

STANDING HIRE AGREEMENT

Customer:

Name:			
ABN:			
Type of Entity:	<input type="checkbox"/> Sole Trader <input type="checkbox"/> Partnership <input type="checkbox"/> Company <input type="checkbox"/> Trust		
Address:			
Billing Address:			
Accounts Contact:			
Telephone:		Facsimile:	
Mobile:		Email:	

Date of Agreement: ___ / ___ / _____

Between:

1. Property & Projects Pty Ltd ACN 141 805 218 as Trustee for the Cross Family Trust ABN 26 003 769 703 trading as "AAC Temp Fence" (**AAC Temp Fence**) and
2. The Customer whose details are set out above (**Customer**).

Background:

- A. AAC Temp Fence is in the business of supplying and installing temporary fencing.
- B. The Customer is likely to have a recurring need for temporary fencing.
- C. AAC Temp Fence and the Customer enter into this Agreement to set out the terms and conditions which will apply to all temporary fencing hire transactions between them.

Operative Part:

1. Interpretation

Words and expressions defined in AAC Temp Fence's standard Hire Terms have the same meaning when used in this Agreement, unless otherwise stated.

2. Standing Agreement

- 2.1 AAC Temp Fence and the Customer agree that AAC Temp Fence's standard Hire Terms will apply to all hires of temporary fencing by AAC Temp Fence and the Customer, unless varied or terminated in writing.
- 2.2 The Customer acknowledges that AAC Temp Fence's Hire Terms may be varied from time to time. AAC Temp Fence will publish its current version on its website.
- 2.3 By way of example only, AAC Temp Fence's current Hire Schedule and Hire Terms are annexed to this Agreement.

3. **Hiring Agreement**

- 3.1 By completing and signing a Hire Schedule, the Customer acknowledges that a separate contract arises comprising:
- (a) the Hire Schedule; and
 - (b) AAC Temp Fence's then current standard Hire Terms (as varied by this Agreement).
- 3.2 For the purposes of the Hire Terms, the contract described in clause 3.1 constitutes the "Hiring Agreement".

4. **Quotes & pricing**

- 4.1 The Customer acknowledges that AAC Temp Fence's hire fees may be varied from time to time.
- 4.2 The Customer may seek a quote from AAC Temp Fence prior to any hire. AAC Temp Fence is bound to hire Fencing at the hire fees shown in a quote if:
- (a) the Customer accepts the quote within any period for acceptance set out in the quote; and
 - (b) the Customer accepts the quote unconditionally.
- The hire fees shown in a quote will apply even if through no fault of AAC Temp Fence, delivery of the Fencing is delayed beyond the date anticipated in the quote or any subsequent invoice or other document.
- 4.3 Subject to clause 4.2, AAC Temp Fence may charge and the Customer must pay AAC Temp Fence's hire fees applicable at the date of installation of Fencing to a Site at the request of the Customer.

5. **Credit terms**

5.1 Credit

- (a) AAC Temp Fence may, but is not obliged to, supply the Customer with the Fencing hire on terms that do not require payment in full at the time of delivery.
- (b) AAC Temp Fence may require the Customer to complete a formal credit application as a condition of extending credit.
- (c) AAC Temp Fence may withdraw, suspend or vary the conditions of credit at any time, with any such withdrawal, suspension or variation becoming effective immediately upon AAC Temp Fence giving the Customer written notice.

5.2 Credit Limit

- (a) AAC Temp Fence may set and vary credit limits for the Customer from time to time (**Approved Credit Limit**).
- (b) AAC Temp Fence may:
 - (i) vary the Customer's Approved Credit Limit at any time, with effect immediately upon AAC Temp Fence giving the Customer written notice; and
 - (ii) require the Customer to make a payment on or prior to delivery if any supply would cause the Approved Credit Limit to be exceeded.

5.3 Customer warranties

The Customer warrants and acknowledges that:

- (a) all of the information provided by the Customer to AAC Temp Fence is true and correct in every particular;
- (b) the Customer can pay its debts as and when they fall due;
- (c) each person who enters into this Agreement and signs any Hire Schedule on behalf of the Customer is (or at the time of making each order will be) authorised to do each of those things on behalf of the Customer,

and the Customer promises not to make any claim or seek to withhold any payment or avoid its obligations, in respect of any of the above matters.

5.4 Guarantee

- (a) AAC Temp Fence may require one or more persons to execute a Guarantee as security for obligations and payments due by the Customer to AAC Temp Fence under this Agreement, as a condition of extending credit and/or making supplies to the Customer.
- (b) If required, the Customer must immediately procure and deliver executed Guarantees to AAC Temp Fence.

