



Terms and Conditions of Hire

1. Definitions

Big and Bulky Goods means Christmas Trees and/or Christmas Decorations.

Business Day means a Week day in which trading banks are open for the transaction of banking business in Melbourne, Australia.

Delivery Address means the address to which the Goods are to be delivered as stated on Your Order.

Delivery Agent means a nominated third party delivery or shipping company for The Happy Christmas Co.

Delivery Fee means the fee charged by the Delivery Agent for the delivery of Goods under clause 8.

Gift Voucher means an online voucher which you or a recipient may make non-cash payments for Goods or services from The Happy Christmas Co.

Goods means the items offered for sale or hire described or displayed on the Website.

GST has the meaning given in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Hirer means any person who requests to hire Goods from The Happy Christmas Co.

Law means any written rule or collection of rules, including, but not limited to any statute, regulation, order or rule, any government ordinance or by-law, any governmental agency's rule, regulation or determination, and any form of custom or policy recognised and enforced by judicial decision.

On-site Service means that The Happy Christmas Co. needs to attend the place of delivery to provide a service in conjunction with the delivery of the Goods, e.g. gift wrapping, Christmas tree assembly, decoration of Christmas tree.

Order means a request by you to purchase or hire Goods from The Happy Christmas Co. under these Terms.

Personal Information has the meaning given in the *Privacy Act 1988* (Cth).

Price means the purchase or hire price of each Good as specified on the Website (including GST).

Privacy Policy means the Happy Christmas Co. Privacy Policy found on the Website. View The Happy Christmas Co. Privacy Policy here.

Purchaser means any person who purchases Goods from The Happy Christmas Co.

Returns and Cancellation Policy means the Happy Christmas Co. Returns and Cancellation Policy found on the Website. View The Happy Christmas Co. Returns and Cancellation Policy here.

Terms means the Terms and Conditions of hire

Terms and Conditions of Hire means the terms specifically relating to Goods that are hired by us to you.

The Happy Christmas Co. means Minny and Max Pty Ltd trading as the Happy Christmas Company (Co.) ABN 19168371711.

We, us or our means The Happy Christmas Co.

Website means the sites available from <http://www.thehappychristmasco.com.au>

Website Terms means the terms governing your use of the Website, in addition to these Terms.

You, your means the Hirer and/or Purchaser.

2. General

2.1. The General Terms and Conditions are also applicable and should be read in conjunction with the Terms and Conditions of Hire. Where there is any inconsistency between the General Terms and Conditions and the Terms and Conditions of Hire, the Terms and Conditions of Hire will prevail.

2.2. The Price quoted for Goods includes one instance of:

2.2.1. Delivery on the date scheduled by The Happy Christmas Co. and

2.2.2. Collection, on one occasion on one of the pre-set

days after Christmas

2.3. The Happy Christmas Co. agrees to hire the Goods to the Hirer on these Terms and the terms of the Order. If there is any inconsistency, these Terms prevail.

2.4. Upon termination of hire, The Happy Christmas Co. is entitled to take possession of the Goods immediately and for this purpose the Hirer irrevocably appoints the Owner as the Hirer's agent and authorises The Happy Christmas Co. to:

2.5. enter upon any land or premises upon which the Goods is situated or where The Happy Christmas Co. has any reason to believe that the Goods may be situated; and

2.6. remove the Goods whether or not it is affixed to the land or premises connected to property or Goods not owned by The Happy Christmas Co., in use by the Hirer or any other person or containing property not owned by The Happy Christmas Co., in Use by the Hirer or any other person or containing property not owned by The Happy Christmas Co.

2.7. If the Goods is not ready for pick-up on the date The Happy Christmas Co. has agreed beforehand to collect, the Hirer shall pay an additional charge of \$59 for each unsuccessful attempt that that the Owner makes to collect.

