



Hire Terms & Conditions

Definitions:

Kirby Productions Pty Ltd is the "Owner"

Hirer is the customer hiring the Owners equipment as specified.

Application of Terms. These terms apply to all Equipment hired by the Hirer from the Owner. If the Special Terms are inconsistent with these Terms, the Special Terms prevail to the extent of any inconsistency.

Hire. The Hirer hires the Equipment from the Owner for the Hire Period for the Price.

Ordering and Acceptance. The Hirer may offer to hire the Equipment by delivering an Order to the Owner. The Owner accepts the Order when it communicates acceptance to the Hirer.

Price. The Price is for the hiring of the Equipment for the Hire Period. It does not include delivery, preparation of the Site, freight, installation, dismantling, packing or pick up, unless as otherwise stated.

Additional Costs. The Hirer must pay to the Owner in addition to the Price, all costs incurred by the Owner (including labour costs):

- (a) for delivery of the Equipment, including any additional costs for delivery to other than street level;
- (b) for freight, installation, dismantling, packing and pick up of the Equipment;
- (c) for providing any service to the Hirer outside of ordinary work hours, on weekends or public holidays;
- (d) for design, consultancy and other similar services provided in connection with the hire of the Equipment or the Hirer's event;
- (e) if the Site is not adequately prepared for delivery and/or installation of the Equipment;
- (f) if the Owner cannot obtain access to the Site;
- (g) arising from a variation to the Contract, including without limitation: a change in the type of Equipment required; a change in the position where the Equipment is to be or has been installed upon the Site; a change in the location of the Site; or a change in the delivery or pick up instructions from those first agreed;
- (h) arising from a failure of the Hirer to be in attendance at the agreed time for delivery or pick up of the Equipment;
- (i) in cleaning the Equipment where it has been returned in an unclean state;
- (j) for service calls to the Site during the Hire Period;
- (k) for Site inspections in excess of 1 for any one Contract;
- (l) in enforcing any provision of the Contract against the Hirer; and
- (m) for replacement of any Equipment not returned by the Hirer at the end of the Hire Period, or at the Owner's election 100% of the daily rate applicable under the Contract for each day or part thereof that Equipment remains unreturned.
- (n) The Hirer agrees to return all leads and cables neatly rolled and acknowledges that a fee will be charged for failure to comply.
- (o) The Hirer is hereby obligated to report any shortage / damage / malfunction in the equipment to the company no later than upon return of the equipment to the Company.

If any costs referred to in this clause are ascertainable before the Hire Period commences, they must be paid before that time.

This provision does not limit the Owner's rights to damages, compensation or indemnity under any other provision of these Terms.

Copyright. The Hirer acknowledges that copyright in all designs, drawings, proposals and other material produced by the Owner or any of its consultants in connection with this Contract remains the property of the Owner (or its consultants as the case may be). The Hirer must not infringe copyright in respect of that material.

Price Lists. Any price lists published by the Owner may be changed without notice.

Goods and Services Tax and Stamp Duty. The Price excludes GST and Stamp Duty unless otherwise specified on the Order. Where the Price excludes GST or Stamp Duty, the Hirer must also pay GST and Stamp Duty on the Price, where applicable.

Payment. The Price will be paid as follows:

- (a) 50% non-refundable deposit on acceptance of the Order by the Owner;
- (b) 100% prior to commencement of the Hire Period

The Owner is not obliged to deliver possession of the Equipment to the Hirer until funds given in payment of the Price are cleared.

Credit Card Payments. Visa and Mastercard only accepted. Deposits and payments incur a 2% merchant service charge fee.

Interest on Unpaid Amounts. The Hirer must pay interest to the Owner at the rate of 5% pr month on any amount which is overdue, from the date it became due until the date it is paid.

Cancellation and Early Return. If the Hirer cancels the Order after it has been accepted by the owner, or the Hirer fails to take delivery of the Equipment, the Hirer must pay the full Price to the Owner as liquidated damages.

The Hirer is not entitled to any refund of the Price if it returns the Equipment before the Hire Period Ends.

Instructions from Hirer. The Hirer must provide the Owner with clear delivery, installation and pick up instructions at least 7 days prior to commencement of the Hire Period. These instructions must include the date, time, place, name and mobile contact of the Hirer's representative who will receive and return the Equipment.

Access. The Hirer warrants that it has the right to access the Site, and that the Owner may access the Site to fulfill its obligations under the Contract.

