

Hire Terms and Conditions

PARTIES

1. Nadine Smith trading as Lost and Wander ABN 37670024291 of 455 Station Street Carlton North VIC 3054 Australia (**Lost and Wander, we, our or us**); and
2. The person that wishes to hire, or has agreed to hire, the Equipment (**you**);
(collectively, the **parties**)

OPERATIVE PROVISIONS

1. Definitions and Interpretation

1.1 Definitions

In this Agreement, capitalised terms are defined below.

Agreement means this Agreement.

Australian Consumer Law means Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

Belle Tent Fire/Stove has the meaning given to it in clause 8.1.

Bespoke Hire has the meaning given to it in clause 7.1.

Bond has the meaning given to it in clause 3.3.

Booking means a booking enquiry to hire the Equipment, whether made by email or via the Lost and Wander website at www.lostandwander.com.au.

Business Days means a day which is not a Saturday, Sunday or bank or public holiday in Victoria, Australia.

Damage Notice has the meaning given to it in clause 11.4.

Equipment means the goods, whether a fixture or chattel, provided or offered to be provided to you for hire by Lost and Wander, including without limitation any camping/glamping equipment, tent and accessories.

Goods and Services Tax (GST) means the tax imposed or to be imposed by the GST Law.

GST Act means means the *New Tax System (Goods and Services Tax) Act 1999* (Cth) and the related imposition Acts of the Commonwealth.

Hire Fee has the meaning given to it in clause 3.1.

Hire Period means the period of time in which the parties agree that you are entitled to hire out the Equipment.

Late Return Fee has the meaning given to it in clause 5.4.

PMSI means a purchase money security interest as defined in the PPSA.

PPSA means the Personal Property Securities Act 2009 (Cth) and any regulations made pursuant to it.

PPSR means the Personal Property Securities Register established pursuant to the PPSA.

Proceeds has the same meaning as in the PPSA.

Security Interest has the same meaning as in the PPSA.

1.2 Interpretation

In this Agreement, the following rules of interpretation apply unless the context requires otherwise:

- (a) headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise.
- (b) the singular includes the plural and conversely, and if a word or phrase is defined, its other

grammatical forms have a corresponding meaning;

- (c) a reference to a party is to a party to this Agreement;
- (d) a reference to a clause, part of a clause, schedule or annexure is a reference to that clause, part of a clause, schedule or annexure of this Agreement;
- (e) a reference to “includes” or “including” should be construed without limitation;
- (f) a reference to conduct includes an omission, statement and undertaking, whether or not in writing;
- (g) a reference to an individual or person includes a corporation, partnership, joint venture, association, authority, trust, state or government and vice versa;
- (h) a reference to a party to this Agreement or another agreement or document includes the party’s successors, permitted substitutes and assigns (and, where applicable, the party’s legal personal representatives);
- (i) a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any subordinate legislation issued under, that legislation or legislative provision;
- (j) a reference to a year or to a month is to a calendar year or a calendar month respectively;
- (k) a reference to any gender includes all genders;
- (l) a reference to dollars and \$ is to Australian currency;
- (m) a reference to a clause or schedule is to a clause or schedule of this Agreement; and
- (n) where an expression is defined anywhere in this Agreement it has the same meaning throughout.

2. Agreement

- 2.1 You may request to hire the Equipment specified by making a Booking with Lost and Wander. By making such request, you agree that your hire of the Equipment from Lost and Wander for the Hire Period are subject to the terms of this Agreement. Lost and Wander may accept, modify or reject your Booking in its sole discretion. Lost and Wander reserves the right to refuse hire to any persons.
- 2.2 Subject to the terms of this Agreement, you will be entitled to the sole use and benefit of the Equipment for the Hire Period.