5.5 Authority

- (a) The Customer authorises and consents to the release to AAC Temp Fence of any information sought by AAC Temp Fence from any bank, financial institution, credit provider, credit reporting agency or register. If requested by AAC Temp Fence, the Customer must sign any document needed to enable AAC Temp Fence to obtain such information.
- (b) AAC Temp Fence may obtain, and the Customer must provide, further information in relation to the Customer's credit history, from time to time.
- (c) AAC Temp Fence's rights under this clause 5.5 extend to any person who has or is required to give a Guarantee under clause 5.4.

5.6 AAC Temp Fence's rights

AAC Temp Fence may, at any time and in its absolute discretion (subject to the ACL) do any one or more of the following:

- (a) reduce the time for payment;
- (b) terminate any credit accommodation granted to the Customer;
- (c) demand immediate repayment from the Customer of all amounts owing (whether or not a due date for payment has arrived or passed);
- (d) impose interest and fees in accordance with the Hire Terms;
- (e) continue to supply the Customer on a cash on delivery basis.

6. **Termination**

6.1 AAC Temp Fence may terminate this Agreement at any time by:

- (a) written notice, effective immediately, if the Customer has not paid any payments on their due date for payment; or
- (b) not less than seven (7) days notice in any other case.

6.2 Termination does not prejudice rights which have accrued to a party before that termination.

7. **Disputes**

If a dispute arises regarding any matter relating directly or indirectly to this Agreement (other than a dispute arising from non-payment of an invoice) then prior to pursuing any other rights or proceedings in relation to the dispute, the parties must meet in good faith and use their best endeavours to resolve such dispute to their mutual satisfaction.

8. **Governing Law**

The laws of the State of Victoria apply to this Agreement.

9. **Miscellaneous**

9.1 Signatory warranty

The person or persons who sign this Agreement as or on behalf of the Customer warrant that each of them is authorised to enter into this Agreement on the Customer's behalf, and to bind the Customer to this Agreement (whether the Customer trades on its own account or as trustee).

9.2 Successors and assigns

This Agreement shall endure to the benefit of and be binding upon each of the parties and their respective successors, authorised assigns, attorneys and legal personal representatives.

9.3 No waiver or variation

A provision of or a right created under this Agreement may not be waived or varied except in writing signed by the party to be bound by the waiver or variation.

9.4 Nature of obligation

- (a) Any provision in this Agreement which binds more than one person binds all of them jointly and each of them individually.
- (b) Each obligation imposed on a party by this Agreement in favour of another is a separate obligation.

9.5 Severance

If any provision of this Agreement is judged invalid or unenforceable for any reason whatsoever by a court of competent jurisdiction, such invalidity or unenforceability (unless deletion of such provision would materially adversely affect one of the parties) will not affect the operation or interpretation of any other provision of this Agreement to the intent that the invalid or unenforceable provision will be treated as severed from this Agreement.

9.6 No merger

On completion or termination of the transactions contemplated by this Agreement, the rights and obligations of the parties set out in this Agreement will not merge and any provision that has not been fulfilled remains in force.

Executed as a Deed

Executed by Property & Projects Pty Ltd
ACN 141 805 218 in accordance with
Section 127 of the Corporations Act 2001

Signature of director/secretary

Name of director/secretary (print)

If the Customer is a company:

Executed by

(Print Customer Company Name)
in accordance with Section 127 of the
Corporations Act 2001

Signature of director/secretary

Name of director/secretary (print)

If the Customer is one or more individuals

Signed by

(Print Customer Name)
in the presence of:

Signature of witness

Name of witness (print)

Signature of director/secretary

Name of director/secretary (print)

Signature

HIRE TERMS

AAC Temp Fence agrees to hire and the Customer agrees to take on hire the Equipment on the following terms and conditions. By signing the Hire Schedule, the Customer acknowledges and confirms that the Customer has read, understood and accepted these terms and conditions.

1. INTERPRETATION

In these terms and conditions:

- 1.1 expressions described in the Hire Schedule have the meaning given to them in the Hire Schedule;
- 1.2 **AAC Temp Fence** means Property & Projects Pty Ltd ACN 141 805 218 as Trustee for the Cross Family Trust ABN 26 003 769 703 trading as "AAC Temp Fence";
- 1.3 **Customer** means the person or company named in the Schedule who takes the Equipment on hire, and includes any servant, agent or contractor of the Customer;
- 1.4 **Equipment** means the fencing and other equipment hired to the Customer by AAC Temp Fence and listed in the Inventory section of the Hire Schedule, including all panels, feet, clamps, bracing and other components;
- 1.5 **Hire Fee** means the amount specified in the Hire Schedule and payable by the Customer to AAC Temp Fence for the hire of the Equipment for the Hire Period;
- 1.6 **Hire Period** means the period set out in the Hire Schedule;
- 1.7 **Hire Schedule** means a schedule in AAC Temp Fence's standard form which sets out the details of the hire; and
- 1.8 **Hiring Agreement** means the Hire Schedule and these Terms and Conditions.