Preparation of Site. The Hirer must prepare the Site to the Owner's satisfaction for delivery, installation, dismantling and pick up of the Equipment. This includes ensuring the Site is accessible, removing obstacles, leveling the ground, and ensuring the Site is safe. The Owner is not responsible for doing these things.

Electricity. The Owner may use the electricity supply at the Site for the purposes of installing and/or operating any of the Equipment. This is at no cost to the Owner.

Return of Equipment. The Hirer must return the Equipment to the Owner before 11.00am on the last day of the Hire Period. Where the Owner has agreed to collect the Equipment from the Hirer, the Owner must have the Equipment ready for collection on the last day of the Hire Period in accordance with the pickup instructions.

The Equipment must be returned clean, in good repair, properly stacked and packed, and otherwise ready for transit or storage.

Owner Receiving Hirer's Goods. If when the Equipment is returned or collected the Owner receives goods owned by the Hirer, the Owner may dispose of those goods without liability to the Hirer unless the Hirer claims them within 14 days after they came into the Owner's possession. Whether or not the Hirer claims them, the Owner may return the goods to the Hirer at the Hirer's cost.

No Warranty. The Owner gives no warranty that the Equipment is fit for the purpose required by the Hirer. The Hirer must satisfy itself as to this

Substitution of Equipment. The Owner may substitute the Equipment with equipment of a similar type without liability to the Hirer.

Display of Name. The Owner's identification, trade name, trade mark and signage may appear on the Equipment. The Hirer must not conceal or obliterate these. The Hirer cannot claim any charges from the Owner for advertising in respect of these.

Risk. The Equipment is at the risk of the Hirer during the Hire Period and at all times during which it is on the Site or in the Hirer's possession. The Hirer holds the Equipment as bailee and must take reasonable care of it. The Hirer must not part with possession of the Equipment or encumber it.

Instructions in Use. The Hirer acknowledges that it has received instructions in the use of the Equipment, that it understands those instructions, and will comply with them.

Inspection and Repair. The Owner may inspect and repair the Equipment at any time during the Hire Period. The Owner or its representative may enter upon the Site for this purpose.

Removal, Alteration and Use of Equipment. The Hirer must not: remove the Equipment from the Site or its position of installation; alter the Equipment; repair or attempt to repair the Equipment; or use the Equipment for a purpose which is different from that for which it is designed.

Damage to Equipment. The Hirer must compensate the Owner for the replacement cost of any Equipment which is damaged, lost or stolen during the Hire Period or at any time during which it is in the Hirer's possession. The Hirer must also compensate the Owner for any other loss or expense it incurs as a result of such events.

The Hirer acknowledges that any Equipment which has been damaged will be kept for one month after it is returned to the Owner, and then will be destroyed.

A statutory declaration signed by the Owner as to the condition of the Equipment and the number of items delivered and/or returned is final, cannot be disputed by the Hirer and is admissible in legal proceedings as conclusive evidence of its contents.

(a) KIRBY PRODUCTIONS PTY LTD is not responsible for the cost of repairs to or the cost of replacement of the Equipment if necessary because of damage to the Equipment sustained during the Hire Period.

INCLUDING:

1. has hired Equipment from the Owner for one event or exhibition;
2. the Equipment has been hired under more than one Contract;
3. the Hirer is liable for failure to return the Equipment;
4. the Hirer remains responsible for, loss or damage occurring to the Equipment;
5. a breach of any statutory laws or regulations in connection with the use of the Equipment by the Hirer;
6. because of misuse, abuse, willful or malicious acts, negligent or reckless use or overloading of the Equipment;
7. because of disregard for instructions given to the Hirer by the Owner in respect of the proper use of the Equipment or in contradiction of the manufacturer's instructions if supplied with the Equipment at the time of hiring;
8. because of the unexplained disappearance of the Equipment;
9. because of theft of the Equipment;
10. while the Equipment is in transit, if being carried by the Hirer or an employee, contractor or agent of the Hirer.

Bond. If requested by the Owner the Hirer must pay (in addition to the Price) a bond equivalent to 10% of the Price. The Owner may apply so much of the bond as is necessary to compensate the Owner for any breach by the Hirer of the Contract, or any damage or loss sustained in respect of the Equipment. The balance if any is refundable to the Hirer.

