

1 Definitions

- 1.1 "Ensuites To Go" means Robert Bruce Wesley T/A Ensuites To Go W.A., its successors and assigns or any person acting on behalf of and with the authority of Robert Bruce Wesley T/A Ensuites To Go W.A.
- 1.2 "Customer" means the Customer or any person acting on behalf of and with the authority of the Customer.
- 1.3 "Equipment" means all Equipment (including any accessories) supplied on hire by Ensuites To Go to the Customer (and where the context so permits shall include any incidental supply of services). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation forms as provided by Ensuites To Go to the Customer.
- 1.4 "Minimum Hire Period" means the Minimum Hire Period as described on the invoices, quotation, authority to hire, or any other forms as provided by Ensuites To Go to the Customer.
- 1.5 "Price" means the cost of the hire of the Equipment as agreed between Ensuites To Go and the Customer 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 re-enactment thereof), except to the extent permitted by those Acts where applicable.
- 2.2 Where the Customer hires Equipment 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 Ensuites To Go from the Customer for the hire of Equipment and/or the Customer's acceptance of Equipment supplied on hire by Ensuites To Go shall constitute acceptance of the terms and conditions contained herein.
- 3.2 Where more than one Customer has entered into this agreement, the Customers shall be jointly and severally liable for all payments of the Price.
- 3.3 Upon acceptance of these terms and conditions by the Customer the terms and conditions are irrevocable and can only be amended with the written consent of Ensuites To Go.
- 3.4 The Customer shall give Ensuites To Go not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer or any change in the Customer's name and/or any other change in the Customer's details (including but not limited to, changes in the Customer's address, facsimile number, or business practice). The Customer shall be liable for any loss incurred by Ensuites To Go as a result of the Customer's failure to comply with this clause.
- 3.5 Equipment is supplied by Ensuites To Go based only on the terms and conditions of hire herein to the exclusion of anything to the contrary in the terms of the Customer'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 Ensuites To Go's sole discretion the Price shall be either;
 - (a) Ensuites To Go's current Price, at the date of delivery of the Equipment, according to Ensuites To Go's current Price list; or
 - (b) Ensuites To Go's quoted Price (subject to clause 4.2) which shall be binding upon Ensuites To Go provided that the Customer shall accept in writing Ensuites To Go's quotation within seven (7) days.
- 4.2 The Ensuites To Go reserves the right to change the Price in the event of a variation to Ensuites To Go's quotation.
- 4.3 At Ensuites To Go's sole discretion a bond may be required which shall be refunded upon return of the Equipment in a condition acceptable to Ensuites To Go.
- 4.4 At Ensuites To Go's sole discretion:
 - (a) payment shall be due on delivery of the Equipment; or
 - (b) payment for approved Customers shall be made by instalments in accordance with Ensuites To Go's payment schedule.
- 4.5 Time for payment for the Equipment 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.
- 4.6 Payment will be made by cash, or by cheque, or by bank cheque, or by direct credit, or by any other method as agreed to between the Customer and Ensuites To Go.
- 4.7 Receipt by Ensuites To Go of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 4.8 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 If Ensuites To Go agrees with the Customer to deliver and/or collect the Equipment, hire charges shall commence from the time the Equipment leaves Ensuites To Go's premises and continue until the Customer notifies Ensuites To Go that the Equipment is available for collection, and/or until the expiry of the Minimum Hire Period, whichever last occurs.
- 5.2 The date upon which the Customer advises of termination shall in all cases be treated as a full day's hire.
- 5.3 No allowance whatsoever can be made for time during which the Equipment is not in use for any reason, unless Ensuites To Go confirms special prior arrangements in writing. In the event of Equipment breakdown provided the Customer notifies Ensuites To Go immediately, hiring charges will not be payable during the time the Equipment is not working, unless the condition is due to negligence or misuse on the part of or attributable to the Customer.

6 Delivery of the Equipment

- 6.1 At Ensuites To Go's sole discretion delivery of the Equipment shall take place when:
- (a) the Customer takes possession of the Equipment at the Customer's address; or
 - (b) Ensuites To Go's nominated carrier takes possession of the Equipment in which event the carrier shall be deemed to be Ensuites To Go's agent and risk for the Equipment does not pass until the Customer takes possession of the Equipment at the Customer's address; or
 - (c) the Customer's nominated carrier takes possession of the Equipment in which event the carrier shall be deemed to be the Customer's agent.
- 6.2 At Ensuites To Go's sole discretion the costs of Delivery is included in the Price.
- 6.3 The Customer shall make all arrangements necessary to take delivery of the Equipment whenever it is tendered for delivery. In the event that the Customer is unable to take delivery of the Equipment as arranged then Ensuites To Go shall be entitled to charge a reasonable fee for redelivery.
- 6.4 Delivery of the Equipment to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this agreement.
- 6.5 The Customer shall be responsible for free access by Ensuites To Go to the site on which the Equipment is located. If there are any delays due to free access not being available then the Customer shall be responsible and shall reimburse Ensuites To Go for all lost hire fees associated with the Equipment being unavailable. The Customer shall also be responsible for all other expenses and costs incurred by Ensuites To Go due to delays in access to the Equipment. The off-hire receipt will be issued when the Equipment is picked up by Ensuites To Go or returned to Ensuites To Go's premises.
- 6.6 The failure of Ensuites To Go to deliver shall not entitle either party to treat this contract as repudiated.
- 6.7 The Ensuites To Go shall not be liable for any loss or damage whatever due to failure by Ensuites To Go to deliver the Equipment (or any of it) promptly, or at all, where due to circumstances beyond the control of Ensuites To Go.

