



EVENT, RESIDENTIAL, AND CORPORATE FURNITURE AND STYLING

www.valiant.com.au

TERMS AND CONDITIONS OF HIRE

Valiant, We, Us, Our and similar expressions, refers to Valiant Commercial Furniture Pty Limited (ABN 47 050 055 082) and Valiant Hire Pty Ltd (ABN 14 097 542 491), and where applicable their Related Bodies Corporate trading as Valiant Commercial Furniture and Valiant Hire. **You, the Hirer**, and similar expressions, refers to the person, corporation, trust or partnership purchasing or hiring equipment from Us and whose name appears in the Delivery Documents.

If You need to contact Us for any reason in an emergency or otherwise our current contact and emergency/afterhours telephone numbers can be found at <http://www.valiant.com.au/contact.php>.

These conditions prevail even if they are inconsistent with anything in any earlier or later order form or similar document.

Any quotation, credit application, delivery docket or any hire schedule form part of these terms, whether signed by You or not (together with the terms, **the Agreement**). In return for us agreeing to consider your order you agree that these conditions apply if we do not accept your order or if we do not supply you with Goods. We are not obliged to accept any orders from you, but if you do place an order with us then it becomes binding from the moment that we accept it even if we do not tell you that it has been accepted. Any quotation is merely an invitation to you to place an order with us. If you offer to hire goods based on a quotation from us, then your offer is subject to these conditions. You should read and consider carefully these terms and conditions before taking delivery. For the purposes of this Agreement, '**Goods**' shall mean any and all items of furniture or equipment described in the quotation or provided to You whatsoever pursuant to this Agreement.

1. Hire Period and Key Hire Terms

- 1.1. The period of hire of the Goods shall commence on the earlier of the date on which You take possession or on delivery of the Goods to the address nominated by You. The period of hire will continue for the minimum period of hire specified in Valiant's quote to Hirer ("**Minimum Hire Period**") or the later of (i) the date on which Valiant collects the Goods from Hirer or (ii) the date on which Valiant accepts the return of the Goods from Hirer, whichever is the longer ("**Hire Period**"). The Hire Period includes all Weekends and public holidays. If a fixed period has been agreed, You may only change the Hire Period with our written consent.
- 1.2. We agree to hire You the Goods on an exclusive basis in good working order, free from defects. We hire our Goods by specification and We guarantee that they are fit for the purpose for which goods of that kind are commonly supplied. You decide what specific purpose to use them for. Unless specifically stated in writing on the quotation, We take no responsibility and give no warranty (save for any ACL Warranty), for the suitability of the use of the Goods and You agree that before taking possession of the Goods, that You

have satisfied Yourself as to the suitability, condition and fitness for the purpose that You intend to Use them.

- 1.3. Any extension to the Hire Period is subject to Valiant's prior agreement and Valiant is not liable if for any reason the Goods are not available for hire after the expiry of the Minimum Hire Period.
2. **Title**
 - 2.1. Valiant always remains the owner of the Goods. Hirer holds the Goods as bailee only during the Hire Period. We retain title to the Goods even if You go into bankruptcy or liquidation during the Hire Period.
 - 2.2. The Goods shall be at Hirers risk from delivery or collection by You (whichever is the sooner).
 - 2.3. If the Goods are sold to You, ownership of the Goods will remain with Us until all amounts owing by You (to Us) are paid in full. If You do sell the Goods in the ordinary course then You agree that You must hold any proceeds from the sale of the Goods as trustee and agent of Valiant and that You will place the same in an ADI account, separate from Your own monies and You must not allow any person to have control of or grant a security interest over the proceeds or the accounts in which they are held.
3. **Hire Fees**
 - 3.1. Hirer must pay the hire fees specified in Valiant's quote to You ("**Hire Fees**") for the duration of the Hire Period and in accordance with this Agreement.
 - 3.2. For some customers, the Hire Fee will include a discounted rate for an agreed Minimum Hire Period. Where the Hire Period is less than the Minimum Hire Period, we may charge You and You agree to pay Us for the actual Hire Period at our standard hire fee rates. For these purposes you agree that the discounted rate will not apply.
 - 3.3. In respect of the hire of Goods for residential purposes, the Hirer acknowledges that We hire Goods in blocks of 7 day periods ("**Block Period**"). In the event that the Hirer returns the Goods within any block period, Hirer confirms and acknowledges that the Hirer is liable to pay all Hire Fees due up to and including the expiration of the 7th day of the block period after the return of the Goods.
 - 3.4. Hirer must pay the Hire Fees for the Goods for the Minimum Hire Period notwithstanding earlier return of the Goods or part of the Goods.
 - 3.5. You may cancel any order at any time prior to delivery or pick up of the Goods, but if you do so you must pay us a cancellation fee of: (i) 50% of the Hire Fees if you cancel by giving us between 72 and 24 hours notice or or (ii) 100% of the Hire Fee if you cancel by giving us less than 24 hours notice.
 - 3.6. Unless otherwise agreed, the Hire Fees are due monthly in advance.