Insurance. The Hirer must maintain public liability insurance for \$10 million and property insurance for the full replacement value of the Equipment. For all orders with a total value exceeding \$5,000, the Hirer is required to produce a relevant Certificate of Currency, or have their insurance policy specifically endorsed for the Owner's interests if so requested.

Indemnity. The Hirer indemnifies the Owner, its officers, employees and agents against all Claims the Owner incurs as a result of: the Hirer's negligence; the Hirer's breach of the Contract; the Hirer's breach of any warranty contained in these Terms; the Hirer's breach of any law; preparation of the Site for delivery or installation of the Equipment; the Owner's entry upon the Site; the delivery, installation, inspection, use, dismantling and collection of the Equipment; and contact with underground pipes or wires on the Site.

Owner Not Liable. The Owner is not liable to the Hirer for, and is released from liability in respect of: failure to have the Equipment ready for collection when the Hire Period commences; failure to deliver the Equipment in accordance with the delivery instructions; loss, damage or injury to any person, property, animal or thing resulting from the delivery, installation, inspection, use, dismantling and collection of the Equipment; the break down or failure of the Equipment; failure to provide equipment of the type and in the quantity specified in the Order; and defects in the installation of the Equipment at the Site.

Exclusion of Laws. To the extent permissible by law, all warranties or other rights implied by law in favour of the Hirer are excluded.

Limitation on Liability. If the Owner is liable to the Hirer for a breach of this Agreement or any warranty implied by law which has not been lawfully excluded, the Owner's liability is limited to: refunding the Price; repairing the Equipment; replacing the Equipment; supplying the Equipment for hire again; or payment to the Hirer of the cost of having the Equipment supplied for hire again. The Owner may choose which of these options apply. The Owner is not liable to the Hirer for consequential or indirect loss, economic loss, or other expenses. The Hirer must not claim a lien over or retain possession of the Equipment in satisfaction of its claim.

Termination. The Owner may terminate the Contract at any time without liability to the Hirer. If the Contract is terminated the Hirer must return the Equipment, or the Owner may at its election collect the Equipment from the Site at the Hirer's cost.

Amendments. No amendment to the Contract will be binding on any party unless made in writing properly and duly executed by that party.

Waiver. The failure of the Owner to exercise any right arising as a result of a breach by the Hirer of the Contract will not waive that right, nor will any practice developed between the parties waive or lessen the Owner's rights under the Contract.

Assignment. The Hirer must not assign the Contract.

Governing Law. The Contract will be construed in accordance with the law.

Severance. If any provision of the Contract is, for any reason, considered or found by a Court of competent jurisdiction or any competent Government authority to be invalid, illegal or unenforceable, that provision is to be severed from the remainder of the provisions of the Contract. The remainder of the provisions of the Contract will remain in full force and effect unless the basic purposes of the Contract are defeated.

Warranty Of Authority. Any person signing or purporting to sign the Order or another document on behalf of the Hirer warrants that they have the authority of the Hirer to sign, and indemnifies the Owner against all losses incurred if that person does not have such authority.

Joint and Several Liability. If the Hirer is more than one person the Hirer is jointly and severally liable under the Contract.

Privacy Policy. KIRBY PRODUCTIONS PTY LTD collects your personal information to assist us in providing the goods or services you have requested and to improve our products and services. KIRBY PRODUCTIONS PTY LTD and all related companies anywhere in the world may be in touch to let you know about goods, services or promotions which may be of interest to you. Please let us know if you object to this and if you would prefer not to be contacted with special offers or in relation to our other goods and services.

Additional Terms and conditions of rental

1. OWNERSHIP, PERSONAL PROPERTY: The Equipment shall remain at all times the property of Kirby Productions Pty Ltd and shall not be lent, let or rehired without the prior written consent of Kirby Productions Pty Ltd. The Customer has no rights or title in the Equipment and shall not assign, transfer, pledge or otherwise dispose of the equipment.

2. MAINTENANCE: Kirby Productions Pty Ltd is responsible for all maintenance of the Equipment. Maintenance will be carried out during normal business hours and will be offsite if necessary. Kirby Productions Pty Ltd will take all reasonable steps to have the Equipment serviced/repaired as soon as possible but will accept no responsibility or liability for any delays whatever the reason.