2. HIRE

AAC Temp Fence agrees to hire and the Customer agrees to take on hire the Equipment on the following terms and conditions.

3. INSTALLATION & REMOVAL

- 3.1 AAC Temp Fence will deliver and install the Equipment at the Site on or as soon as possible after the Installation Date, in accordance with the Customer's site plan or verbal directions.
- 3.2 The Customer acknowledges that AAC Temp Fence may need to alter the position of Equipment to accommodate services or obstacles.
- 3.3 AAC Temp Fence will remove all Equipment from the Site on the last day of the Hire Period, unless the Customer requests an extension of the Hire Period in accordance with clause 5.

4. HIRE FEES

- 4.1 The Customer agrees to pay all fees and charges levied under this Hiring Agreement plus all applicable goods and services tax (GST), and any other government taxes or duties that may apply.
- 4.2 AAC Temp Fence will invoice the Customer for the Hire Fee immediately after installation. Invoices will be sent to the Billing Address shown in the Hire Schedule.
- 4.3 AAC Temp Fence may require the Customer to pay a deposit, and if so, AAC Temp Fence is not obliged to deliver and install Equipment until that deposit has been paid in full.
- 4.4 The Customer must pay each invoice in full within 30 days of the date shown on the invoice. All payments must be made by direct deposit (into AAC Temp Fence's nominated bank account, as shown on the invoice), cash or cheque.
- 4.5 AAC Temp Fence may levy and the Customer must pay:
 - (a) interest on all late payments at the rate of 15% per annum; and
 - (b) a \$30.00 per week administration fee, calculated daily from the due date for payment until the entire amount overdue (plus all accrued interest) has been paid in full.

5. HIRE PERIOD

- 5.1 The Hire Period commences on the date Equipment is installed at the Site.
- 5.2 The Customer may request, prior to the end of the Hire Period, an extension of the Hire Period. If AAC Temp Fence agrees to the extension, the Customer must pay the Monthly Fee for each month or part thereof starting on the day after the end of the initial Hire Period, and ending on the date all Equipment is returned to AAC Temp Fence's possession.
- 5.3 If, through any act or omission of the Customer, AAC Temp Fence is unable to remove and recover possession of all Equipment at the end of the Hire Term, the Hire Period will be automatically extended for successive periods of one (1) month until the date all Equipment is returned to AAC Temp Fence's possession, and the Customer must pay the Monthly Fee for each month or part thereof.
- 5.4 Neither the Hire Fee nor the Monthly Fee will be pro-rated. For the avoidance of doubt, AAC Temp Fence is not obliged to refund any amount to the Customer if the Equipment is returned early.

6. INTERFERENCE

- 6.1 If the Customer moves or alters the Equipment on the Site:
 - (a) the Customer does so at its own risk; and
 - (b) the Customer must not damage the Equipment in doing so.
- 6.2 The Customer must not remove any of the Equipment from the Site without AAC Temp Fence's prior written approval.
- 6.3 If AAC Temp Fence agrees to relocate the Equipment to a new location, AAC Temp Fence may agree to do so subject to the Customer agreeing to pay AAC Temp Fence's reasonable costs of relocating and re-installing the Equipment.

7. LOSS AND DAMAGE

- 7.1 The Customer is responsible for all loss, theft or damage of the Equipment whilst the Equipment is on any site at the request of the Customer.
- 7.2 If, after Equipment is returned to AAC Temp Fence's possession, any components are missing or damaged, AAC Temp Fence will invoice the Customer in accordance with its current Damaged & Lost Equipment Schedule (as published on AAC Temp Fence's website from time to time), and clauses 4.4, and 4.5 shall apply.

8. CUSTOMER OBLIGATIONS

- 8.1 The Customer must not, without the prior consent of AAC Temp Fence, make any substantial repairs, alterations, additions or replacements to the Equipment.
- 8.2 The Customer must:
 - (a) return the Equipment to AAC Temp Fence in the same condition as when delivered (fair wear and tear excepted);
 - (b) not do or cause or suffer to be done any act, matter or thing which is likely to endanger the safety or condition of the Equipment; and

- (c) pay to AAC Temp Fence on demand all money which AAC Temp Fence pays or is liable to pay to make good any failure by the Customer to comply with any obligation under this Hiring Agreement and all other costs and expenses, including legal costs and expenses that AAC Temp Fence may incur in the enforcement or protection or attempted enforcement or protection of AAC Temp Fence's rights under this Hiring Agreement or in the Equipment, including money paid by AAC Temp Fence in releasing any lien or other encumbrance claimed on the Equipment and in dismantling and removing Equipment from any premises.

