

PART A. UNDERSTANDING THIS AGREEMENT**Meanings** In this Agreement:

Agreement means this Equipment Hire Agreement comprised of the Details and the Terms.

Booking Date means the date specified in the email

Bond means the amount specified in the email if applicable.

Collection Date means the date specified in the email

Claims means any costs, expenses, losses, damages and liabilities (including legal costs on a full indemnity basis) suffered or incurred by, and all actions, proceedings, demands and claims brought, made or recovered by any person against the Owner whether in contract, tort (including, without limitation, negligence) or otherwise.

Delivery Date means the date specified in the email

Deposit means the amount specified in the email.

Details means the information set out in Section A of this Agreement

Encumbrance means any encumbrance or security interest and includes any legal or equitable mortgage, charge (fixed or floating), pledge, lien, title retention or conditional sales agreement, option or restriction about transfer, use or possession.

Equipment means the items of equipment specified in the emails which have been approved and deemed acceptable by the Hirer in discussions prior or after entering this Agreement.

GST means any tax imposed on the supply of goods or services which is imposed or assessed under *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (as amended).

Hire Fee means the hire fee set out in in the emails

Insolvency Event means a party:

- (a) becomes or states they are insolvent;
- (b) becomes or passes a resolution to become an **externally administered body corporate**;
- (c) cannot pay its debts as and when they fall due or becomes an **insolvent under administration**;
- (d) has proceedings brought against it under any bankruptcy or insolvency law and such proceedings are not discharged or stayed within 30 days; and/or
- (e) becomes subject to the appointment of an administrator, provisional **liquidator**, trustee in bankruptcy or has a **controller** appointed in respect of any property (each bold term in this definition has the meaning given in section 9 of the *Corporations Act 2001* (Cth)).

(each bold term in this definition has the meaning given in section 9 of the *Corporations Act 2001*)

Owner's Representative means the person specified in the Details.

Permitted Use means using the Equipment for the reasonable functional or recreational purpose that the Equipment is intended to be used for by children under the age of 7 (seven) years of age.

Site has the meaning specified in the Details.

Term means the period from the Delivery Date to the Collection Date.

1. Interpretation

In this Agreement:

- 1.1. the singular includes the plural and vice versa;
- 1.2. a reference to "\$" or "dollars" is to Australian dollars
- 1.3. no rule of construction applies to the disadvantage of a party because that party put forward this Agreement or any portion of it.
- 1.4. if a provision of this Agreement would, but for this clause, be unenforceable:
 - 1.4.1. the provision must be read down to the extent necessary to avoid that result; and
 - 1.4.2. if the provision cannot be read down to that extent, it must be severed without affecting the validity and enforceability of the remainder of this Agreement.
- 1.5. a party includes a party's successors, executors, administrators and permitted assigns; and
- 1.6. legislation or reference to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.

PART B. EQUIPMENT HIRE**2. Hire**

- 2.1. The Owner agrees to hire the Equipment to the Hirer, and the Hirer agrees to hire the Equipment from the Owner, for the Term on the terms of this Agreement. The Hirer may
- 2.2. Prior to hiring the Equipment, the Hirer warrants that the Hirer has inspected the Site and determined that the Owner will have a reasonable and safe means of access to the Site and that there is a place at the Site where the Equipment can be safely installed and set up for use and operation.
- 2.3. The Hirer may only use the Equipment for the Permitted Use.
- 2.4. At all times during the Term, the Hirer must, unless with the consent of the Owner:
 - 2.4.1. not move the Equipment the position on the Site where the Equipment has been installed by the Hirer;
 - 2.4.2. when not in use, leave the Equipment in a safe condition at the Site;
 - 2.4.3. not remove the Equipment from the Site; and
 - 2.4.4. ensure that the Equipment is secure from theft, damage, defacing and destruction.
- 2.5. The Owner may inspect the Equipment at any time during the Term.
- 2.6. When operating the Equipment, the Hirer must have the Supervisor supervise the operation and use of the Equipment and give the Supervisor a copy of these Terms.
- 2.7. The Supervisor must ensure that the Equipment is:
 - 2.7.1. operated and used in accordance with all applicable laws and standards concerning the Equipment;
 - 2.7.2. not soiled by, or allowed to come into contact with, food, drinks, animals, cigarettes, face paint, any sugar-based substances, chewing gum or any item (including but not limited to sharp objects)

that may cause irreparable damage or harm to the Equipment;

