

Solitaire Homes Pty Ltd T/A ACT Fence Hire AND Quick QLD Fence Hire – Terms & Conditions of Hire

1. Definitions

1.1 "FH" shall mean Solitaire Homes Pty Ltd T/A ACT Fence Hire AND Quick QLD Fence Hire, its successors and assigns or any person acting on behalf of and with the authority of Solitaire Homes Pty Ltd T/A ACT Fence Hire AND Quick QLD Fence Hire.

1.2 "Client" shall mean the Client or any person acting on behalf of and with the authority of the Client.

1.3 "Guarantor" means that person (or persons), or entity who agrees herein to be liable for the debts of the Client on a principal debtor basis.

1.4 "Fencing" shall mean all temporary fencing (including any accessories) supplied on hire by FH to the Client (and where the context so permits shall include any incidental supply of services). The Fencing shall be as described on the invoices, quotation, or any other authorisation forms as provided by FH to the Client.

1.5 "Minimum Hire Period" shall mean the Minimum Hire Period as described on the invoices, quotation, or any other authorisation forms as provided by FH to the Client.

1.6 "Price" shall mean the cost of the hire of the Fencing as agreed between FH and the Client subject to clause 4 of this contract.

2. The Commonwealth Competition and Consumer Act 2010 ("CCA") and Fair Trading Acts ("FTA")

2.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the CCA or the FTA in each of the States and Territories of Australia (including any substitute to those Acts or reenactment thereof), except to the extent permitted by those Acts where applicable.

2.2 Where the Client hires Fencing as a consumer these terms and conditions shall be subject to any laws or legislation governing the rights of consumers and shall not affect the consumer's statutory rights.

3. Acceptance

3.1 Any instructions received by FH from the Client for the hire of Fencing and/or the Client's acceptance of Fencing supplied on hire by FH shall constitute acceptance of the terms and conditions contained herein.

3.2 Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments of the Price.

3.3 Upon acceptance of these terms and conditions by the Client the terms and conditions are irrevocable and can only be amended with the written consent of FH.

3.4 The Client shall give FH not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client or any change in the Client's name and/or any other change in the Client's details (including but not limited to, changes in the Client's address, facsimile number, or business practice). The Client shall be liable for any loss incurred by FH as a result of the Client's failure to comply with this clause.

3.5 Fencing is supplied by FH based only on the terms and conditions of hire herein to the exclusion of anything to the contrary in the terms of the Client's order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of hire.

4. Price and Payment

4.1 At FH's sole discretion the Price shall be either:

(a) as indicated on invoices provided by FH to the Client in respect of Fencing supplied on hire; or

(b) FH's quoted Price (subject to clause 4.2) which shall be binding upon FH provided that the Client shall accept in writing FH's quotation within thirty (30) days.

4.2 FH reserves the right to change the Price in the event of a variation to FH's quotation.

4.3 Time for payment shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due seven (7) days following the date of the invoice.

4.4 For long-term hire of the Fencing (and at FH's sole discretion), payment shall be due monthly (or at intervals agreed to by FH).

4.5 Payment will be made by cash, cheque, bank cheque, direct credit, or by any other method as agreed to between the Client and FH.

4.6 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

5. Hire Period

5.1 Hire charges shall commence from the time the Fencing departs from FH's premises, and will continue until the return of the Fencing to FH's premises, and/or until the expiry of the Minimum Hire Period, whichever last occurs.

5.2 No allowance whatsoever can be made for time during which the Fencing is not in use for any reason, unless FH confirms special prior arrangements in writing. In the event of Fencing breakdown provided the Client notifies FH immediately, hiring charges will not be payable during the time the Fencing is not working, unless the condition is due to negligence or misuse on the part of or attributable to the Client.

6. Delivery and Collection of the Fencing

6.1 At FH's sole discretion delivery of the Fencing shall take place when the Client takes possession of the Fencing at the Client's address (in the event the Fencing is delivered by FH, or FH's nominated carrier).