9. GUARANTEES

- 9.1 AAC Temp Fence may require one or more persons to provide a personal guarantee as security for obligations and payments due by the Customer to AAC Temp Fence under this Hiring Agreement, as a condition of extending credit and/or hiring Equipment and/or continuing to hire Equipment to the Customer.
- 9.2 If required, the Customer must immediately procure and deliver executed personal guarantees (in the form required by AAC Temp Fence) to AAC Temp Fence.

10. SECURITY INTEREST

- 10.1 In this clause 10, terms which are defined in the *Personal Property Securities Act 2009 (Cth)* (PPSA) have the meaning given to them in the PPSA.
- 10.2 The Customer agrees to grant AAC Temp Fence a security interest in all present and after-acquired property and their proceeds to secure payment of all fees and charges payable under this Hiring Agreement.
- 10.3 At the request of AAC Temp Fence, the Customer agrees to promptly execute any documentation necessary, or to do anything else required by AAC Temp Fence, to ensure that the security interest created under this Hiring Agreement shall constitute a first ranking, perfected security interest over the Customer's property and proceeds. This includes providing any information necessary for AAC Temp Fence to complete a financing statement or financing change statement.
- 10.4 The Customer waives the Customer's right to receive a copy of a verification statement under the PPSA.
- 10.5 The Customer agrees to reimburse AAC Temp Fence for all costs and charges incurred, expended or payable by AAC Temp Fence in relation to the filing of a financing statement or financing change statement in accordance with this Hiring Agreement.

11. TERMINATION

- 11.1 AAC Temp Fence may terminate the Hiring Agreement and remove the Equipment from the Site at any time if:
 - (a) the Customer commits a material breach of the Hiring Agreement; or
 - (b) any of the following events occurs in relation to the Customer:
 - (i) execution or other process issued on a judgement, decree or order of an Australian court in favour of a creditor of the Customer is returned wholly or partly unsatisfied;
 - (ii) it becomes an insolvent under administration (as defined in section 9 of the *Corporations Act 2001*) or action is taken that could result in that event;
 - (iii) it becomes an externally-administered body corporate (as defined in the *Corporations Act 2001*);
 - (iv) steps are taken by any person which towards making the Customer an externally-administered body corporate;
 - (v) it is subject to the appointment of a controller (as defined in the *Corporations Act 2001*), trustee, trustee-in-bankruptcy, external administrator or guardian in respect of all or part of its property;
 - (vi) it is taken to have failed to comply with a statutory demand within the meaning of section 459F of the *Corporations Act 2001*; or
 - (vii) anything analogous or having a substantially similar effect to any of the events specified above happens in relation to the Customer, under any applicable law.
- 11.2 If the Hiring Agreement is terminated early for any reason, clause 5.4 applies.

12. GENERAL

- 12.1 Disputes: If a dispute arises regarding any matter relating directly or indirectly to this Hiring Agreement (other than a dispute arising from non-payment of an invoice) then prior to pursuing any other rights or proceedings in relation to the dispute, the parties must meet in good faith and use their best endeavours to resolve such dispute to their mutual satisfaction.
- 12.2 Governing Law: The laws of the State of Victoria apply to this Hiring Agreement.
- 12.3 Signatory warranty: The person or persons who sign this Hiring Agreement as or on behalf of the Customer warrant that each of them is authorised to enter into this Hiring Agreement on the Customer's behalf, and to bind the Customer to this Hiring Agreement (whether the Customer trades on its own account or as trustee).
- 12.4 No waiver or variation: A provision of or a right created under this Hiring Agreement may not be waived or varied except in writing signed by the party to be bound by the waiver or variation.
- 12.5 Nature of obligation:
 - (a) Any provision in this Hiring Agreement which binds more than one person binds all of them jointly and each of them individually.
 - (b) Each obligation imposed on a party by this Hiring Agreement in favour of another is a separate obligation.
- 12.6 Severance: If any provision of this Hiring Agreement is judged invalid or unenforceable for any reason whatsoever by a court of competent jurisdiction, such invalidity or unenforceability (unless deletion of such provision would materially adversely affect one of the parties) will not affect the operation or interpretation of any other provision of this Hiring Agreement to the intent that the invalid or unenforceable provision will be treated as severed from this Hiring Agreement.
- 12.7 No merger: On completion or termination of the transactions contemplated by this Hiring Agreement, the rights and obligations of the parties set out in this Hiring Agreement will not merge and any provision that has not been fulfilled remains in force.