- 3.7. The Hire Fees shall include all (i) delivery, collection or installation costs and charges (ii) cleaning or repair charges if the Goods are not returned in clean and good condition (iii) stamp duty or GST (if applicable) (iv) credit card charges and (v) any other charges or costs described in our quotation to You.
- 4. Payment Terms and GST**
- 4.1. Unless expressly stated otherwise, all payments must be paid on or within 30 days of the date of the invoice from Valiant. If Hirer has given Valiant a credit card authority or account debit authority, Hirer authorises Valiant to debit all fees and charges payable and due in accordance with these Terms to Hirer's card or account. Failure by the credit card provider to honour such charges shall not relieve Hirer from personal responsibility for such charges.
- 4.2. If requested by Valiant, Hirer must pay to Valiant an amount equal to one month's Hire Fee or such other amount as is described in the quotation as a security deposit ("**Security Deposit**"). Without limiting any other of Valiant's rights or remedies, Valiant is entitled to debit the Security Deposit for any outstanding Hire Fees (including without limitation costs and charges for recovery) and/or for cost of any damage or loss to the Goods. Valiant will refund the balance of any Security Deposit within 14 days of a written request conditional upon the Goods having been returned to Valiant and if and only if, all outstanding Hire Fees and other charges due to Valiant under this Agreement are paid in full.
- 4.3. You acknowledge that We have a security interest in the Goods for the purposes of the Personal Property Securities Act (Cth) (**PPS Act**) and to the extent applicable the PPS Act applies. To give effect to the above, Hirer consents to Us affecting a registration on the Personal Properties Securities Register (**PPSR**) (in any manner We consider appropriate) in relation to any security interest arising under or in connection with this Agreement or any hire agreement and Hirer agrees to provide all assistance reasonably required to facilitate this. Hirer also undertakes to do all such things, including executing any new document or providing any information that is required by Us so that We acquire and maintain a perfected security interest under the PPS Act in respect of the Goods and its proceeds, so that We may register a financing statement or financing change statement and to ensure that our security position, and rights and obligations, are not adversely affected by the PPS Act.
- 4.4. If an amount is due under this Agreement but is unpaid, interest shall be due on the overdue amount at the rate of 1.5% per month, calculated daily from the due date until payment is received in full and if required, the Goods have been returned in accordance with these Terms. Hirer will be liable for all additional costs incurred by Valiant in recovering unpaid amounts including the cost of legal and or mercantile agent fees.
- 4.5. The Hire Fees, delivery charges and any other taxes and charges due under these this Agreement (together the "**Charges**") are exclusive of GST, which must be paid by Hirer in addition to the Charges.
- 4.6. Despite anything else in this agreement to the contrary, to the extent that We are liable to pay GST in connection with any taxable supply pursuant to this agreement (*the affected supplies*)-
- 4.6.1. We may add to each of the amounts payable by You for the affected supplies, an allowance in respect of GST as reasonably calculated by Us (for past, present or future GST liabilities) and You must pay Us the higher amount which results.
- 4.6.2. We may make a further charge after termination, being a further allowance in respect of any remaining GST as reasonably calculated by Us and You must also pay Us that charge.
- 4.6.3. Any amount payable under this agreement, including an amount payable because of the previous provisions, remains payable whether or not there is disclosure of any amount included on account of GST.
- 4.6.4. We must comply on demand with our obligations in relation to the issue of any relevant tax invoice to You.
- i. Anything We might have said to You about GST in connection with this agreement was only intended to reflect our current understanding and may not have been applicable in Your particular circumstances. We recommend that You obtain and only rely on Your own independent expert advice in relation to GST in particular.
- ii. *GST, tax invoice and taxable supply* in this agreement have the meanings defined in A New Tax System (Goods and Services Tax) Act 1999 as may be amended or substituted from time to time. If those definitions are repealed, then those words have the meanings defined for such comparable terms as We may reasonably identify in any comparable legislation.
- 4.7. In the event that the Hirer is a partnership, corporate entity or the Trustee of a Trust, the person/persons who opens the account and/or who signs the Delivery Documents thereby acknowledges and confirms that person/persons has/have the authority to bind the partnership/corporate entity/Trustee of the Trust and that the partnership/corporate entity/Trustee of the Trust, is bound in accordance with these Terms and Conditions.
- 4.8. We may apply amounts received in connection with this Agreement to satisfy obligations secured by a security interest contemplated by this Agreement in any way We determine whatsoever which will unless otherwise notified by Us, be an allocation firstly towards recovery fees and costs thereafter to interest and finally to a reduction of the Hire Fees.
- 5. Delivery and Return**
- 5.1. Upon delivery, collection or return of the Goods, Hirer must check the Goods and quantities delivered (or returned). If there are any discrepancies between the Goods delivered and the quoted order or return docket, the Hirer must note them at the time of delivery or collection by amending the relevant documents in the presence of a Valiant representative.
- 5.2. In the event that the Goods are to be collected by the Hirer from Valiant's premises or in the event that Valiant is to collect Goods from the Hirers address, Hirer must provide Valiant three (3) business days prior written notice by fax or email specifying the date proposed date of collection, name of a representative of the Hirer (who must be present), name of the intended carrier, contact telephone number, and quantity and nature of Goods to be collected. Valiant will confirm the date for collection with Hirer. Goods may/will

