

# Hire Agreement - Perth Kids Party Hire

Please read the following terms and conditions carefully. It is a condition of hiring any equipment from Perth Kids Party Hire that the Hirer accepts the below terms and conditions which constitute the whole of the Contract with the Hirer.

## 1. DEFINITIONS

**"Balance Due"** means the total cost of the Equipment hired, as listed on page one of this Hire Agreement, less the Deposit paid by the Hirer.

**"Bank Account"** means the following bank account:

**"Cancellation"** means the cancellation by the Hirer.

**"Deposit"** means any payment stated on page one of this Hire Agreement that is paid by the Hirer as a deposit prior to delivery.

**"Direct Deposit"** means the electronic payment by the Hirer to the Owner's Bank Account.

**"Equipment"** means collectively all goods and equipment listed on page one of this Hire Agreement and separately each item of the goods and equipment listed on page one of this Hire Agreement and includes all additional equipment.

**"Hire Period"** means the period for which the Equipment is hired by the Hirer being from the time the Equipment is delivered by the Owner to the Hirer, or picked up by the Hirer from the Owner, until the time the Equipment is returned to the Owner.

**"Hirer"** means the person or company listed on page one of this Hire Agreement, jointly and severally if more than one, who are hiring the goods from Perth Kids Party Hire.

**"The Owner"** means Perth Kids Party Hire (ABN 78 463 219 271), its employees and agents.

**"Prescribed Hire Rates"** means the current rates listed on the Owners website and on the Perth Kids Party Hire Booking Request Form.

**"Site"** means the venue at which the hired Equipment is to be used by the Hirer.

## 2. BASIS OF CONTRACT

**2.1** The Hirer is deemed to have accepted these terms and conditions upon payment of a Deposit for the hiring of any Equipment from the Owner, and further, the Hirer is deemed to have agreed that these terms and conditions shall be the only terms and conditions on which the Owner will provide the Equipment to the Hirer.

## 3. PAYMENT TERMS

**3.1** The Hirer will pay a deposit of \$100 via Direct Deposit to secure the booking within two (2) days of receiving this hire agreement.

**3.2** For bookings where the Balance Due as stated on page one of this Hire Agreement is less than \$100 payment is due in full with in two (2) days of receiving this hire agreement.

**3.3** The Hirer will pay the remaining balance due stated on page one of the Hire Agreement by Direct Deposit into the Owner's Bank Account at least seven (7) days prior to the commencement of the Hire Period.

**3.4** The Hirer must pay a bond in the amount of \$50.00 to the Owner upon delivery, or collection by the Hirer, of the Equipment. The Owner will return the \$50.00 bond in full to the Hirer conditional upon the Equipment being available for collection, or being returned, in the condition stated on page of this Hire Agreement at the expiration of the Hire Period. The Owner reserves their absolute right to retain the \$50.00 bond if the Hirer breaches any of these terms and conditions.

## 4. THE EQUIPMENT

**4.1** The Equipment will at all times remain the exclusive property of the Owner. The Hirer has no legal or equitable interest in the Equipment.

- 4.2 The Hirer will not will not lend, sell or assign any hired Equipment at any time throughout the Hire Period without obtaining prior written consent from the Owner.
- 4.3 The Hirer will be held responsible for any damaged or missing Equipment at the Site and for the duration of the Hire Period.
- 4.4 Upon delivery, or collection, of the Equipment the Hirer must inspect the Equipment to determine whether the Equipment is in accordance with the page one of this Hire Agreement, and that the Equipment is in working condition and good order. If the Hirer believes that the Equipment is not in accordance with the Hire Agreement or is malfunctioning they must notify the Owner by telephone within twenty-four (24) hours of receipt of the Equipment.
- 4.5 At the end of the Hire Period the Hirer must make available for collection, or deliver to the Owner, the Equipment in the same condition as at the commencement of the Hire Period.
- 4.6 Throughout the Hire Period Hirer agrees to:
- (a) At all times exercise absolute care and diligence in any use of the Equipment in accordance with the Equipment instructions as issued by the Owner or in accordance with the manufacturer's specifications;
  - (b) Not tamper, interfere, repair or attempt to repair any Equipment;
  - (c) Ensure the Equipment safe at all times throughout the Hire Period;
  - (d) Be responsible for all accidental damage to the Equipment throughout the Hire Period;
  - (e) Be responsible for all damage or loss to the Equipment caused by theft, malicious damage, or any other unlawful act that occurs throughout the Hire Period;
  - (f) Ensure that at all times throughout the Hire Period the Equipment is stored safely and securely;
  - (g) In the case of bad weather, provide suitable protection of any Equipment for the duration of the Hire Period;
  - (h) Not permit any person, including a child, to improperly or unsafely use the Equipment throughout the Hire Period.
- 4.7 In the event that the Equipment is not available for collection by the Owner, or delivery by the Hirer, at the end of the Hire Period then the Hirer will be liable to pay to the Owner at the Prescribed Hire Rates for the duration of the period until the Equipment is available for collection by the Owner or is delivered by the Hirer.
- 4.8 In the event that the Equipment is lost, stolen or damaged during the Hire Period the Hirer will be liable to the Owner and will indemnify the Owner for the full costs of replacing of any lost or stolen Equipment, the repair of any damaged Equipment, and if in the sole discretion of the Owner the replacement of any Equipment which they determine is damaged beyond repair.
- 4.9 In the event that the Equipment is not available for collection by the Owner, or delivery by the Hirer, within seven (7) days of the expiry of the Hire Period then the Equipment will be deemed to have been lost, stolen or damaged and the Hirer will be liable to the Owner to pay the full amount of replacing this Equipment within fourteen (14) days of the expiry of the Hire Period.