- 2.7.3. operated and used in accordance with any manufacturer's operating instructions provided by the Owner to the Hirer;
- 2.7.4. operated and used in accordance with any procedures and guidelines in relation to the Equipment as provided by the Owner to the Hirer;
- 2.7.5. not used and operated if at any time during use and operation any part of the Equipment is
- 2.7.6. cleaned after use and operation, ready for collection by the Owner on the Collection Date.
- 2.7.7. If a bouncy castle forms part of the hired Equipment, the Supervisor appointed by the Hirer must, in addition to the matters ensure that:
- 2.7.8. no adults enter, and use the bouncy castle;
- 2.7.9. children remove footwear before entering the bouncy castle;
- 2.7.10. children wear socks while using the bouncy castle;
- 2.7.11. the bouncy castle is not overcrowded, and limit numbers to 10 children at one time;
- 2.7.12. no food, drinks, chewing gum, face paint, party poppers, coloured streamers or silly string is taken in the bouncy castle;
- 2.7.13. the bouncy castle is not used during high winds or heavy rain conditions. In the case of heavy rain, the blower component of the bouncy castle must be disconnected and stored in a dry place to avoid damage;
- 2.7.14. if the blower component of the bouncy castle stops working, all children are evacuated promptly from the bouncy castle and the Owner's Representative is immediately contacted using the phone numbers set out in the Details.

3. Delivery

- 3.1. Unless agreed otherwise, the Owner will deliver the Equipment to the Site for use by the Hirer on and from the Delivery Date. If the Hirer informs the Owner that the Hirer wishes to set a later Delivery Date and Collection Date, the Owner will use reasonable endeavours to accommodate such a request.
- 3.2. The Hirer must afford the Owner clear and unrestricted access to the Site so that the Equipment can be delivered and set up for use and operation.
- 3.3. The person delivering the Equipment for and on behalf of the Owner shall have an absolute discretion as to selecting a place at the Site where the Equipment may be safely installed or set up for use and operation.
- 3.4. If the Owner determines (acting reasonably) that despite the warranty given by the Hirer at clause 3.2 above that the Site cannot be accessed safely or if a bouncy castle has been hired, that the bouncy castle cannot be safely delivered and set up for use and operation, the Owner may elect to terminate the arrangements under this Agreement and retain the Part Payment or in the case where a bouncy castle was to be hired, the Deposit and Bond.
- 3.5. Where a bouncy castle is being hired, the Owner may, if the bureau of meteorology has predicted bad weather conditions will affect the Site on the Delivery Date, decline (in the Owner's absolute discretion) that it will be unsafe to use the bouncy castle and therefore decline to deliver the bouncy castle to the Site on the Delivery Date. The Owner will inform the Hirer of any such decision and either set a

new Delivery date with the Hirer or give the Hirer a full refund of all amounts paid by the Hirer in respect of the bouncy castle.

- 3.6. Delivery Fee will apply to all bookings.

PART C. FEES AND CHARGES

4. Hire Fee

- 4.1. Hirer must pay 50% of the Hire Fee on the booking date (**Part Payment**). The balance of the Hire Fee shall be payable no later than 5 calendar days before the Delivery Date. If the balance of the Hire Fee is not paid within this timeframe, the Owner may (acting reasonably) terminate the arrangements under this Agreement and retain half of the Part Payment as compensation for the administrative time and resources expended by the Owner.
- 4.2. If a bouncy castle is being hired, the Hirer must pay:
 - 4.2.1. the Deposit on the Booking Date to secure the hire of the bouncy castle;
 - 4.2.2. each of the Bond and the Hire Fee applicable to the bouncy castle no later than 5 calendar days before the Delivery Date;
- 4.3. The Part Payment and balance of the Hire Fee and may be paid by direct debit or electronic funds transfer into an account nominated by the Owner or in any other way agreed in writing between the parties.
- 4.4. The Hire Fee is inclusive of GST.
- 4.5. Subject to clause 5.6, the Owner will be entitled to claim, in addition to the Hire Fee, a cleaning charge of \$50.00 (Fifty Dollars) if the Hirer fails, in breach of clause 3.6.5, to clean the Equipment before it is collected.
- 4.6. If a bouncy castle has to be cleaned by reason of the Hirer breaching clause 3.6.5, the applicable charge is \$150.00 (One Hundred and Fifty Dollars).
- 4.7. The Owner may retain and apply the Bond to fund any cleaning or repair costs payable pursuant to this Agreement. If the Bond is insufficient to cover any such costs, the Owner may take action to recover the shortfall.
- 4.8. **The Owner has the right to alter/ change prices on the website www.littlepeoplepartyhire.com without notice.**

