

Pull up a Chair - Hire Terms

1 Definitions

1.1 In this Agreement:

- (a) **Agreement** means this agreement comprising the Details, these Hire Terms and any Annexures.
- (b) **Commencement Date** means the Date of this Agreement in the Details or if no date is written then the date the Deckchair is despatched by Us to You.
- (c) **Delivery Date** means the date that We deliver the Deckchair to You at the Delivery Address.
- (d) **Deckchair Terms of Use** means the Deckchair terms of use in Annexure A.
- (e) **Deckchair** means the deckchair and any Associated Equipment specified in the Details.
- (f) **GST Act** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and GST has the meaning set out in the GST Act.
- (g) **Invoice** means an invoice for the Total Hire Charge and/or any other payments payable under this Agreement, provided by Us and payable by You.
- (h) **Perth Metropolitan Area** means generally an area within 50 kilometres from the Perth CBD. We will confirm whether your Delivery Address is within the Perth Metropolitan Area when you submit your application to us.
- (i) **PPS Law** means the *Personal Property Securities Act 2009* (Cth) and the associated regulations.
- (j) **Return Date** means the date that We accept the return of the Deckchair to Us.
- (k) **Us, We, Our** refers to Pull Up A Chair Pty Ltd ACN 621 299 787 of 40 Barridale Drive Kingsley, WA 6026.
- (l) **You, Your** refers to the Hirer.
- (m) no provision of this Agreement will be construed adversely to a party because that party was responsible for the preparation of this Agreement;
- (n) where You comprise more than one person, the undertakings and agreements on their part contained or implied in this Agreement bind them jointly and each of them separately;
- (o) the words 'including' or 'for example' are not words of limitation; and
- (p) headings do not affect the meaning of this Agreement.

2 Hire and Hire Term

- 2.1 We will hire the Deckchair to You and You will hire Deckchair from Us for the Hire Term at the Hire Charges and on the terms of this Agreement, and we will provide the Deckchair to You in good working order.
- 2.2 This Agreement commences on the Agreement Date and continues until the Return Date. We may agree to extend the Hire Term, but We are under no obligation to agree to any extension
- 2.3 By signing this Agreement and/or paying Our Invoice, You are deemed to have accepted the terms of this Agreement.

3 Delivery, Installation and Return of the Deckchair

- 3.1 Upon receipt of the Total Hire Charge in cleared funds, subject to clause 3.2 We will deliver and install the Deckchair at the Delivery Address on the Delivery Date.
- 3.2 Delivery times are estimates only. While We will endeavour to deliver the Deckchair on the Delivery Date, We are not liable to You for any loss or damage arising from late or non-delivery. Delivery to a Delivery Address outside the Perth Metropolitan Area may incur an additional fee as set out in the Details.
- 3.3 At least one (1) week before the Delivery Date, You must provide Us with a site plan showing where and how the Delivery Address can be accessed for delivery and installation of the Deckchair.
- 3.4 You agree that suitability of, access to and on-site arrangements for delivery and/or installation of the Deckchair is Your sole responsibility, and you have made all necessary arrangements for the safe and lawful delivery and installation of the Deckchair at the Delivery Address.
- 3.5 We are not and will not be responsible nor liable for any loss or damage arising from the Delivery Address being unsuitable or inaccessible to deliver and/or install the Deckchair at any time.

3.6 We may cancel the delivery and/or installation of the Deckchair at any time, if We decide in our discretion that it would be unlawful or unsafe to deliver or install the Deckchair to You at the Delivery Address for any reason including due to weather conditions. If We cancel the delivery and/or installation of the Deckchair in accordance with this clause, You agree that you will only be entitled a credit of the Total Hire Charge to be used on an alternative Delivery Date to be agreed between the parties.

3.7 Upon the expiry of the Hire Term or early termination of this Agreement, We will take possession of the Deckchair and You must permit Us to access the Delivery Address for the sole purpose of taking possession of the Deckchair.

4 Ownership of the Deckchair

4.1 We retain legal and beneficial title to the Deckchair notwithstanding:

- (a) the delivery of the Deckchair to You; and
- (b) the possession and use of the Deckchair by You during the Hire Term.