## 5. RESPONSIBILITIES OF THE HIRER

- 5.1 It is the responsibility of the Hirer to ensure that the Equipment hired is suitable for the age and skills of the children who will be using the Equipment at the Site, or who will be in contact with the Equipment at any other time during the Hire Period, and that the Equipment is used in accordance with any instructions provided by the Owner.
- 5.2 The Hirer acknowledges that it is their absolute responsibility to ensure that any children using the Equipment at the Site, or at any other time during the Hire Period, are being supervised by a competent adult **at all times**.
- 5.3 The Hirer acknowledges that is their responsibility to ensure that the Site is safe and indemnifies the Owner against any liability to any third party who suffers injury, loss or damage where that injury, loss or damage is caused wholly or partly as a consequence of any negligent act or omission or other failure of the Hirer to ensure the Site is safe.
- 5.4 The Hirer accepts responsibility to return the items in the same state of repair and cleanliness as when delivered.

## 6. WARRANTIES

- 6.1 All warranties implied by the *Competition and Consumer Act 2010* (Cth) are hereby expressly excluded.
- 6.2 Where permitted by statute, the Owner's liability for breach of any warranty is limited to:
- The supply to the Hirer of substituted equivalent equipment; or
  - (a) The payment of the costs of supplying to the Hirer any substituted equivalent equipment; or

(b) The full repayment to the Hirer of the Balance Due, the Deposit, and the \$50.00 bond provided at clause 3.2 above.

## **7. LIMITATION OF LIABILITY**

- 7.1** The Hirer acknowledges that they bear all risk in the equipment for the full duration of the Hire Period.
- 7.2** To the full extent permitted by law the Hirer hereby releases the Owner from any liability for any loss or damage suffered, or for any injury sustained, by the Hirer or any of its employees or agents for the full duration of the Hire Period.
- 7.3** The Hirer agrees to indemnify the Owner from any liability resulting from improper use of any Equipment or failure to comply with any prescribed instructions.
- 7.4** The Hirer agrees to release, and agrees to indemnify, the Owner in respect of any third party claims arising from damage or injury caused either directly or indirectly to a person or to property out of the hire or use of the Equipment during the Hire Period
- 7.5** This clause 7 survives the termination or natural expiration of this Hire Agreement between the Owner and the Hirer.

## **8. CANCELLATION**

- 8.1** The Hirer agrees to provide the Owner with notice of an intention to cancel the hire of any Equipment under this Hire Agreement at least fourteen (14) days prior to the commencement of the Hire Period, if the hirer fails to provide fourteen (14) days notice they hereby accept that they will forfeit the \$100 deposit payment made to the owner.
- 8.2** The Hirer agrees to provide the Owner with notice of an intention to cancel the hire of any Equipment under this Hire Agreement at least forty eight (48) hours prior to the commencement of the Hire Period, if the hirer fails to provide forty eight (48) hours notice they hereby accept that they will forfeit all payments made to the owner.

## **9. DISPUTE RESOLUTION**

- 9.1** The parties agree not to commence proceedings in relation to any dispute arising in regard to the Agreement without first having regard to the procedure set out in this clause 9.
- 9.2** Should any dispute or difference arise between the Hirer and the Owner in connection with this Hire Agreement, then:
- (a) The party that alleges they have suffered some loss or damage, or is otherwise aggrieved, shall serve the other party, by hand or by mail, with a Notice of Dispute in writing adequately identifying and providing details of the dispute.
  - (b) Within 7 days of receipt of the Notice of Dispute, the parties must meet and take reasonable steps to resolve the dispute.
  - (c) If the dispute cannot be resolved within 14 days of the meeting between the parties, then the parties agree to submit the dispute to arbitration.
- 9.3** Arbitration shall be effected by a single arbitrator who shall be mutually agreed upon by the parties or, in the event that they fail to agree within 7 days, then the arbitrator shall be the President for the time being of the WA Chapter of the Institute of Arbitrators and Mediators Australia ("**IAMA**") or his appointee.
- 9.4** The parties agree to submit to the arbitration procedures and guidelines adopted by the IAMA.
- 9.5** The rules of evidence will not apply strictly to the arbitration, but may be considered by the arbitrator in determining the weight to be attached to each item of evidence.
- 9.6** If the dispute is not resolved within 90 days of service of the Notice of Dispute (or any longer period as agreed to by the parties), either party who has complied with this clause may end this dispute resolution process by written notice to the other party and immediately thereafter commence court proceedings in relation to the dispute.

## **10. MISCELLANEOUS**

- 10.1** Failure by the Owner to enforce any of their rights under the terms of this Hire Agreement shall not be construed as a waiver of any of the Owners rights.
- 10.2** If any term or condition under this Hire Agreement is unenforceable it is to be read down so as to be enforceable, or if it cannot be read down then the unenforceable term shall be severed from this Hire Agreement without affecting the enforceability of any other clause.
- 10.3** The Hirer shall be bound by these Terms & Conditions regardless of whether they were signed by the Hirer themselves or their agents, employees, representatives or contractors.

**ACKNOWLEDGMENT OF TERMS & CONDITIONS ON BOOKING**

The Hirer hereby acknowledges receipt of these Terms & Conditions, having read and agreed to be bound by them. We further acknowledge that we have had the opportunity of obtaining independent legal advice and that we understand the Terms & Conditions outlined above.