3. Orders, payment and bond

- 3.1 If your Booking is accepted by Lost and Wander, Lost and Wander will issue you with an invoice (**Invoice**) for the full price for hire of the Equipment, including any applicable taxes, handling and delivery fees, etc. (**Hire Fee**).
- 3.2 You agree to pay the full price, being 100% of the Hire Fee by the due date specified in such Invoice and acknowledge and agree that your Booking will not be confirmed unless such Invoice is paid by the due date.
- 3.3 You are required to provide a bond of \$100.00 (**Bond**) which will be retained by Lost and Wander in the event that the Equipment is lost or damaged during the hire. The Bond will be returned to you in full within 48 hours once Lost and Wander inspects and confirms that the Equipment has been returned in a condition satisfactory to Lost and Wander. No interest is payable to you by Lost and Wander with respect to the Bond.
- 3.4 You agree to pay any invoices issued by Lost and Wander to you by the due date specified in such invoice, or if no due date is specified, within 10 Business Days of the date of the Invoice. Lost and Wander reserves the right to charge interest of 10% p.a. on overdue payments and you are liable for any expenses, costs or disbursements incurred by the Lost and Wander in recovering any outstanding amounts including debt collection agency fees and legal costs.

4. Cancellation and changes

- 4.1 You may cancel or make changes to your Booking without further charge if the cancellation or change is made at least two (2) weeks prior to the Collection Date.
- 4.2 Subject to this clause 4.2, any cancellations of a Booking made less than two (2) weeks prior to the Collection Date will only entitle you to a refund of fifty per cent (50%) of the total Hire Fee. Lost and Wander reserves the right to retain the remaining fifty per cent (50%) Hire Fee.
- 4.3 Lost and Wander do not accept cancellations of a Booking made less than two (2) days prior to the Collection Date and no refund of the Hire Fee will be provided.
- 4.4 Any changes to a Booking within two (2) weeks prior to the Collection Date may incur a late change fee of 30% of the total Hire Fee.
- 4.5 Any cancellations or early returns after the Collection Date will not entitle you to a refund, except where required under Australian Consumer Law.
- 4.6 Lost and Wander reserves the right to reject, cancel or reschedule any Booking for any reason prior to the Collection Date with notice to you. If your Booking is rejected or cancelled by Lost and Wander, a reschedule date cannot be arranged and such rejection or cancellation is not due to fault of your own, Lost and Wander will return the Hire Fee to you as soon as reasonably practicable.

5. Collection and return

- 5.1 You must arrange for and are liable for any costs of collection and return of the Equipment.
- 5.2 You must collect Equipment on the date time specified from the location specified by Lost and Wander in writing (**Collection Date**).
- 5.3 You must return the Equipment to Lost and Wander prior to the date and time specified and to the location on the date and time specified by Lost and Wander in writing (**Return Date**).
- 5.4 Late drop-offs (being drop-offs after the Return Date) may incur a late return fee to the amount of \$30.00 per day plus the daily Hire Fee rate (**Late Return Fee**).

6. Cleaning

- 6.1 You agree that you will return the Equipment (excluding the bedding, which will be cleaned by Lost and Wander) properly cleaned and that you will remove any waste material before returning the Equipment. It is agreed that the whole or any part of the cost incurred by Lost and Wander arising out of your failure to clean the Equipment will incur a cleaning charge to you which must be paid immediately upon request to us.

7. Bespoke Hire

- 7.1 Lost and Wander may offer a tailored hire service for you upon request, which includes hire of Equipment and set up of the Equipment in a particular location, which may be for special occasion or surprise event (**Bespoke Hire**). If you are interested in a Bespoke Hire, you may contact us for a quote, including details of the Bespoke Hire such as the location and date and time, and we will confirm whether we have availability of the Equipment and are able to provide the Bespoke Hire service. If a quote and date/time can be agreed, Lost and Wander will issue you an invoice for the Hire Fee in accordance with clause 3.

8. Belle Tent Fire/Stove

- 8.1 If the Equipment includes a Fire/Stove in the Bell Tent (**Belle Tent Fire/Stove**), you agree that you are responsible for safe use of the Belle Tent Fire/Stove and that you will use it in accordance with the instructions provided by Lost and Wander.