5 Your obligations

5.1 You must at all times following the delivery of the Deckchair and throughout the Hire Term:

- (a) retain possession and control of the Deckchair;
- (b) keep and maintain the Deckchair in proper working order and condition and in good and substantial repair;
- (c) protect the Deckchair from theft, seizure and loss;
- (d) only use the Deckchair in a proper and skilful manner and in strict compliance with the Deckchair Terms of Use and all applicable laws including all relevant health and safety legislation;
- (e) display the Deckchair Terms of Use in a prominent position near the Deckchair as directed by Us;
- (f) not move, relocate or reposition the Deckchair for any reason after it is delivered and installed by Us at the Delivery Address;
- (g) not service, repair, alter, tamper with, damage or modify the Deckchair in any manner including the removal, obscuring or modification of, or addition to, all or any part of the Deckchair Terms of Use or other instructions, labels, trade marks or other markings attached to the Deckchair, without Our prior written consent;
- (h) not sell, offer for sale, part with possession of, mortgage, assign, transfer, charge, encumber or otherwise deal with the Deckchair;
- (i) maintain at your cost all appropriate policies of insurance, including insurance for personal injury of any user of the Deckchair, and fire damage and theft; and
- (j) allow Us to enter the Delivery Address to inspect, observe the use of or do any other thing which may be required to be done to protect Our rights in the Deckchair.

5.2 If You require repositioning of the Deckchair, You must immediately contact Us on Our Phone number specified in the Details and We will determine, in Our discretion, whether or not to accept Your request to reposition the Deckchair. If We accept Your request to reposition the Deckchair, clause 6.3 applies.

5.3 You acknowledge and agree that:

- (a) You are responsible and liable for any loss of or damage to the Deckchair however occasioned;
- (b) without limiting Our rights or remedies under this Agreement, We are entitled to debit the Security Deposit for the cost of any loss or damage to the Deckchair however occasioned; and
- (c) if You fail to perform or comply with the terms of use in this clause 5, We may terminate this Agreement in accordance with clause 10.3.

6 Total Hire Charge and other payments

6.1 You must pay the Total Hire Charge by cleared funds on or before the Hire Charge Payment Date via the payment method specified in Our Invoice, before We hire the Deckchair to You.

6.2 You agree that no credit or refund of the Total Hire Charge is given for any part of the period where Deckchair is not used for any reason or returned to Us prior to the expiry of the Hire Term.

