

## Terms and Conditions of Hire.

Updated 1<sup>st</sup> September 2022

These Hire Contract Conditions apply to the exclusion of any other conditions proposed by the Customer, unless otherwise agreed by Seating Matters and the Customer in writing. Seating Matters agrees to hire Equipment to the Customer on terms set out in this document. If the Customer wishes to hire Equipment the Customer must complete and sign (or otherwise accept in the manner required by Seating Matters) a Hire Schedule and such other documents as Seating Matters may require. Each Hire Schedule is not a separate contract but forms a part of this hire agreement between Seating Matters and the Customer, together with any credit application, guarantee and indemnity or other contractual documents. The customer agrees to receive hire schedules and all associated documentation by electronic means. Seating Matters may in its absolute discretion decline to hire Equipment to the Customer at any time if it has reasonable cause to do so.

**Amendment:** These Hire Contract Conditions may be changed by Seating Matters from time to time by Seating Matters giving notice of the amendment to the Customer. Notice is deemed given when Seating Matters does any of the following: (a) sends notice of the amendment to the Customer at any address (including an email address) supplied by the Customer; (b) publishes the amended terms on its website [www.SeatingMatters.com.au](http://www.SeatingMatters.com.au); or (c) displays the amended terms at premises from which Seating Matters conducts hire operations.

Changes to these hire Contract Conditions will only apply to Hire Schedules entered into after the change occurs.

### 1. Interpretation of Words in this Contract;

- I. **Commencement – The date when the Customer takes possession of the Equipment.**
- II. **Equipment** – Means any kind of equipment including but not limited to the following kinds of medical seating systems, chairs and accessories for any of the foregoing.
- III. **Hire Charge** – The amounts shown on the Hire Schedule payable by the Customer to hire the Equipment.
- IV. **Hire Period** – Means from Commencement until the end of the period shown on the Hire Schedule. The Hire Period may only be extended for one or more definite periods and in each case this can only be done if the Customer requests it and if Seating Matters agrees. Seating Matters may issue and require the Customer to sign an amended Hire Schedule for any extension of the Hire Period.
- V. **Hire Schedule** – Means a document which Seating Matters may require the Customer to sign (or accept in a way Seating Matters requires) including particulars of the Equipment and the Hire Period and such other information as Seating Matters may decide to require.
- VI. **Seating Matters** – The company or companies listed on the Hire Schedule.

### 2. Seating Matters Obligations; Seating Matters will:

- 2.1 **Allow the Customer to take and use the Equipment for the Hire Period;**
- 2.1.1 **Provide the Equipment to the Customer clean and in good working order;**
- 2.1.2 **Collect the Equipment within 5 days of being requested to do so by the Customer.**

### 3. Obligations of the Customer; The Customer must:

- 3.1 Return the Equipment to Seating Matters clean and in good repair;
- 3.2 Satisfy itself at Commencement that the Equipment is suitable for its purposes;
- 3.3 Operate the Equipment safely, strictly in accordance with the law, only for its intended use, and in accordance with any manufacturer's instructions whether supplied by Seating Matters or posted on the Equipment;

- 3.4 **Indemnify** Seating Matters for all injury and/or damage to the extent caused or contributed to by the Customer to persons and property in relation to the Equipment and its operation and have adequate insurance to cover all liabilities incurred as a result of the use of the Equipment;
- 3.5 Ensure that any person collecting or taking delivery of Equipment on behalf of the Customer is authorised by the Customer to do so and the Customer will not allege that any such person is not so authorized;
- 3.6 Conduct a thorough hazard and risk assessment before using the Equipment and comply with all Occupational Health and Safety laws relating to the Equipment and its operation;
- 3.7 Safely secure all items loaded in or on the Equipment or in or on the Customer's vehicle, and indemnify Seating Matters in respect of any injury and/or damage caused by items falling from the Equipment or from any vehicle or trailer operated by or on behalf of the Customer;
- 3.8 Report and provide full details to Seating Matters of any accident or damage to the Equipment within 2 business days of the accident or damage occurring.