7 Risk

- 7.1 The Ensuites To Go retains property in the Equipment nonetheless all risk for the Equipment passes to the Customer on delivery.
- 7.2 The Customer accepts full responsibility for the safekeeping of the Equipment and indemnifies Ensuites To Go for all loss, theft, or damage to the Equipment 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 Customer.
- 7.3 The Customer will insure, or self insure, Ensuites To Go's interest in the Equipment 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 Equipment. Further the Customer will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.
- 7.4 The Customer accepts full responsibility for and shall keep Ensuites To Go 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 Equipment during the hire period however arising and whether or not arising from any negligence, failure or omission of the Customer or any other persons.

8 Title

- 8.1 The Equipment is and will at all times remain the absolute property of Ensuites To Go.
- 8.2 If the Customer fails to return the Equipment to Ensuites To Go then Ensuites To Go or Ensuites To Go's agent may (as the invitee of the Customer) enter upon and into land and premises owned, occupied or used by the Customer, or any premises where the Equipment is situated and take possession of the Equipment, without being responsible for any damage thereby caused.
- 8.3 The Customer is not authorised to pledge Ensuites To Go's credit for repairs to the Equipment or to create a lien over the Equipment in respect of any repairs.

9 Defects

- 9.1 The Customer shall inspect the Equipment on delivery and shall within twenty-four (24) hours notify Ensuites To Go of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford Ensuites To Go an opportunity to inspect the Equipment within a reasonable time following delivery if the Customer believes the Equipment is defective in any way. If the Customer shall fail to comply with these provisions the Equipment shall be presumed to be free from any defect or damage. For defective Equipment, which Ensuites To Go has agreed in writing that the Customer is entitled to reject, Ensuites To Go's liability is limited to either repairing or replacing the Equipment, except where the Customer has hired Equipment as a consumer within the meaning of the Competition and Consumer Act 2010 (CWith) or the Fair Trading Acts of the relevant state or territories of Australia, and may therefore also entitled to, either a refund of the hire price of the Equipment, or repair of the Equipment, or replacement of the Equipment.

10 Customer's Responsibilities

- 10.1 The Customer shall:
- (a) notify Ensuites To Go immediately by telephone of the full circumstances of any mechanical breakdown or accident. The Customer is not absolved from the requirements to safeguard the Equipment by giving such notification;
 - (b) satisfy itself at commencement that the Equipment is suitable for its purposes;
 - (c) operate the Equipment safely, strictly in accordance with the law, only for its intended use, and in accordance with any manufacturer's instruction whether supplied by Ensuites To Go or posted on the Equipment;
 - (d) comply with all occupational health and safety laws relating to the Equipment and its operation;

- (e) on termination of the hire, deliver the Equipment complete with all parts and accessories, clean and in good order as delivered, fair wear and tear accepted, to Ensuites To Go;
- (f) not alter or make any additions to the Equipment including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment;
- (g) employ the Equipment solely in its own work and shall not permit the Equipment 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 Equipment;
- (i) not use or carry any illegal, prohibited or dangerous substance in or on the Equipment;
- (j) not fix any of the Equipment in such a manner as to make it legally a fixture forming part of any freehold;
- (k) indemnify and hold harmless Ensuites To Go in respect of all claims arising out of the Customer's use of the Equipment.

10.2 Immediately on request by Ensuites To Go the Customer will pay:

- (a) the new list price of any Equipment that is for whatever reason destroyed, written off or not returned to Ensuites To Go;
- (b) all costs incurred in cleaning the Equipment;
- (c) all costs of repairing any damage caused by the ordinary use of the Equipment up to an amount equal to ten percent (10%) of the new list price of the Equipment;
- (d) the cost of repairing any damage to the Equipment caused by the negligence of the Customer or the Customer's agent;
- (e) the cost of repairing any damage to the Equipment caused by vandalism, or (in Ensuites To Go's reasonable opinion) in any way whatsoever other than by the ordinary use of the Equipment by the Customer;
- (f) the cost of fuels and consumables provided by Ensuites To Go and used by the Customer.

11 Cancellation

- 11.1 The Ensuites To Go may cancel these terms and conditions or cancel delivery of Equipment at any time before the Equipment is delivered by giving written notice. On giving such notice Ensuites To Go shall repay to the Customer any sums paid in respect of the Price. The Ensuites To Go shall not be liable for any loss or damage whatever arising from such cancellation.
- 11.2 In the event that the Customer cancels delivery of the Equipment the Customer shall be liable for any loss incurred by Ensuites To Go (including, but not limited to, any loss of profits) up to the time of cancellation.