PART D. MAINTENANCE

5. Maintenance and Repair

- 5.1. The Hirer agrees to make the Equipment available for repair, service and maintenance by the Owner as and when reasonably requested by the Owner. The Owner will be liable for the cost and expense of such repair, service and maintenance works. The Owner will ensure that it minimises any disturbance to the Hirer's use and enjoyment of the Equipment when undertaking any repairs, servicing or maintenance of the Equipment in accordance with this clause 5.1 and will only undertake such works at a time convenient to the Hirer.
- 5.2. If the Equipment is damaged, the Hirer must:
 - 5.2.1. promptly notify the Owner and provide written details of the damage to the Equipment and the circumstances giving rise to the damage;

- 5.2.2. comply with the Owner's directions as regards to the preservation and storage of any broken parts of the Equipment; and
- 5.2.3. if the damage is caused by any breach of these Terms or negligent acts or omissions of the Hirer, promptly pay the reasonable and substantiated costs and expenses incurred in repairing the Equipment. The Hirer indemnifies the Owner for any such reasonable and substantiated costs and expenses.
- 5.3. Where the Equipment is faulty or ceases to work for any reason except where caused directly or indirectly by the acts or omissions of the Hirer, the Owner will, at its cost and in its sole discretion, repair or re-supply that Equipment.
- 5.4. The Hirer must inspect and check all equipment and notify Owner at the time of delivery if there is any equipment missing, damaged, or unfit for use. Failure to do so will see Hirer responsible for any damages or missing equipment on pick up.

PART E. END OF HIRE AGREEMENT

6. Return of Equipment

- 6.1. On the Collection Date or upon the termination of this Agreement, the Hirer shall make the Equipment available collection by the Owner at the Site in a clean and tidy state.
- 6.2. The Hirer grants the Owner an irrevocable licence to enter the Site in order to repossess the Equipment

PART F. RISK AND TITLE

- 7. **Risk** Risk in the Equipment passes to the Hirer on the Delivery Date and remains with the Hirer until the date on which the Owner receives possession of the Equipment at which time risk in the Equipment passes back from the Hirer to the Owner.
- 8. **Title** title to the Equipment does not pass to the Hirer notwithstanding the possession and use of the Equipment by the Hirer.

PART G. WARRANTIES AND INSURANCE

9. As is Basis

- 9.1. The Equipment is hired to the Hirer on an "as is" basis being the condition of the Equipment as at the Delivery Date.
- 9.2. To the extent permitted by law, any implied terms, representations or warranties as to the fitness, quality, suitability for purpose or condition of the Equipment are excluded.

10. Representations and Warranties

- 10.1. The Hirer warrants and represents to the Owner that the Hirer has full legal capacity and power to enter into and perform its obligations under this Agreement.
- 10.2. The Owner makes no warranty or representation in relation to any of the services provided to the Hirer.
- 10.3. Except as required by the mandatory operation of law all implied terms and conditions are excluded.

11. Insurance and Liability

- 11.1. The Hirer releases the Owner from all Claims in connection with the hire of the Equipment, including in connection with its use.