9. Weather conditions

- 9.1 In the event of extreme weather conditions, Lost and Wander reserves the right to cancel or reschedule bookings to ensure your safety. We will endeavor to provide as much notification as possible and issue a full refund of the Hire Fee in the event that a rescheduled date cannot be arranged.
- 9.2 In any event, you agree that you are responsible to review all safety and weather conditions and to make your own decision as to whether it is safe to conduct your proposed activities using the Equipment.

10. Covenants regarding possession and use of the Equipment

- 10.1 You must, at all times:
- (a) take reasonable steps to protect the Equipment from loss or damage;
 - (b) use the Equipment in a proper manner and in accordance with any manufacturer's requirements or guidelines;
 - (c) ensure that the Equipment is kept in a secure location at all times when the Equipment is left unattended and use the lock to secure the Equipment where provided;
 - (d) where the Equipment includes a tent:
 - (i) not store any items which are likely to mark or tear the floor, or otherwise damage any part of the inside of any tent;
 - (ii) not smoke or permit any other person to smoke, inside the tent; and
 - (iii) not allow any naked or open flame inside the tent at any time.
- 10.2 You must only operate and maintain the Equipment in accordance with recognised methods and standards for Equipment and/or goods of their type and comply in all respects with the instructions and recommendations of the manufacturer, supplier and Lost and Wander relating to the Equipment and to their use.
- 10.3 You must not use the Equipment for any illegal purpose.
- 10.4 You must comply in all respects with all applicable laws, regulations, requirements and rules reasonably necessary for the safe and lawful operation of the Equipment.
- 10.5 You must not agree, attempt, offer or purport to sell, assign, sublet, lend, pledge, mortgage, let on hire, grant a Security Interest in, allow any lien or other encumbrance to arise in, or otherwise part with or attempt to part with the personal possession of or otherwise deal with, the Equipment or any part of the Equipment except with the prior written consent of Lost and Wander.
- 10.6 You must not permanently attach, affix or secure the Equipment to any location that is not approved in writing by Lost and Wander prior to doing so (for example to an illegal camp site).
- 10.7 You must not tamper with the Equipment.

11. Damage to the Equipment

- 11.1 You must, as soon as reasonably practicable, notify Lost and Wander in writing (such as by email or SMS text message) if there is any loss or damage to the Equipment.
- 11.2 Lost and Wander reserves the right to inspect the Equipment after it has been returned by you and Lost and Wander is entitled to retain such properly qualified experts as it thinks fit in order to determine whether the Equipment is in need of repair, replacement or is otherwise deficient.
- 11.3 You are liable for any loss of, or damage to, the Equipment and will be liable to pay the full cost of repair or replacement of the Equipment.
- 11.4 Lost and Wander may provide you with a notice in writing of any damage, defect or deficiency in the Equipment or its operation or both (whether that damage, defect or deficiency comes to Lost and Wander's attention in the course of any inspection otherwise) requiring repair or replacement for which you are or may be responsible for under this Agreement (**Damage Notice**).
- 11.5 The Damage Notice may require that you repair or replace the Equipment, make good the defect or

deficiency within the time specified in the Damage Notice) or make payment for the cost of repair or replacement by Lost and Wander within the time specified in the Damage Notice. In the event of such damage, defect or deficiency in the Equipment, you agree that Lost and Wander may retain the whole or a portion of the Bond as required to repair or replace the Equipment and that it may issue an invoice to you for any outstanding amounts payable for such repair or replacement.

12. Accidents, loss, theft or malicious damage

- 12.1 In the event of an incident of theft, loss or malicious damage to the Equipment, you must report such incident to the police and provide Lost and Wander with the police reference number and details of the incident as soon as reasonably possible by phone and additionally in writing.
- 12.2 Lost and Wander will not be liable for any inconvenience, loss or damage whatsoever suffered by the you due to any accident, loss, theft or malicious damage involving the Equipment.
- 12.3 You are required to reimburse Lost and Wander for the cost of replacement of the Equipment upon written request by Lost and Wander.