3. COMPATIBILITY: Kirby Productions Pty Ltd gives no warranty or guarantee that the Equipment is compatible with any software or other equipment to be used by the Customer. **4. WARRANTY:** Kirby Productions Pty Ltd warrants that each item of Equipment hired is of merchantable quality and reasonably fit for the purpose for which it was designed. The Customer acknowledges that it has not relied upon any statement by Kirby Productions Pty Ltd in respect of Customers purpose for utilization of Equipment and that Kirby Productions Pty Ltd is not responsible or liable for the failure of the Equipment to perform the purposes required by the Customer. The Customer acknowledges that detection and prevention is their own responsibility.

5. CONSEQUENTIAL LOSS: Kirby Productions Pty Ltd will not be responsible for nor accept any liability for any consequential or similar losses due to necessary service or maintenance or any incompatibility of software or hardware or for any other occurrence. Kirby Productions Pty Ltd will accept no liability for any loss of or damage to any data, or software or other equipment whatever the cause.

6. EQUIPMENT OPERATION: Kirby Productions Pty Ltd will not be responsible for the operation of nor any work performed on the Equipment by the Customer. **7. LOSS, DAMAGE OR ALTERATION OF EQUIPMENT:** The Customer is responsible for any loss of or damage to the Equipment. The Customer shall not alter the Equipment in any way without the prior written consent of KIRBY PRODUCTIONS PTY LTD. The Customer shall pay to Kirby Productions Pty Ltd new replacement cost as assessed by Kirby Productions Pty Ltd for any Equipment which is lost or damaged beyond repair. The Customer will continue to pay hire charges for such Equipment until Kirby Productions Pty Ltd has been paid in full by the Customer the replacement cost of Equipment lost or damaged or stolen or damaged beyond repair. In the case of Equipment which is damaged by or whilst in the possession of the Customer and which is reasonably repairable the Customer will continue paying hire charges until the Equipment is repaired. All Manuals and packaging supplied with the Equipment shall be paid for if lost or damaged by the customer. **8. HIRE PAYMENTS:** Should any hire fees not be paid by the stated date, Kirby Productions Pty Ltd shall be able to immediately collect the Equipment, and all outstanding hire charges shall be paid to Kirby Productions Pty Ltd by the Customer.

9. EQUIPMENT LOCATION: The Equipment will be delivered to and shall not be removed from the Customers address detailed on the attached invoice without the prior written consent of Kirby Productions Pty Ltd. Kirby Productions Pty Ltd shall have the right to inspect the Equipment at any reasonable time.

10. EARLY CESSATION: Notwithstanding the hire period, Kirby Productions Pty Ltd expressly reserves to itself the right of early cessation which may be exercised on demand and at the absolute discretion of Kirby Productions Pty Ltd. In the event that Kirby Productions Pty Ltd so demands the Customer shall forthwith allow Kirby Productions Pty Ltd to collect the Equipment. The applicable Hire charge shall be adjusted and payable on a pro rata basis. For the purpose of pro rating a week shall be seven days. In the event that the Customer requests early cessation of the Hire period agreed upon the Customer will not be entitled to a pro rata refund on Hire charges already paid or still outstanding. Any refund will be at the sole discretion of Kirby Productions Pty Ltd. **11. SEPARATE ITEMS OF EQUIPMENT:** Where more than one item of Equipment is supplied under this Agreement in interpreting this Agreement the singular should be read as the plural where appropriate and the hire shall be apportioned to each item of Equipment as set forth on the current invoice and the conditions of this shall apply separately to each individual item of Equipment as though each item of Equipment were subject to a separate Agreement. This Agreement will apply to any replacement or additional items of equipment.

12. EXTENSION OF HIRE: Where the Customer requests and Kirby Productions Pty Ltd agrees to an extension of the initial hire period the terms and conditions of this Agreement shall apply to the extension of the hire period.

13. CONTRACT TERMS AND CONDITIONS: The Customer shall pay all Kirby Productions Pty Ltd costs and expenses including but not limited to reasonable attorneys fees and expenses and the fees of collecting agencies incurred by Kirby Productions Pty Ltd in enforcing any of the terms and conditions of this Agreement.

14. REPOSSESSION: The owner may repossess the goods and the hirer shall on being so required by the owner forthwith return the goods to the hirer, if: a) The hirer is in breach of any term or condition hereof or has made any misrepresentation to the owner. b) Or the goods are damaged in any way.

15. OTHER AGREEMENTS: This document constitutes the entire Agreement between Kirby Productions Pty Ltd and the Customer and supersedes any previous oral or written Agreement. Any amendments shall be agreed between both parties in writing.