**4. The Customer must NOT;**

- 4.1 Tamper with, damage or repair the Equipment;
- 4.2 Lose or part with possession of the Equipment;
- 4.3 Rely upon any representation relating to the Equipment or its operation other than those contained in this Contract;

**5. Payments by the Customer to Seating Matters**

- 5.1 The Customer will pay the Hire Charge in accordance with the terms of the Hire Agreement and/or invoice.
- 5.2 Immediately on request by Seating Matters, the Customer will pay:
- (a) the new list price of any Equipment which is for whatever reason not returned to Seating Matters.

**(NOTE TO CUSTOMER: Subject only to any express provision of this Contract to the contrary, the Customer is responsible for loss or theft of the Equipment)**

- (b) all costs incurred in cleaning the Equipment if Seating Matters decides the equipment requires excessive cleaning.
- (c) the full cost of repairing any damage to the Equipment caused or contributed to by the Customer, unless expressly agreed otherwise in this Contract;
- (d) stamp duties, GST, any other taxes or duties, and all tolls, fines, penalties, levies or charges payable in respect of this Contract or arising from the Customer's use of the Equipment;
- (e) all costs incurred by Seating Matters in delivering and recovering possession of the Equipment;
- (f) Interest for late payment of amounts owing by the customer, at the pre-judgement interest rate set by the Local Court of NSW from time to time
- (g) any expenses and legal costs (including commission payable to a commercial agent) incurred by Seating Matters in enforcing this Contract due to the Customers default.;

(h) if any damage and/or theft waiver applies, the amount for which the Customer is liable as set out in this Contract.

5.3 Without limiting the ability of Seating Matters to recover all amounts owing to it, the Customer authorises Seating Matters to charge any amounts owing by the Customer to any credit card or account details of which are provided to Seating Matters.

5.4 Seating Matters may tokenise the Customers Credit Card or Account details to facilitate credit card or online payments.

## **6. Damage Waiver**

**6.1 Damage Waiver is not insurance, but is an agreement by Seating Matters that the Customer's liability for damage to the Equipment can be limited in some circumstances only, to an amount called the Damage Waiver Excess**

**6.2 Damage Waiver applies to all hires, subject to the conditions below, for no additional fee. The Damage Waiver Excess is the actual recovery and repair cost of the Equipment, or 20% of the current replacement cost of the Equipment as reasonably determined by Seating Matters using suppliers list prices, whichever is the lesser amount.**

**DAMAGE WAIVER DOES NOT APPLY AND WILL NOT LIMIT THE CUSTOMER'S LIABILITY in the following circumstances;**

- (i) where the Equipment is lost or stolen;
- (j) where the equipment has been wilfully damaged by the Customer or its employees or agents;
- (k) where the damage is caused in any way by overloading.

**THEFT WAIVER DOES NOT APPLY AND WILL NOT LIMIT THE CUSTOMER'S LIABILITY FOR THEFT in the following circumstances;**

- (l) where the Customer has failed to keep the Equipment in a securely locked Compound
- (m) where the Customer has failed to submit to Seating Matters a Police Report on the theft within 7 days of the theft allegedly occurring.

In the event of Theft Waiver applying, hire fees will be charged to the Customer until the Police Report is provided to Seating Matters.

## **7. Exclusion of Warranties and Liabilities.**

7.1 Where the Australian Consumer Law applies, the Customer has the benefit of guarantees in relation to the hire of the Equipment which cannot be excluded.

7.2 Where the Australian Consumer Law applies and the goods are not of a kind ordinarily acquired for personal domestic or household use or consumption, Seating Matters liability in respect of any guarantee is limited to the replacement or repair of the goods, or the cost of having the goods repaired or replaced.

7.3 To the extent that the Australian Consumer Law (or any other law which cannot be excluded) does not apply. Seating Matters makes no representations and gives no warranties other than those set out in these Hire Contract Conditions and will not be liable to the Customer for any damages, costs or other liabilities whatsoever (including for consequential loss) in relation to the hiring of the Equipment by the Customer.