6.2 At FH's sole discretion the costs of delivery and collection shall be charged to the Client in addition to the Price.

6.3 FH may deliver the Fencing by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.

6.4 Delivery of the Fencing to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this agreement.

6.5 The Client shall be responsible for free access by FH to the site on which the Fencing is located. If there are any delays due to free access not being available then the Client shall be responsible and shall reimburse FH for all lost hire fees associated with the Fencing being unavailable. The Client shall also be responsible for all other expenses and costs incurred by FH due to delays in access to the Fencing.

6.6 FH shall not be liable for any loss or damage whatsoever due to failure by FH to deliver the Fencing (or any part of it) promptly, or at all, due to circumstances beyond the control of the Seller, nor shall such delay entitle the Client to consider this agreement repudiated.

7. Risk

7.1 FH retains property in the Fencing nonetheless all risk for the Fencing passes to the Client on delivery.

7.2 Where the Client expressly requests FH to deliver the Fencing to an unattended location then such Equipment shall be left at the Client's sole risk.

7.3 The Client accepts full responsibility for the safekeeping of the Fencing and indemnifies FH for all loss, theft, or damage to the Fencing howsoever caused and without limiting the generality of the foregoing whether or not such loss, theft, or damage is attributable to any negligence, failure, or omission of the Client.

7.4 The Client will insure, or self insure, FH's interest in the Fencing against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will effect adequate Public Liability Insurance covering any loss, damage or injury to property arising out of the Fencing. Further the Client will not use the Fencing nor permit it to be used in such a manner as would permit an insurer to decline any claim.

7.5 The Client accepts full responsibility for and shall keep FH indemnified against all liability in respect of all actions, proceedings, claims, damages, costs and expenses in respect of any injury to persons or damage to property arising out of the use of the Fencing during the hire period however arising and whether or not arising from any negligence, failure or omission of the Client or any other persons.

8. Title

8.1 The Fencing is and will at all times remain the absolute property of FH.

8.2 If the Client fails to return the Fencing to FH then FH or FH's agent may (as the invitee of the Client) enter upon and into land and premises owned, occupied or used by the Client, or any premises where the Fencing is situated and take possession of the Fencing, without being responsible for any damage thereby caused.

8.3 The Client is not authorised to pledge FH's credit for repairs to the Fencing or to create a lien over the Fencing in respect of any repairs.

9. Defects

9.1 The Client shall inspect the Fencing on delivery and shall within seven (7) days notify FH of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford FH an opportunity to inspect the Fencing within a reasonable time following delivery if the Client believes the Fencing is defective in any way. If the Client shall fail to comply with these provisions the Fencing shall be presumed to be free from any defect or damage. For defective Fencing, which FH has agreed in writing that the Client is entitled to reject, FH's liability is either repairing or replacing the Fencing, except where the Client has hired Fencing as a consumer within the meaning of the Competition and Consumer Act 2010 (CWWth) or the Fair Trading Acts of the relevant state or territories of Australia, and is therefore also entitled to, at the consumer's discretion either a refund of the hire price of the Fencing, or repair of the Fencing, or replacement of the Fencing.

10. Warranty

10.1 No Warranty is provided by FH in respect of the condition of the Fencing or its fitness for any particular purpose. The Client shall indemnify and hold harmless FH in respect of all claims arising out of use of the Fencing.

