to vary these terms & conditions by notice to the Hirer in writing. If the Hirer considers that the variation may cause the Hirer a material detriment, the Hirer may within 30 days of Site Safe notifying the Hirer of the variation, terminate the Hire Agreement and return the Goods to Site Safe.