## **8. Breach of Hire Contract by Customer**

**8.1** If the Customer breaches any clause whatsoever of this Contract and does not remedy the breach within 7 days' notice of the breach, or becomes bankrupt, insolvent or ceases business then; Seating Matters shall be entitled to terminate this Contract and repossess the Equipment (and is authorized to enter any premises where the Equipment is located to do so), and any Damage and/or Theft Waiver is immediately invalidated.

**8.2** The Customer indemnifies Seating Matters in respect of any damages, costs or loss, to the extent caused or contributed to by the customer resulting from a breach by the Customer of any provision of this Contract.

## **9. Disputes**

**9.1** The Customer must immediately check all Hire Charges, and any disputes in relation to those Hire Charges must be communicated to Seating Matters in writing within 30 days of the Hire Contract date. In the event that no communication is received from the Customer within that 30-day period, the Hire Charges are deemed to be accepted by the Customer.

**9.2** If a dispute arises relating to this Contract, the hiring or the use of the Equipment (except in regard to payments due to Seating Matters), the parties agree to negotiate to settle the dispute with the assistance of the Hire and Rental Association of Australia before litigation.

## **10. Privacy**

**10.1** Seating Matters will comply with the Australian Privacy Principles in all dealings with Customers.

### **Invoice terms and conditions**

- **Hires are ongoing until cancelled in writing, unless a fixed term hire or prior arrangement has been made.**
- **All rental items remain the property of Seating Matters and are not available for purchase.**

### **General Terms and Conditions of Credit Application:**

I/We apply for a credit application and warrant I/We have provided all required details in support of this application.

I/We understand and acknowledge that normal trading terms are listed on the hire agreement and/or invoice.

I/We undertake to pay all accounts on or before the due date.

I/We acknowledge that once payment is overdue the account may be suspended until it is brought in line with these trading terms.

### **The Credit Provider reserves the right at all times:**

1. To suspend or discontinue the supply of services and goods on credit to the applicant without obligation to give reasons for such action.
2. To vary the Terms and Conditions at any time by giving 30 days prior notice in writing to the applicant.

## **Goods and Services Tax (GST)**

1. The price of all goods supplied whether under credit or not is exclusive of GST.
2. In addition to the price, the Applicant shall pay the GST charged on any taxable supply, subject to the receipt of a Tax Invoice complying with the GST Legislation.

### **Notice of disclosure of your credit information to a credit reporting agency:**

Under Section 18E(c) of the Privacy Act, the credit provider is allowed to give a credit reporting agency personal information about your credit application. The information which may be given to an agency is covered by SECTION 18E(1) of the Act and includes:

- Identity particulars as permitted under Section 18E(3).
- The fact that you have applied for credit and the amount
- The fact that the credit provider is a current credit provider to you
- Payments that become overdue more than 60 days and for which collection action has commenced.
- Advice that payments are no longer overdue
- Cheques drawn by you which have been dishonoured more than once
- That the credit provided to you by the credit provider has been paid or otherwise discharged.  
(Acknowledge by the individual).

### **Agreement that the credit provider may use a credit report about me for collecting overdue payments (Section 18K(H) Privacy Act 1988.**

If the Credit Provider considers it relevant to collecting overdue payments in receipt of commercial credit provided to me/us, I/We agree to the Credit Provider receiving from a credit reporting agency a credit report containing personal information about me/us in relation to collecting overdue payments.

### **Agreement to the credit provider seeking from or giving to other credit providers details about my/our credit worthiness (section 18N(1)(B)) Privacy Act 1988.**

I/We agree that the credit provider may give to and seek from any credit providers named in this credit application any credit providers that may be named in a credit report issued by a credit reporting agency information about my/our credit arrangements. I/We understand that this information can include any information about my/our credit worthiness, credit standing, credit history or credit capacity that credit providers are allowed to give and receive from each other under the Privacy Act.