not be collected until a written confirmation is provided by Valiant.

- 5.3. Valiant will endeavour to effect delivery and collection of the Goods at the times indicated by Hirer but will not under any circumstances be liable for any delay in delivery or collection or for failure to deliver or collect. Valiant reserves the right at any time to refuse any carrier of the Hirer.

6. Your obligations to Us

- 6.1. Hirer must:

- 6.1.1. keep the Goods in proper working order and condition;
- 6.1.2. store the Goods safely and securely and protected from theft, seizure, loss or damage;
- 6.1.3. not alter, tamper, damage or repair the Goods without our written consent;
- 6.1.4. not remove any label, identifying mark or safety instruction from the Goods;
- 6.1.5. not remove the Goods from the location described in the quotation;
- 6.1.6. allow Us (or our nominated person) at any time during the Hire Period, to enter the premises where the Goods are stored to inspect the Goods;
- 6.1.7. notify Us immediately if there is any loss or damage.

- 6.2. If the Goods are damaged (other than fair Wear and tear) and capable of repair, Hirer must compensate Valiant for the cost of repair. If the Goods are lost or damaged beyond repair, Hirer must pay Valiant the new replacement cost of the Goods and any other costs incurred by Valiant due to the loss or damage of the Goods.

- 6.3. **A Residential Hirer** will maintain at its own expense, during the Hire Period, all appropriate policies of insurance including, but not limited to, insurance for fire damage and theft.

- 6.4. Hirer must not sell, offer for sale, part with possession of, mortgage, assign, transfer, charge, encumber or otherwise deal with the Goods or these Terms in any way without Valiant's prior written consent.

- 6.5. **For Corporate and Events clients a compulsory 7% Damage Waiver is payable by the Hirer**

Damage Waiver is payable by the Hirer to cover all costs associated with the normal wear and tear to the Equipment and any accidental damage to a particular item of Equipment, provided that the replacement cost and/or cost of repairs to any Equipment which was damaged does not exceed 10% of the hiring fee for the particular item.

This waiver does not apply to any other damage to Equipment including:

- (a) Damage resulting from overloading, exceeding rated capacity, misuse, abuse or improper servicing of Equipment;
- (b) Damage due to mysterious disappearance of the Equipment;
- (c) Damage caused by the use or operation of Equipment in contravention of any of the conditions of the Agreement;
- (d) Damage to, or loss of, the Equipment from any unknown cause.

- 6.6. In the event that the Goods are lost or damaged in circumstances where a claim can be made upon insurance effected by Valiant pursuant to these Terms then the Hirer must;

- 6.6.1. Report the damage or loss to Valiant and the Police (If appropriate) immediately upon the Hirer becoming aware of such loss or damage;

- 6.6.2. Provide all necessary co-operation to Valiant, the Police and the insurer in respect of any claim;

- 6.6.3. Immediately upon demand pay to Valiant a minimum excess of \$750 per claim;

- 6.6.4. This provision does not in any way affect the Hirer's liability for any loss or damage to the Goods or any monies payable pursuant to those Terms.