2.8. To pack up Goods we require a minimum of 3m2 of clear floor space where the Goods is located.

3. The Hirer's Obligations

3.1. The Hirer will:

3.1.1. hire the Goods at its own risk, and bear responsibility for the Goods hired from the time of its delivery into the possession of the Hirer until collection by or return to the Owner;

3.1.2. where necessary be responsible to obtaining the necessary permission needed to install and use the Goods;

3.1.3. upon installation or delivery of the Goods, immediately examine the Goods to satisfy itself as to its condition and suitability and fitness for the purpose to which it requires the Goods. In accepting the Goods, the Hirer acknowledges that it has duly examined the Goods and has satisfied itself as required. The Hirer acknowledges that it has not in any way relied upon the skill or judgment or any representation made by or on behalf of The Happy Christmas Co. Owner in respect of the Goods, its purpose, suitability or performance. Should the Hirer alter its installation or delivery requirements prior to, during, or after installation or delivery, the Hirer is liable for all extra costs of The Happy Christmas Co.'s employees, agents and cartage;

3.1.4. keep the Goods safe until collection;

3.1.5. without the written consent of The Happy Christmas Co., not move, replace, alter, adjust or tamper with Goods once installed; not sub-hire, part with possession or part with control of, the Goods, without the Owner's written permission; assume the risk of and indemnify and hold the Owner harmless from and against any and all property damage and personal injury resulting from the Use of the Goods;

3.1.7. use the Goods in a proper, safe and prudent manner and only for the purpose and capacity for which it was designed;

3.1.8. turn off any lights or other electrical Goods which have been installed on the Goods when unsupervised;

3.1.9. comply with any written instructions given to the Hirer or accompanying the Goods; and

3.1.10. ensure all Goods is ready for collection by The Happy Christmas Co., and is readily accessible.

4. Property

4.1. The Hirer acknowledges that The Happy Christmas Co. may inspect the Goods at any time during the period of hire, whether notice of such inspection is given to the Hirer or not, and the Hirer shall provide all assistance and co-operation necessary to facilitate such inspection of the Goods. The Hirer shall indemnify the Owner in relation to any action of trespass or any other action or claim against

the Owner in the course of the Owner exercising its right to inspect the Goods.

- 4.2. The Hirer acknowledges that all property in and title to the Goods at all times remains with the Owner, the Hirer does not acquire any property in or title to the Goods and the Hirer's interest in the Goods is as bailee of the Owner only.

5. Loss of or Damage to Goods

- 5.1. If the Goods are lost, break or are damaged, the Hirer must immediately notify the Owner of the details. Notification shall not absolve the Hirer from its obligations under these Terms. In the event that the Goods breaks down or becomes unsafe to Use, the Hirer shall immediately stop using the Goods and take all steps necessary to prevent the Goods from sustaining any further damage. The Hirer must also take all steps necessary to prevent injuries from occurring to any person or property as a result of the condition of the Goods and must not repair or attempt to repair the Goods. If the Goods is lost or damaged and the loss of or damage to the Goods is caused by the negligence or willful act or omission of the Hirer or the breach of any of these Terms by the Hirer, the Hirer shall without limitation be liable for;
 - 5.1.1. any costs incurred by the Owner in repairing or replacing the Goods;
 - 5.1.2. hire charges for the Goods until the Goods is repaired or replaced; and
 - 5.1.3. any other costs whatsoever incurred or loss suffered by the Owner as a result of the damage to or loss of the Goods.

6. Release and Indemnity

- 6.1. The Hirer hereby releases the Owner from, and agrees to indemnify the Owner in respect of any third party claims, action, suits, demands, costs and expenses for damage or injury to person or property arising directly or indirectly out of the hire or Use of the Goods by the Hirer or the Hirer's breach of any of these terms.

7. Damage Waiver

- 7.1. Please note this is separate and distinct from insurance (refer clause 7.1.4). The Hirer agrees to pay a damage waiver to the Owner to cover any costs associated with any accidental damage to a particular item of Goods, provided that the replacement cost and/or the cost of repairs to any Goods which was damaged does not exceed 5% of the hiring fee for the particular item of Goods. If the damage exceeds 5% of the hiring fee for the particular item of Goods, then clause 4.2 shall apply. The damage waiver does not apply to or cover any other damage to or loss of Goods including, without limitation:
 - 7.1.1. damage resulting from misuse, abuse or improper servicing of Goods;
 - 7.1.2. damage or loss due to disappearance of the Goods;
 - 7.1.3. damage caused by the Use or operation of Goods in contravention of any of these Terms; and
 - 7.1.4. damage to, or loss of, the Goods from any unknown cause.