- 6.3 Subject to clause 5.2, if the on-site conditions of the Delivery Address change or You require repositioning of the Deckchair, this will be at Your cost. We will notify You of any additional charges to reposition the Deckchair and such charges must be paid for in full before the Deckchair is repositioned.
- 6.4 Within fourteen (14) days of the Return Date, We will refund the Security Deposit to You via the payment method that You paid our Invoice or another method as notified by Us to You, minus any outstanding charges under this Agreement including any charges payable pursuant to clause 5.3 for any loss or damage to the Deckchair.
- 6.5 If an amount is due under this Agreement but is unpaid, interest shall be due on the overdue amount at the rate specified by the Reserve Bank of Australia cash rate target (accessible at <http://www.rba.gov.au/statistics/cash-rate/>) current at the date such amount is due, calculated daily from the due date until the payment is received in full.
- 6.6 In this clause, a word or expression defined in the GST Act has the meaning given to it in that Act. In this Agreement:
- any prices supplied under this Agreement are exclusive of GST unless expressly provided otherwise; and
 - if a party makes a supply under or in connection with this Agreement in respect of which GST is payable, the consideration for the supply but for the application of this clause 6.6 (**GST Exclusive Consideration**) is increased by an amount equal to the GST Exclusive Consideration multiplied by the rate of GST prevailing at the time the supply is made.
- 7 Exclusion of liability**
To the maximum extent permitted by law, you agree:
- 7.1 the Deckchair is provided 'as is' without warranty of any kind, express or implied;
- 7.2 We exclude all warranties whether express, implied, statutory or otherwise relating in any way to the Deckchair, the delivery and/or installation of the Deckchair and/or any other subject matter of this Agreement. Nothing in this clause restricts or modifies any right of remedy under the *Australian Consumer Law*;
- 7.3 to use and possess the Deckchair entirely at Your risk and You agree that We are not responsible or liable for any loss or damage as a result of use of the Deckchair by You or any third party while the Deckchair is hired to You pursuant to this Agreement. To the maximum extent permitted by law, You release and discharge Us and Our agents and employees from:
- all claims and demands on Us; and
 - any loss or damage whatsoever and whenever caused to You
- arising directly or indirectly from or incidental to any defect in any Deckchair or any accident to or involving any Deckchair or its use, operation, repair, maintenance or storage or which may otherwise be suffered or sustained in, upon or near any Deckchair;
- 7.4 for any loss or damage which cannot otherwise be excluded by law, Our liability for any loss or damage which You or any third party suffers arising from, or caused or contributed to by, Our negligence, is limited to the Total Hire Charge paid by You; and
- 7.5 neither party is liable to the other for any indirect or consequential loss or special damage incurred by the other party under or in relation to this Agreement.
- 8 Indemnities**
To the maximum extent permitted by law, you agree:
- 8.1 that You are liable for and indemnify Us against any and all liabilities, claims, action, damage, loss, costs, penalties and expenses (including legal fees and costs) which We suffer, incur or are liable for in connection with (a) a breach by You of this Agreement, (b) Your hire or use of the Deckchair and/or (c) any other act or omission by You pursuant to this Agreement or in relation to the Deckchair.
- 8.2 the indemnities and assumptions of liability contained in this clause survive the expiry or termination of this Agreement.
- 9 PPS Law**
9.1 You agree that We may take all such steps to register, protect, perfect, record or secure Our interest in respect of the Deckchair under the PPS Law. You agree to do all things and sign any documentation as is necessary and reasonably required to enable Us to register, protect, perfect, record or secure Our interest in respect of the Deckchair under the PPS Law.
- 10 Termination**
10.1 You may terminate this Agreement and cancel the delivery and/or installation of the Deckchair by notifying Us on Our Phone Number in the Details.
- 10.2 If You cancel the delivery and installation of the Deckchair:
- more than twenty eight (28) days before the Delivery Date, We will refund the Total Hire Charge to You.
 - less than twenty eight (28) days before the Delivery Date, We will refund the Total Hire Charge minus the Security Deposit, to You.
- 10.3 We may terminate this Agreement at any time without liability to You if:
- You fail to pay the Total Hire Charge or other charges payable under this Agreement;
 - You breach any term of this Agreement;
 - You fail to perform or observe any of the undertakings or provisions of this Agreement on Your part to be performed or observed;
 - You become bankrupt, insolvent, or are placed into liquidation, administration or receivership;
 - You being a natural person, die; and/or
 - We consider, on reasonable grounds, that fulfilling Our obligations under this Agreement may endanger the safety of any person or the condition of the Deckchair.
- 10.4 You agree that if We terminate this Agreement under clause 10.1:
- We may repossess the Deckchair, in which case clause 3.7 applies; and
 - You are not entitled to a refund of all or any part of the Total Hire Charge or Security Deposit.
- 11 General**
11.1 Any description, illustration, image or other depiction of the Deckchair contained in Our marketing material, catalogues, quote or advertising is for illustrative purposes only and does not form part of this Agreement.
- 11.2 Nothing contained or implied in this Agreement will be deemed or construed to create the relationship of partnership, of principal and agent, of joint venture or any fiduciary relationship between Us and You.
- 11.3 We may at any time assign, charge or otherwise deal with the Deckchair or its right, title and interest pursuant to this Agreement. You must not assign or charge this Agreement or any of Your rights or obligations under this Agreement.
- 11.4 You agree to promptly do all further acts and deliver all further documents required by law or reasonably requested by Us to give effect to this Agreement.
- 11.5 All notices under this Agreement must be in writing, and delivered to the relevant party's Email provided in the Details.
- 11.6 This Agreement may not be varied unless otherwise agreed between the parties in writing.
- 11.7 Not exercising any right, remedy or power it may have under this Agreement, does not waive any right a party may have to exercise any such right, remedy or power it has under this Agreement.
- 11.8 This Agreement is governed by the laws of Western Australia, and the parties agree to submit to the jurisdiction of the Western Australian courts.
- 11.9 Any part or provision of this Agreement which is invalid, void or unenforceable is to be read down or severed, and the rest of the Agreement applies in full force and effect.

ANNEXURE A – Deckchair Terms of Use

Use of the deckchair is entirely at your own risk. If you do not accept this risk, you must not use the deckchair.

Children using or in the vicinity of the deckchair must be supervised by a responsible and sober guardian or adult at all times.

The weight load on the deckchair must not exceed 250kg at any one time

The weight load on the foot stool must not exceed 100kg at any one time

You must not use the deckchair if you are intoxicated or under the influence of illicit drugs.

Crockery, cutlery and glassware are not permitted on or near the deckchair

Food and drinks must not be consumed whilst on or near the deckchair

Please do not move, reposition, alter or damage the deckchair or any equipment attached to the deckchair in any way, or attempt to do so.

Do not use the deckchair if it is windy or under any adverse weather conditions.

Please do not climb, jump, stand or slide on the deckchair. It is intended to be used as a chair for sitting on so use it accordingly.