13. Indemnities

- 13.1 You agree to use, operate and possess the Equipment at your risk.
- 13.2 To the maximum extent permitted by law, you acknowledge and agree that Lost and Wander will have no responsibility or liability for any loss or damage to any property, whether owned by you or Lost and Wander and you release and discharge Lost and Wander and its agents and employees from:
 - (a) all claims and demands on Lost and Wander; and
 - (b) any loss or damage whatsoever and whenever caused to you or your agents or employees whether by way of death of, or injury to, any person of any nature or kind, accident or damage to property, delay, financial loss or otherwise (including consequential loss, damage or injury), arising directly or indirectly from or incidental to a breakdown of, or defect in, the Equipment or any accident to or involving the Equipment or their use, operation, repair, maintenance or storage (whether occasioned by the negligence of Lost and Wander or otherwise) or which may otherwise be suffered or sustained in, upon or near the Equipment.
- 13.3 To the maximum extent permitted by law, you assume full liability for, and indemnify and will keep indemnified, protected, saved and harmless Lost and Wander from and against any and all injuries, actions, proceedings, claims, demands, liabilities, losses, damages, costs, penalties and all expenses legal or otherwise (including court costs and legal fees reasonably incurred) and of whatsoever kind and nature (including claims based upon strict liability in tort):
 - (a) arising out of or alleged to arise out of the delivery, late delivery, rejected or cancelled Booking, selection, purchase, acceptance or rejection, ownership, possession, use, repair, maintenance, storage, or operation of the Equipment, and by whomsoever used or operated (except where used by Lost and Wander or by any other person by or on behalf of Lost and Wander);
 - (b) incurred by Lost and Wander in respect of any loss of the Equipment by seizure, distress, execution or other legal process, confiscation or forfeiture of the Equipment; or
 - (c) arising out of any claim for patent, trademark or copyright infringement, for strict liability, or for any other reason being made against Lost and Wander in connection with the Equipment or their operation.
- 13.4 You must reimburse Lost and Wander for all and any costs, charges, expenses, fees, disbursements (including all reasonably legal costs on a solicitor and own client basis) paid or incurred by Lost and Wander of or incidental to:
 - (a) any breach, default or repudiation of the Agreement by you (including the fees of all professional consultants properly incurred by Lost and Wander in consequence of, or in connection with, any such breach, default or repudiation);
 - (b) the exercise or attempted exercise of any right, power, privilege, authority or remedy of Lost and Wander under or by virtue of this Agreement, including all amounts incurred in repossessing the Equipment under this Agreement and in enforcing this Agreement generally.

- 13.5 The indemnities contained in this clause 13 will continue in full force and effect notwithstanding the termination of the Agreement whether by expiration of time or otherwise as to any act or omission relating to the Equipment occurring during the continuance of the Agreement which at any time is claimed to have created a cause of action against Lost and Wander.

14. Ownership and risk

- 14.1 You acknowledge that during the Hire Period, Lost and Wander retains full title to and ownership of the Equipment, subject only to your rights as a mere bailee of the Equipment with a right only to possess and use the Equipment in accordance with and under this Agreement.
- 14.2 You acknowledge and agree that you do not have any right, option or obligation to purchase the Equipment and acknowledge that no representation to that effect, express or implied, written or oral, has been made by or on behalf of Lost and Wander to you at any time.

15. Your warranties

- 15.1 You represent and warrant to Lost and Wander that:
- (a) if you are a corporation:
 - (i) you are duly incorporated under the *Corporations Act 2001* (Cth) and has the power to carry on its business and full power and authority to enter into, observe and do all things required by, the Agreement;
 - (ii) the person signing on behalf of the corporation is duly authorised to enter into the Agreement on behalf of the corporation and if in breach of this warranty, agrees that he or she shall be personally liable for performance of the corporation's obligations;
 - (iii) except as disclosed in writing to Lost and Wander and dispensed with in writing by Lost and Wander, neither the execution nor performance of the Agreement will:
 - A violate in any respect any laws;
 - B conflict with or result in any breach of, or require any consent or approval under, any mortgage, agreement or other undertaking or instrument to which you are a party or which is binding upon you or any of your assets;
 - (b) except as disclosed in writing to Lost and Wander and dispensed with in writing by Lost and Wander, you are not in default or difficulty under any deed, agreement or other document or obligation to which it is a party or by which it is bound, or in respect of any financial commitment or obligation (including obligations under guarantees or other contingent liabilities), which default or difficulty is reasonably likely to adversely affect your ability to comply with its obligations under the Agreement;
 - (c) except as disclosed in writing to Lost and Wander and dispensed with in writing by Lost and Wander, no litigation or administrative or other proceedings before or of any court or governmental authority or agency or other tribunal have, to your knowledge, been initiated or threatened against you or any of your assets which would, might or have a materially adverse effect upon your business, assets or financial condition; and
 - (d) you are enter into this Agreement on its own behalf and not as trustee of any trust.