8. Insurance

- 8.1. The Hirer will maintain at its own expense all appropriate policies of insurance:
 - 8.1.1. for theft and damage to the Goods hired in an amount not less than the full replacement cost of the Goods; and
 - 8.1.2. for liability, property and casualty insurance coverage in amounts necessary to fully protect the Owner and its Goods against all claims, loss or damage whatsoever.

9. Limitation of Liability

- 9.1. To the full extent permitted by law, all warranties, conditions and guarantees that may otherwise apply or be implied are excluded and the Owner's only obligation resulting from a breach by it or of any condition, warranty or guarantee that cannot be excluded is limited to replacing the Goods or supplying Goods similar to the Goods, repairing the Goods, paying the cost of replacing the Goods or paying the cost of repairing the Goods.

10. Security Interest

- 10.1. These Terms create a security interest in favour of the Owner in the Goods pursuant to the Personal Property Securities Act 2009 (Cth).
- 10.2. The Hirer undertakes to immediately do such acts and provide such information as in the Owner's opinion may be necessary or desirable to enable the Owner to perfect any security interest created or provided for by these Terms, as a perfected security interest with first priority.
- 10.3. To the fullest extent permitted by law, the Hirer waives any rights it may have now or in the future to receive a copy of any verification statement or other confirmation related to the interests created or provided for, or perfected in the manner contemplated by, these Terms.

11. Force Majeure

- 11.1. If the Owner is unable at any time to perform any of its obligations whether wholly or partly by reason of any cause beyond its control (including without limitation, acts of God, inclement Weather, strikes, lockouts, fires, riots, civil commotion or unrest, interference by civil or military authorities or act of war) the Owner may give written notice to that effect to the Hirer, giving full particulars of such force majeure in which case the obligations of the Owner under these Terms shall, to the extent that they are affected by the force majeure, be suspended during the term of the force majeure. The Owner shall not be liable for any loss or damage suffered by the Hirer as a result of any delays caused by such force majeure events.

12. Charge

- 12.1. The Hirer charges in favour of the Owner all its estate and interest in land and in any other assets whether tangible or intangible in which the Hirer now has any legal or beneficial interest or in which the Hirer may later acquire any such interest with payment of all monies owed by the Hirers and agree upon request in writing, to execute a registrable instrument transferring to the Owner, the Hirers estate and interest by way of security.

13. Miscellaneous

- 13.1. The Happy Christmas Co. reserves the right at all times to make changes to the General Terms and Conditions, the Terms and Conditions of Hire and the Returns, Changes and Cancellation Policy. Any variations to the General Terms and Conditions, the Terms and Conditions of Hire and the Cancellation and Returns Policy will take effect from posting on the Website. The General Terms and Conditions, the Terms and Conditions of Hire and the Returns, Changes and Cancellation Policy which apply at the time of Order are those that govern your relationship with The Happy Christmas Co. with respect to that Order.
- 13.2. The Happy Christmas Co. may give notice to you by electronic mail. You may give notice to The Happy Christmas Co. by electronic mail to contact@thehappychristmasco.com.au.
- 13.3. Any provision of these Terms 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 these Terms or affect the validity or enforceability of that provision in any other jurisdiction.
- 13.4. A failure or delay by The Happy Christmas Co. to exercise a power or right under these Terms does not constitute as a waiver of that power or right, and the exercise of a power or right by The Happy Christmas Co. does not preclude its future exercise or the exercise of any power or right.
- 13.5. A reference to a clause is a reference to a clause of these Terms.
- 13.6. The laws of Victoria, Australia govern this agreement. Your transaction is deemed to have taken place in Melbourne, Victoria.