7. PPS Act

- 7.1. Hirer waives the right to receive any notice under the Act (including notice of a verification statement) unless the notice is required by the Act and cannot be excluded.
- 7.2. Hirer acknowledges that if our interest under this Agreement or any hire agreement is a security interest for the purposes of the Act:
- 7.2.1. that security interest relates to the Goods and all proceeds of any kind; and
 - 7.2.2. each hire agreement is a security agreement for the purposes of the Act.
- 7.3. We may in our absolute discretion perfect any security interest held by Us against any third party on whose site the Goods are located in any manner that We consider appropriate to protect our interest in the Goods.
- 7.4. If requested by Us, Hirer must provide Us with all details as to the location of the Goods and the identity of any sub-lessee or third party that has been given possession.
- 7.5. (Subject always to our consent) If the Hirer sub-leases or provides the Goods to a third party the Hirer must do everything required to ensure that the Hirer's security interest has attached and is perfected by registration on the PPSR.
- 7.6. You undertake not to:
- 7.6.1. register a financing change statement in respect of a security interest contemplated or constituted by this Hire Agreement without Our prior written consent; and
 - 7.6.2. register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without Our prior written consent.
- 7.7. If the PPS Act applies to the enforcement of a security interest arising under this Agreement:
- 7.7.1. section 115(1) of the PPS Act allows for the contracting out of provisions of the PPS Act, the following provisions of the PPS Act will not apply and You will have no rights under them: section 95 (to the extent that it requires the secured party to give notices to the grantor); section 96; section 118 (to the extent that it allows a secured party to give notices to the grantor); section 121(4); section 125; section 130; section 132(3)(d); section 132(4); section 135; section 142 and section 143; and
 - 7.7.2. section 115(7) of the PPS Act allows for the contracting out of provisions of the PPS Act, the following provisions of the PPS Act will not apply and

You will have no rights under them: section 127; section 129(2) and (3); section 130(1); section 132; section 134(2); section 135; section 136(3), (4) and (5) and section 137.

- 7.8. Hirer agrees not to disclose information of the kind referred to in section 275(1) of the PPS Act to an interested person, or any other person requested by an interested person. You waive any right You may have, or but for this clause may have had, under section 275(7)(c) of the PPS Act to authorise the disclosure of the above information.
- 7.9. For the purposes of section 20(2) of the PPS Act, the collateral is the Goods. This Agreement is a security agreement for the purposes of the PPS Act.
- 7.10. You agree to notify Us in writing of any change to Your details set out in the Credit Application, within 5 days from the date of such change.

8. Sale of Goods

Subject to Valiant prior written consent and agreement between Hirer and Valiant as to the sale price, Valiant may, at Hirer's request, agree to sell the Goods to Hirer at the expiry of the Hire Period. The Goods are not in any other circumstances offered for sale. For the avoidance of doubt, Hire Fees are payable for the Goods up until payment has been received in full by Valiant.

9. Termination and Access for Repossession

- 9.1. Without affecting any other rights Valiant may have, Valiant may terminate these Terms at any time without liability to Hirer if Hirer (i) breaches these terms. (ii) fails to pay any amount when due, or (iii) becomes bankrupt, insolvent, or is placed in liquidation, administration or receivership, and in any such case Valiant may repossess the Goods.
- 9.2. Without adversely affecting Valiant's other rights and remedies, upon termination of these Terms for any reason and/or upon expiry of the Hire Period (i) Hirer must provide Valiant with all reasonable assistance in locating and collecting the Goods; and (iii) Hirer acknowledges and agrees that Valiant or its employees or agents shall be entitled to enter Hirer's premises where the Goods are, or Valiant reasonably believes the Goods are, in order to re-take the possession of Goods. Hirer indemnifies Valiant against any liability, damage, loss, cost, charge, or expense arising directly or indirectly out of Valiant exercising this right of entry.
- 9.3. If the Goods are not returned to Valiant in the condition they were provided to the Hirer (subject to reasonable wear and tear) at the expiry of the Hire Period, or within seven (7) days of Valiant making written demand, Hirer must pay Valiant the new replacement cost of the Goods and any other costs incurred by Valiant due to the loss of the Goods.