12 Default and Consequences of Default

- 12.1 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 Ensuites To Go's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 12.2 If the Customer owes Ensuites To Go any money the Customer shall indemnify Ensuites To Go from and against all costs and disbursements incurred by Ensuites To Go in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Ensuites To Go's collection agency costs, and bank dishonour fees).
- 12.3 Without prejudice to any other remedies Ensuites To Go may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms of hire Ensuites To Go may repossess the Equipment as per clause 8.2, or suspend or terminate the supply of Equipment to the Customer and any of its other obligations under the terms and conditions. The Ensuites To Go will not be liable to the Customer for any loss or damage the Customer suffers because Ensuites To Go has exercised its rights under this clause.
- 12.4 Without prejudice to Ensuites To Go's other remedies at law Ensuites To Go shall be entitled to cancel all or any part of any order of the Customer which remains unperformed in addition to and without prejudice to any other remedies Ensuites To Go may have and all amounts owing to Ensuites To Go shall, whether or not due for payment, become immediately payable in the event that:
 - (a) any money payable to Ensuites To Go becomes overdue, or in Ensuites To Go's opinion the Customer will be unable to meet its payments as they fall due; or
 - (b) the Customer 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 Customer or any asset of the Customer.

13 Security and Charge

- 13.1 In consideration of Ensuites To Go agreeing to supply Equipment, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 13.2 The Customer indemnifies Ensuites To Go from and against all Ensuites To Go's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Ensuites To Go's rights under this clause.
- 13.3 The Customer irrevocably appoints Ensuites To Go and each director of Ensuites To Go as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 13 including, but not limited to, signing any document on the Customer's behalf.

14 Privacy Act 1988

- 14.1 The Customer agrees for Ensuites To Go to obtain from a credit reporting agency a credit report containing personal credit information about the Customer in relation to credit provided by Ensuites To Go.

- 14.2 The Customer agrees that Ensuites To Go may exchange information about the Customer with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency for the following purposes:
- (a) to assess an application by the Customer; and/or
 - (b) to notify other credit providers of a default by the Customer; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Customer.

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

- 14.3 The Customer consents to Ensuites To Go being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).

- 14.4 The Customer agrees that personal credit information provided may be used and retained by Ensuites To Go for the following purposes (and for other purposes as shall be agreed between the Customer and Ensuites To Go or required by law from time to time):

- (a) the provision of Equipment on Hire; and/or
- (b) the marketing of services by Ensuites To Go, its agents or distributors; and/or
- (c) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Equipment on hire; and/or
- (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
- (e) enabling the daily operation of Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the hire of the Equipment.

- 14.5 The Ensuites To Go may give information about the Customer to a credit reporting agency for the following purposes:

- (a) to obtain a consumer credit report about the Customer;
- (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.

- 14.6 The information given to the credit reporting agency may include:

- (a) personal particulars (the Customer's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number);
- (b) details concerning the Customer's application for credit or commercial credit and the amount requested;
- (c) advice that Ensuites To Go is a current credit provider to the Customer;
- (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 Customer'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 Ensuites To Go, the Customer has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Customer's credit obligations);
- (g) advice that cheques drawn by the Customer for one hundred dollars (\$100) or more, have been dishonoured more than once;
- (h) that credit provided to the Customer by Ensuites To Go has been paid or otherwise discharged.

15 Personal Property Securities Act 2009 ("PPSA")

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

- 15.2 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Equipment that has previously been supplied and that will be supplied in the future by Ensuites To Go to the Customer.

- 15.3 The Customer undertakes 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 Ensuites To Go 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 15.3(a)(i) or 15.3(a)(ii);
- (b) indemnify, and upon demand reimburse, Ensuites To Go 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 Equipment charged thereby;
- (c) not register a financing change statement in respect of a security interest without the prior written consent of Ensuites To Go;
- (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Equipment in favour of a third party without the prior written consent of Ensuites To Go.

- 15.4 The Ensuites To Go and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.

- 15.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.

Ensuites To Go W.A. – Terms & Conditions of Hire

- 15.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 15.7 Unless otherwise agreed to in writing by Ensuites To Go, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 15.8 The Customer must unconditionally ratify any actions taken by Ensuites To Go under clauses 15.3 to 15.5.
- 15.9 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 the PPSA.

16 General

- 16.1 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.
- 16.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Western Australia and are subject to the jurisdiction of the courts of Western Australia.
- 16.3 The Ensuites To Go shall be under no liability whatever to the Customer for any indirect loss and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by Ensuites To Go of these terms and conditions.
- 16.4 In the event of any breach of this contract by Ensuites To Go the remedies of the Customer shall be limited to damages. Under no circumstances shall the liability of Ensuites To Go exceed the Price.
- 16.5 The Customer shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Customer by Ensuites To Go.
- 16.6 The Ensuites To Go 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 Ensuites To Go notifies the Customer of such change. Except where Ensuites To Go supplies further Equipment to the Customer and the Customer accepts such Equipment, the Customer shall be under no obligation to accept such changes.
- 16.7 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.
- 16.8 The failure by Ensuites To Go to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Ensuites To Go's right to subsequently enforce that provision.