- 11.2. The Hirer will indemnify the Owner from all Claims in connection with its use of the Equipment, the Hirer's acts or omissions (whether negligent or otherwise) including those of the Hirer's officers, employees, agents and contractors and any breach of this Agreement by the Hirer.
- 11.3. To the fullest extent permitted by law, to the extent not excluded by this Agreement, the Owner's liability is limited to the repair or re-supply of Equipment (at its sole discretion).
- 11.4. The Hirer will, on demand, pay the deductible of any applicable insurance policy held by the Owner if an insurable event occurs in relation to the Equipment during the Term.
- 11.5. The Hirer will not do, or fail to do, anything which could:
 - 11.5.1. prejudice the Owner's insurance in respect of the Equipment;
 - 11.5.2. cause the premiums for such insurance to be increased;
 - 11.5.3. lead to the cancellation or refusal of insurance for the Equipment.
- 11.6. At all times during the Term, the Hirer must hold public liability insurance for an amount of not less than \$20,000,000 covering its liability for personal injury or death caused in connection with the Equipment.
- 11.7. The Hirer must provide written evidence of its compliance with clause 11.6 on demand by the Owner.
- 11.8. The Hirer agrees to defend, Indemnify, assume liability for and hold Owner harmless from any and all claims, demands, damages, losses, suits, proceedings, penalties, expenses or other liabilities Including lawyer fees and court costs arising out of or resulting from the use of the equipment, regardless of the basis.

PART H. TERMINATION

12. Right of Termination

- 12.1. The Owner may terminate this Agreement immediately by written notice to the Hirer if:
 - 12.1.1. any amount payable by the Hirer under this Agreement is not paid when due;
 - 12.1.2. the Hirer breaches any provision of this Agreement (except in relation to payment of an amount, these being covered by clause 12.1.1) and does not remedy that breach within 7 days; or
 - 12.1.3. an Insolvency Event occurs in relation to the Hirer.
- 12.2. The Hirer may terminate this Agreement immediately by written notice to the Owner if:
 - 12.2.1. the Owner breaches any provision of this Agreement and does not remedy that breach within 7 days; or
 - 12.2.2. an Insolvency Event occurs in relation to the Owner

13. Consequences of Termination

- On the termination of this Agreement:
 - 13.1. the Hirer must, at its own cost, return the Equipment to the Owner at the Site or any other place specified by the Owner in writing;

- 13.2. if the Hirer does not return the Equipment in accordance with clause 13.1, the Owner may repossess the Equipment at the Hirer's cost;
- 13.3. where the Owner terminates this Agreement in accordance with clause 12.1, the Hirer will pay, as liquidated damages and not as a penalty, an amount equal to the Hire Fee that would have been payable for the balance of the Term; and
- 13.4. any accrued rights and remedies to which a party to this Agreement may be entitled or be subject before its termination or which arise from the event of termination will remain in effect.

PART I. GENERAL

14. Entire Agreement

- 14.1. This Agreement represents the parties' entire agreement, and supersedes all prior representations, communications, contracts, statements and understandings, whether oral or in writing, relating to its subject matter.
- 14.2. The Hirer will be bound by the terms and conditions set out in this Agreement by signing the acknowledgement below or by making any payments in respect of the hire of the Equipment.
15. **No Waiver** A party waives a right under this Agreement only by written notice that it waives that right.
16. **Assignment** The Hirer must not, without the prior written consent of the Owner:
 - 16.1. assign or transfer any right or obligation under this Agreement; or
 - 16.2. grant any person any Encumbrance in respect of the Equipment.
17. **Notice** For the purpose of this clause 17, notice includes any consent or approval which may be given under this Agreement. Notice can only be in writing by the party or its agent. Notice can only be given to a party:
 - 17.1. personally;
 - 17.2. by registered post to the recipient's last known place of business (notice by post is deemed to be received at the time at which the letter would be delivered in the ordinary course of post); or
 - 17.3. by email (notice by email is deemed to be received if the sender does not receive either an electronic delivery notification error or delivery delay notice within 24 hours of sending the email).
18. **Amendment** This Agreement can only be amended by written agreement of the parties.
19. **Governing Law and Jurisdiction** This Agreement is governed by the laws of South Australia. The parties submit to the exclusive jurisdiction of the courts of South Australia and the Federal Court of Australia (Adelaide Registry) in respect of any matter connected with this Agreement.

By transferring your bond to secure your booking you are acknowledging that you agree with the above terms and conditions for hire.