11. Client's Responsibilities

11.1 The Client shall:

(a) notify FH immediately by telephone of the full circumstances of any mechanical breakdown or accident. The Client is not absolved from the requirements to safeguard the Fencing by giving such notification;

(b) satisfy itself at commencement that the Fencing is suitable for its purposes;

(c) comply with all occupational health and safety laws relating to the Fencing and its operation;

(d) on termination of the hire, deliver the Fencing complete with all parts and accessories, clean and in good order as delivered, fair wear and tear accepted, to FH;

(e) keep the Fencing in their own possession and control and shall not assign the benefit of the hire contract nor be entitled to lien over the Fencing;

(f) not alter or make any additions to the Fencing including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Fencing or in any other manner interfere with the Fencing;

(g) employ the Fencing solely in its own work and shall not permit the Fencing of any part thereof to be used by any other party for any other work;

(h) not exceed the recommended or legal load and capacity limits of the Fencing;

(i) not use or carry any illegal, prohibited or dangerous substance in or on the Fencing;

(j) not fix any of the Fencing in such a manner as to make it legally a fixture forming part of any freehold.

11.2 Immediately on request by FH the Client will pay:

(a) the new list price of any Fencing that is for whatever reason destroyed, written off or not returned to FH;

(b) all costs incurred in cleaning the Fencing;

(c) all costs of repairing any damage caused by the ordinary use of the Fencing up to an amount equal to 10% of the new list price of the Fencing;

(d) the cost of repairing any damage to the Fencing caused by the negligence of the Client or the Client's agent;

(e) the cost of repairing any damage to the Fencing caused by vandalism, or (in FH's reasonable opinion) in any way whatsoever other than by the ordinary use of the Fencing by the Client.

12. Cancellation

12.1 FH may cancel these terms and conditions or cancel delivery of Fencing at any time before the Fencing is delivered by giving written notice. On giving such notice FH shall repay to the Client any sums paid in respect of the Price. FH shall not be liable for any loss or damage whatever arising from such cancellation.

12.2 In the event that the Client cancels delivery of the Fencing the Client shall be liable for any loss incurred by FH (including, but not limited to, any loss of profits) up to the time of cancellation.

13. Default and Consequences of Default

13.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and one half percent (2.5%) per calendar month (and at FH's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

13.2 In the event that the Client's payment is dishonoured for any reason the Client shall be liable for any dishonour fees incurred by FH.

13.3 If the Client defaults in payment of any invoice when due, the Client shall indemnify FH from and against all costs and disbursements incurred by FH in pursuing the debt including legal costs on a solicitor and own client basis and FH's collection agency costs.

13.4 Without prejudice to any other remedies FH may have, if at any time the Client is in breach of any obligation (including those relating to payment) FH may repossess the Fencing as per clause 8.2, or suspend or terminate the supply of Fencing to the Client and any of its other obligations under the terms and conditions. FH will not be liable to the Client for any loss or damage the Client suffers because FH has exercised its rights under this clause.

13.5 If any account remains overdue after seven (7) days then an amount of the greater of \$20.00 or 10.00% of the amount overdue (up to a maximum of \$200) shall be levied for administration fees which sum shall become immediately due and payable.

13.6 Without prejudice to FH's other remedies at law FH shall be entitled to cancel all or any part of any order of the Client which remains unperformed in addition to and without prejudice to any other remedies FH may have and all amounts owing to FH shall, whether or not due for payment, become immediately payable in the event that:

(a) any money payable to FH becomes overdue, or in FH's opinion the Client will be unable to meet its payments as they fall due; or

(b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or

(c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

14. Security and Charge

14.1 Despite anything to the contrary contained herein or any other rights which FH may have howsoever:

(a) where the Client and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Client and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to FH or FH's nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Client and/or the Guarantor acknowledge and agree that FH (or FH's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.

(b) should FH elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client and/or Guarantor shall indemnify FH from and against all FH's costs and disbursements including legal costs on a solicitor and own client basis.

(c) the Client and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint FH or FH's nominee as the Client's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 14.1.

15. Privacy Act 1988

15.1 The Client and/or the Guarantor/s (herein referred to as the Client) agree for FH to obtain from a credit reporting agency a credit report containing personal credit information about the Client in relation to credit provided by FH.

15.2 The Client agrees that FH may exchange information about the Client with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency for the following purposes:

(a) to assess an application by the Client; and/or

(b) to notify other credit providers of a default by the Client; and/or

(c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or

(d) to assess the creditworthiness of the Client.

