

CONDITIONS OF HIRE

1. Definitions

"charges" means our quoted charges for the hire of the equipment calculated by reference to a daily rate under our contract or other agreed rates.

"consumer" means an individual who acquires our equipment (goods) wholly or predominately for personal, domestic or household use or consumption.

"contract" means the equipment hire contract between you and us including these conditions.

"equipment" means the equipment listed in our contract.

"hire period" means the period of hire commencing on the date specified in the contract and ending on the date specified in the contract, or when the equipment is back in our possession, whichever is the later.

"laws" means all applicable laws, regulations, guidelines, codes, standards or policies of the Commonwealth of Australia, any state, territory or local authority, including the Road Safety Road Rules 2009 (Vic).

"place of collection" means the address nominated by you at which we or a third party arranged by us collects the equipment.

"place of delivery" means your nominated address to which we or a third party arranged by us delivers the equipment.

"PPSA" means the *Personal Property Securities Act 2009* (Cth).

"premises" mean Majestic Baby's premises

"purchase money security interest" has the same meaning as under the PPSA.

"security bond" means the amount specified under our contract payable by you.

"security interest" has the same meaning as under the PPSA and for the avoidance of doubt, includes a purchase money security interest.

"us", "we", "our" means Majestic Baby Pty Ltd ACN 151 523 814

"you", "your" means the person, firm, partnership, corporation or other entity contracting with us.

2. Consumer contract

If you are a consumer:

- (a) these conditions do not affect any rights you have under Schedule 2 of the *Competition and Consumer Act 2010* (Cth);
- (b) condition 6.5 (contracting out of the PPSA), 5.3 (change in rates), condition 10 (limitations and exclusions of liability) except for condition 10.4*, and condition 11 (termination) do not apply to this contract;
- (c) the laws in force in the place in which the contract is made apply to the contract.

*Condition 10.4 is a list of causes of loss or damage for which we won't pay.

3. Hire of equipment to you

3.1 We hire the equipment to you for the hire period.

3.2 Our charges commence from the start of the hire period and continue until the equipment is back in our possession.

4. Delivery of equipment

4.1 Subject to condition 4.2, you must pick up the equipment from our premises at the time and on the day specified by us.

4.2 If you so request, we may deliver the equipment to the place of delivery at your risk and expense.

4.3 We will have delivered the equipment to you if at the place of delivery we obtain an acknowledgement of delivery.

4.4 If the delivery address you gave us is unattended during normal business hours or the prearranged delivery period, we may store the equipment or re-deliver the goods at your expense.

4.5 You may return the equipment to us at our premises between 9 am and 5 pm or at any other time agreed with us, or, if you so require we will collect the equipment from the place of collection at your risk and expense.

5. Our charges

5.1 You must pay us the security bond and our charges for the hire period, at our option:

- (a) when your order is processed; or
- (b) at the time of delivery/pick up.

5.2 You must also pay:

- (a) any storage or re-delivery charges as under condition 4.4;
- (b) any additional charges we incur to clean the equipment at the end of the hire period;
- (c) additional charges we incur to replace or repair the equipment at the end of the hire period if you lose or damage it;
- (d) interest at the rate under the *Penalty Interest Rates Act 1983* (Vic) if any charges are not paid on the date for payment.

5.3 We may change our charges at any time with notice to you.

6. Security interest under the PPSA

6.1 The equipment is and remains at all times our property and that at all times you hold the equipment as a bailee from us.

6.2 You promise you have not granted, and will not grant to, any other person a security interest in the equipment.

6.3 You must do anything (including providing information, obtaining consents, signing and producing documents and arranging for documents to be completed and signed) that we request and consider necessary to:

- (a) ensure that any security interest in the equipment is enforceable, perfected and otherwise effective;