10. Force Majeure

Valiant will not be liable for the consequences of any circumstance reasonably beyond Valiant's control which affects its obligations under this Agreement.

11. Variation

From time to time We may change or vary this Agreement. We will give You 28 days written notice of our intention do so and if You reasonably believe that the varied terms are detrimental to Your rights You may terminate this Agreement without penalty but only on the condition that a notice of termination is received by Us in writing within 28 days from Your receipt of our intention to vary these terms. Otherwise, a variation may only be made in writing by each of Us.

12. Indemnity and Limitation of Liability

- 12.1. All guarantees, terms, conditions, warranties, undertakings or representations express or implied in any way relating to this Agreement are excluded to the maximum extent permitted by law. Notwithstanding this, nothing in this Agreement restricts or modifies any right or remedy including any guarantee imposed or implied under the Australian Consumer Law (if applicable) which contains guarantees to protect consumers of certain goods and services.
- 12.2. To the extent that We are able to determine the same our liability for breach is limited to (at our sole discretion):
- 12.2.1. in the case of Goods, the repair or replacement of the Goods or the supply of substitute Goods (or the cost of doing so); or
- 12.2.2. in the case of services, the supplying of the services again, or the payment of the cost of having the services supplied again.
- 12.3. Save for any liability that We may not exclude, to the maximum extent permitted by law, our liability for all claims arising under this Agreement, whether in contract, tort (including without limitation negligence), in equity, under statute, under an indemnity, or on any other basis, is limited to an amount equal to the Hire Fees paid by You under this Agreement.
- 12.4. Subject to the provisions of this Clause 12, We are not liable for any consequential, indirect or special loss or damage, loss of profits, loss of business, business interruption, costs or amounts that You are liable for arising out of any loss suffered by third parties under or relating to this Agreement, whether in contract, tort (including without limitation negligence), in equity, under statute, under an indemnity, or on any other basis, whether or not such loss or damage was foreseeable and even if advised of the possibility of the loss or damage.
- 12.5. You must indemnify Us against all liability, claims, damage, loss, costs and expenses (including, without limitation, legal fees, costs and disbursements on a full indemnity basis, whether incurred against or by Us in respect of:
- 12.5.1. personal injury;
- 12.5.2. damage to tangible property; or
- 12.5.3. a claim by a third party,
- 12.6. in respect of Use of the Goods. To the extent that our loss is caused by our negligence, Your liability is diminished.
- #### **13. Confidentiality**
- 13.1. For the purposes of this clause, Confidential Information means all confidential, non-public or proprietary information of one party (the Disclosing Party) regardless of how it is stored, delivered, provided to or learnt by the other party (the Receiving Party) in relation to this Agreement, but does not include excluded information such as information that is or becomes available in the public domain other than through breach of this Agreement or an obligation of confidence owed to the Disclosing Party or that was already known to the Receiving Party at the time of disclosure or that the Receiving Party acquires from a source other than the Disclosing Party. Confidential Information includes all pricing and related terms pertaining to the provision of Services under this Agreement.
- 13.2. Neither party may disclose any Confidential Information to any person without the other party's written consent, except to Representatives requiring the information for the purposes of, and in accordance with, this Agreement, or if

either party is required to do so by law or an Exchange or in connection with legal proceedings relating to this Agreement.

13.3. This clause survives termination (for whatever reason) of this Agreement.

14. Electrical Tagging

14.1. You are responsible for arranging at Your cost, the re-testing and re-tagging of the Hire Item in accordance with the manufacturer's instructions and the Australian Standards requirements.

15. General

These Terms are governed by the laws of the relevant State of Australia and each party submits to the non-exclusive jurisdiction of

the courts of that State. A provision of or right created under this Agreement will not be waived by Valiant or varied except in writing signed by an authorised representative of Valiant. A waiver by Valiant of a provision will not waive any other provision of this Agreement or constitute a continuing waiver unless expressly provided. If a provision or right or remedy of a party under this Agreement is void or unenforceable for any reason than that part will be read down or severed from this Agreement without affecting the validity or enforceability of the remaining provisions. You are not entitled to set off against or deduct from the price any sums owed or claimed to be owed to You by Us. The description, illustration and performance of any product contained in our catalogue, marketing material, price list or advertising does not form part of this agreement unless expressly set out in this agreement. We may complete any blanks on any form on Your behalf.