The Client understands that the information exchanged can include anything about the Client's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.

15.3 The Client consents to FH being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).

15.4 The Client agrees that personal credit information provided may be used and retained by FH for the following purposes (and for other purposes as shall be agreed between the Client and FH or required by law from time to time):

(a) the provision of Fencing on Hire; and/or

(b) the marketing of services by FH, its agents or distributors; and/or

(c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Fencing on hire; and/or

(d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or

(e) enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the hire of the Fencing.

15.5 FH may give information about the Client to a credit reporting agency for the following purposes:

(a) to obtain a consumer credit report about the Client;

(b) allow the credit reporting agency to create or maintain a credit information file containing information about the Client.

15.6 The information given to the credit reporting agency may include:

(a) personal particulars (the Client's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number;

(b) details concerning the Client's application for credit or commercial credit and the amount requested;

(c) advice that FH is a current credit provider to the Client;

(d) advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;

(e) that the Client's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;

(f) information that, in the opinion of FH, the Client has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Client's credit obligations);

(g) advice that cheques drawn by the Client for one hundred dollars (\$100) or more, have been dishonoured more than once;

(h) that credit provided to the Client by FH has been paid or otherwise discharged.

16. Personal Property Securities Act 2009 ("PPSA")

16.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.

16.2 Upon assenting to these terms and conditions in writing the Client and the Guarantor acknowledge and agree that these terms and conditions constitute a security agreement for the purposes of the PPSA and create a security interest in all Fencing that has previously been supplied and that will be supplied in the future by FH to the Client.

16.3 The Client and the Guarantor undertake to:

(a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which FH may reasonably require to:

(i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;

(ii) register any other document required to be registered by the PPSA; or

(iii) correct a defect in a statement referred to in clause 16.3(a)(i) or 16.3(a)(ii);

(b) indemnify, and upon demand reimburse, FH for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Fencing charged thereby;

(c) not register a financing change statement in respect of a security interest without the prior written consent of FH;

(d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Fencing in favour of a third party without the prior written consent of FH; and

16.4 FH, the Client and the Guarantor agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.

16.5 The Client and the Guarantor waive their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.

16.6 The Client and the Guarantor waive their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.

16.7 Unless otherwise agreed to in writing by FH, the Client and the Guarantor waive their right to receive a verification statement in accordance with section 157 of the PPSA.

16.8 The Client and the Guarantor must unconditionally ratify any actions taken by FH under clauses 16.3 to 16.5.

16.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

17. Building and Construction Industry Legislation

17.1 At FH's sole discretion, if there are any disputes or claims for unpaid Fencing then the provisions of the:

(a) ACT Building and Construction Industry (Security of Payment) Act 2009 ACT; or

(b) NSW Building and Construction Industry Security of Payments Act 1999; or

(c) QLD Building and Construction Industry Payments Act 2004; may apply.

17.2 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Acts, as specified above, except to the extent permitted by each Act where applicable.

18. General

18.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

18.2 If any provisions of these terms and conditions are inconsistent with the PPSA, the PPSA shall prevail to the extent of that inconsistency.

18.3 These terms and conditions and any contract to which they apply shall be governed by the laws of the State in which the sale is made and are subject to the jurisdiction of the courts of that State.

18.4 FH shall be under no liability whatever to the Client for any indirect loss and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by FH of these terms and conditions.

18.5 In the event of any breach of this contract by FH the remedies of the Client shall be limited to damages. Under no circumstances shall the liability of FH exceed the Price.

18.6 The Client shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Client by FH.

18.7 FH may license or sub-contract all or any part of its rights and obligations without the Client's consent.

18.8 FH reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which FH notifies the Client of such change. Except where the Client supplies further Fencing to the Client and the Client accepts such Fencing, the Client shall be under no obligation to accept such changes.

18.9 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.

18.10 The failure by the Client to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Client's right to subsequently enforce that provision.