16. Termination

- 16.1 Lost and Wander may terminate this Agreement and/or your right to possession of the Equipment for any reason with 5 Business Days' written notice to you.
- 16.2 Lost and Wander may immediately terminate this Agreement and/or your right to possession of the Equipment if:
- (a) you breach this Agreement;
 - (b) the Equipment is lost, stolen or damaged;
 - (c) if any amount owing to Lost and Wander has not been paid by the due date; or

- (d) if Equipment is not returned by the Return Date.

16.3 Upon termination of this Agreement:

- (a) you must immediately pay any amounts owing to Lost and Wander;
- (b) you must, at Lost and Wander's election:
 - (i) immediately deliver the Equipment to Lost and Wander;
 - (ii) make the Equipment available for collection by Lost and Wander and make payment for the cost of retrieving the Equipment as specified by Lost and Wander plus any Late Return Fees; or
 - (iii) pay for the full price paid by Lost and Wander for the purchase of the Equipment plus any Late Return Fees; and
- (c) Lost and Wander may recover from you any outstanding invoices or interest any and all additional damages and expenses sustained by Lost and Wander by reason of such termination or by reason of the breach of any covenant, representation or warranty contained or implied in this Agreement other than for due payment of the Hire Fee.

16.4 You must provide Lost and Wander with all reasonable assistance in locating and collecting the Equipment. You agree to grant Lost and Wander or its agents, a right of entry into any premises where the Equipment is stored, using such force as is necessary to repossess the Equipment. Lost and Wander will not be liable for any damage to property caused by any person in the collection of the Equipment.

17. PPSA

17.1 You must not assign or grant a Security Interest in the Equipment or its right, title and interest.

17.2 If Chapter 4 of the PPSA does apply to the enforcement of a Security Interest arising under or in connection with this Agreement, you agree that the following provisions of the PPSA will not apply to the enforcement of that Security Interest:

- (a) section 95 (notice of removal of accession), to the extent that it requires Lost and Wander to give you a notice;
- (b) section 96 (when a person with an interest in the whole may retain accession);
- (c) subsection 121(4) (enforcement of liquid assets – notice to grantor);
- (d) section 125 (obligation to dispose of or retain collateral);
- (e) section 130 (notice of disposal), to the extent that it requires Lost and Wander to give you a notice;
- (f) paragraph 132(3)(d) (contents of statement of account after disposal);
- (g) subsection 132(4) (statement of account if no disposal);
- (h) section 142 (redemption of collateral);
- (i) section 143 (reinstatement of security agreement).

17.3 Where a person is a controller in relation to the Equipment, the parties agree that Part 4.3 of the PPSA will not apply to the enforcement of any Security Interest in the Equipment by that controller.

17.4 Notices or documents required or permitted to be given to Lost and Wander for the purposes of the PPSA must be given in accordance with the PPSA.

17.5 You consent to Lost and Wander effecting a registration on the PPSR (in any manner that Lost and Wander considers appropriate) in relation to any Security Interest arising under or in connection with this Agreement and you agree to provide all assistance reasonably required by Lost and Wander to facilitate this.

17.6 You waive your right to receive any notice under the PPSA (including notice of a verification statement) unless the notice is required by the PPSA and cannot be excluded.