- (b) enable us to apply for any registration, or give any notification, about the security interest so that the interest has the priority required by us; or
 - (c) enable us to exercise rights about the security interest.
- 6.4 You must pay us any costs we incur in doing anything required by this condition 6 and must reimburse our costs and expenses (including legal fees) for anything you are required to do under this condition 6 but do not do.
- 6.5 To the extent permitted by law, if the PPSA applies, you irrevocably waive any rights you may have to:
- (a) receive notices or statements under sections 95, 121(4), 125, 130, 132(3)(d), 132(4) and 135 of the PPSA;
 - (b) redeem the equipment under section 142 of the PPSA;
 - (c) reinstate this agreement under section 143 of the PPSA; and
 - (d) receive a verification statement (as defined in the PPSA).
- 7. What you must do and not do**
- 7.1 You must inspect the equipment at the time of delivery or pick-up to ensure the equipment is fit for the purposes for which you propose to use it. If it is not, advise us and we will supply alternative equipment, or you may end this contract and we will return to you all charges and security deposit paid.
- 7.2 You must:
- (a) use the equipment in a proper manner and only for the purpose and within the capacity or fitness for purpose for which it is designed;
 - (b) use the equipment under the manufacturer's instructions a copy will be made available to you or may be downloaded from our website www.majesticbaby.com.au
 - (c) ensure that safety harnesses are used on the equipment (if applicable);
 - (d) comply with all laws;
 - (e) ensure the equipment is in good and clean condition at the end of the hire period; and
 - (f) notify us when the equipment is ready to collect at the place of collection if we are to do so.
- 7.3 You must immediately notify us if the equipment:
- (a) is damaged during the hire period, or you notice a fault in the equipment; or
 - (b) is involved in a traffic incident.
- 7.4 You must unpack the equipment when picking-up or accepting delivery of it at the place of delivery at the start of the hire period; and you must pack it when returning it to us, or when we collect it from the place of collection, at the end of the hire period.
- 7.5 You indemnify us against any cost or liability we incur, pay or have to pay in dealing with any claim against us for loss or damage to property or illness, injury or death, to the extent caused:

- (a) by your breach of contract or these conditions; or
- (b) by a negligent wilful, or unlawful act or omission of you or any person acting for you,

and there is no need for us to suffer loss or damage before enforcing this right of indemnity.

8. What we can do

- 8.1 We will not release the security bond to you unless all the equipment is returned to us in the same condition as when you picked it up or it was delivered to you at the place of delivery, less fair wear and tear.
- 8.2 We may retain the security bond or any part of it which we believe is necessary to repair any damage to the equipment or to clean it.
- 8.3 We may extend the hire period if you notify us at least 24 hours before the date specified as the end of the period of hire in the contract.

9. Risk and responsibility

- 9.1 Risk in the equipment passes to you when the equipment is either delivered to the place of delivery or picked-up by you from our premises, and continues until you return the equipment to our premises or we collect it from the place of collection.
- 9.2 You accept full responsibility for the safekeeping, care and good order of the equipment while in your custody and care.

10. Limitations and exclusions on our liability to you

- 10.1 We do not exclude or limit the application of any laws, including Schedule 2 of the *Competition and Consumer Act 2010* (Cth), where to do so would contravene those laws or cause any part of these conditions to be void.
- 10.2 We exclude from these conditions all conditions, warranties, terms and consumer guarantees implied by laws, general law or customer except any the exclusion of which would contravene any laws or cause this condition to be void ("Non-Excludable Condition").
- 10.3 We exclude all liability to you or any other person for, and you indemnify us against, any claim by any person about, any loss, damage to the equipment or to any property, or injury or death to persons arising out of the use, installation, or delivery of the equipment.
- 10.4 We will not pay for any loss or damage if it is caused by:
 - (a) incorrect or incomplete information provided by you;
 - (b) an act or omission by a third party courier, or any person acting on your behalf.
- 10.5 Our liability to you for any breach of a Non-Excludable Condition is limited to at our option the:
 - (a) replacement of the equipment or the supply of equivalent equipment;
 - (b) repair of the equipment;
 - (c) payment of the cost of replacing the equipment or of acquiring equivalent equipment; or
 - (d) payment of the cost of having the equipment repaired.

- 10.6 We will not pay any indirect, economic, special or consequential loss or damage including but not limited to loss of revenue, profit, production, business, anticipated savings or claims by you, even if we know they are possible or otherwise foreseeable.
- 10.7 These conditions apply even in circumstances arising from a fundamental breach of contract or breach of a fundamental term.

11. Termination

- 11.1 We may terminate our contract with you:
- (a) at any time by giving you 5 days notice; or
 - (b) without notice if you breach our contract, including these conditions.
- 11.2 Upon termination you must immediately return the equipment to us, or make it available so we can collect it from the place of collection.

12. Other matters which affect the contract

- 12.1 The laws of Victoria apply to the contract and you must bring any proceeding against us in a court of Victoria.
- 12.2 If a condition or part of a condition is unenforceable, it must be severed from and does not affect the rest of the contract.
- 12.3 We are not bound by any waiver, discharge or release of a condition or any agreement which changes the contract, unless it is in writing and signed by or for us.
- 12.4 A reference to any law includes any statutory modification, substitution or re-enactment of it.