17.7 You acknowledge that if Lost and Wander's interest under this Agreement is a Security Interest for the

purposes of the PPSA:

- (a) that Security Interest relates to the Equipment and all Proceeds of any kind;
- (b) this Agreement is a security agreement for the purposes of the PPSA.

18. GST

- 18.1 Terms with an initial capital letter which have a defined meaning in GST Act shall have that meaning in this clause except that Taxable Supply excludes the reference to section 84-5 of the GST Act.
- 18.2 If GST is payable on a Taxable Supply made under, by reference to or in connection with this Agreement, the amount of GST payable in respect of that supply must be paid as additional amount. This clause does not apply to the extent that the Consideration for the supply is expressly stated to be GST inclusive.
- 18.3 If GST is payable on a Taxable Supply made under, by reference to or in connection with this Agreement, the amount of GST payable in respect of that supply must be paid as additional amount. This clause does not apply to the extent that the Consideration for the supply is expressly stated to be GST inclusive.
- 18.4 Any reference in the calculation of any amount payable under this Agreement to a cost, expense or other liability incurred by a party must exclude the amount of any Input Tax Credit in relation to that cost, expense or other liability.

19. General

- 19.1 **Entire Agreement:** This Agreement contains the entire agreement between the parties with respect to its subject matter and supersedes all prior agreements and understandings between the parties in connection with it (whether oral or written).
- 19.2 **Assignment:** You must not, without Lost and Wander's written consent, assign, transfer or otherwise deal with this Agreement nor any of its rights or obligations under the Agreement. Lost and Wander may assign, transfer or otherwise deal with this Agreement at any time without notice.
- 19.3 **Your risk:** Whenever you are obliged or required under this Agreement to do or effect any act, matter or thing, then the doing of such act, matter or thing will, unless this Agreement otherwise expressly provides, be at your sole risk and expense.
- 19.4 **Australian Consumer Law:** Where the Australian Consumer Law applies, you may have the benefit of guarantees in relation to the hire of the Equipment which cannot be excluded under this Agreement. Nothing in this Agreement purports to exclude any rights available to you under Australian Consumer Law that cannot be excluded.
- 19.5 **Relationship:** Nothing contained or implied in this Agreement will be deemed or construed to create the relationship of partnership or of principal and agent or of joint venture between the parties.
- 19.6 **Severability:** Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That does not invalidate the remaining provisions of this Agreement nor affect the validity or enforceability of that provision in any other jurisdiction.
- 19.7 **No waiver:** Time is of the essence of this Agreement. However, no failure or delay on the part of Lost and Wander to exercise any power or right under this Agreement will operate as a waiver of that power or right. Nor will any single or partial exercise of any power or right under this Agreement preclude any other or further exercise of that power or right. Lost and Wander will only be taken to have waived any power or right under this Agreement, to the extent that the right or power has been expressly waived in writing by Lost and Wander, irrespective of any previous waiver of any other breach of the same or any other covenant or provision of this Agreement or any other agreement.
- 19.8 **Further assurances:** You must, at your expense, do any further act and execute any further documents which Lost and Wander may reasonably request in order to protect Lost and Wander's title and Lost and Wander's rights, powers and remedies under this Agreement.
- 19.9 **Counterparts:** This Agreement may be executed in any number of counterparts each signed by one or more parties. Each counterpart when so executed is deemed to be an original and all such

counterparts taken together constitute one document and the date of this Agreement will be the date on which a counterpart is executed by the last party. The exchange of executed counterparts by email or fax will create a binding deed.

- 19.10 **Amendments:** Lost and Wander may, at any time, amend these terms and conditions by giving you written notice of the changes. You will be deemed to have accepted the changes unless you notify Lost and Wander immediately of its non-acceptance of the changes. All Equipment supplied by Lost and Wander to you after the you receive a notice of change in accordance with this clause are supplied in accordance with the new terms and conditions.
- 19.11 **Governing law:** This Agreement is governed by the law of Victoria, Australia. Each party submits to the exclusive jurisdiction of courts exercising jurisdiction there in connection with matters concerning this Agreement.