

Terms and Conditions

These Terms and Conditions are the only basis upon which Equipment will be sold, supplied or hired to a Client. By requesting to purchase or hire Equipment and/or by placing an order with the Seller, the Client agrees to accept and comply with each of these Terms and Conditions. Any terms and conditions not contained below or which are inconsistent with these Terms and Conditions (other than those implied by statute) will not be binding on the Seller.

1. Definitions

In these Terms and Conditions unless the context otherwise requires:

- 1.1 "Application Form" means the Seller's account application form from time to time as completed and submitted to the Seller by the Client.
- 1.2 "CGA" means the Consumer Guarantees Act 1993 and any amendment, re-enactment or replacement of it.
- 1.3 "Seller" means Baby on The Move 2008 Limited and its agents/franchisees.
- 1.4 "Client" means that person (or persons) purchasing and/or hiring equipment and/or receiving supply of Equipment from the Seller and, where that person (or persons) does so on behalf of another entity, includes such entity and any person claiming under or authorised by the Client.
- 1.5 "Deposit" means in relation to:
 - (a) the sale/purchase of Equipment part payment of the Price of the Equipment; or
 - (b) the hire of equipment the monies payable to and to be held by the Seller as security pursuant to Condition 4.5 for performance of the Client's obligations under the Hire Agreement.
- 1.6 "Front Page" means the invoice or details of the hiring relating to the sale/supply/hiring of the Equipment signed by the Seller and the Client together with any other terms relating to the sale or hiring agreed between the parties in writing.
- 1.7 "GST" means Goods and Services Tax as defined in and a reference to the Goods and Services Tax Act 1985.
- 1.8 "Guarantor" means the person (or persons) named and/or signing the Application Form in that capacity or otherwise signifying in writing agreement to be liable for the obligations (including but not limited to debts of the Client).
- 1.9 "Hire Agreement" means the Agreement between the Seller and the Client relating to the Equipment comprising the (a) Front Page and these Terms and Conditions.
- 1.10 "Hire Commencement Date" means the commencement of the hiring as set out in the Front Page or if earlier the date of delivery of the Equipment to the Client.
- 1.11 "Equipment" means all goods and products supplied in any way (including but not limited to sale or hire) by the Seller to the Client (and shall include any incidental supply of services).
- 1.12 "Layby Sales" means a layby sale as defined in Section 3 of the Layby Sales Act 1971.
- 1.13 "Minimum Hire Period" means the period stated on the Front Page which shall be calculated from the Hire Commencement Date.
- 1.14 "Price" means (save as provided in Condition 1.1) the price stated on the Front Page; or if none or if higher at the date of delivery of the Equipment the then current price of the Equipment as shown on the Seller's current price list exhibited at the Seller's place of business or on the Website produced to the Client on application in person at the Seller's place of business during normal business hours.
- 1.15 "PPSA" means the Personal Property Securities Act 1999 and any amendment or replacement of it.
- 1.16 "Rent" means (save as provided in Condition 1.1) the rent stated on the Front Page; or if none or if higher at the date of delivery of the Equipment the then current rent of the Equipment as shown on the Seller's current price list exhibited at the Seller's place of business or on the Website or if not will be produced to the Client on application in person at the Seller's place of business during normal business hours.
- 1.17 "Return Date" means the return date stated on the Front Page or if none, the date of expiry of notice of termination of the hiring lawfully given by either the Seller or the Client.
- 1.18 "Website" means www.babyonthemove.co.nz and/or such other website(s) of the Seller from time to time.

2. Acceptance

The Client shall be deemed to have accepted these Terms and Conditions on the first to occur of:

- (a) submission to the Seller of the Application Form;
 - (b) signature of the Hire agreement or any other hire commencement forms or documentation; or
 - (c) delivery of the Equipment.
- 2.2 None of the Seller's agents or representatives are authorised to make any representations, statements, conditions or agreements not made by the Seller (acting by its duly appointed manager or higher officer) in writing nor is the Seller bound by any such unauthorised statements.
 - 2.3 No terms and conditions of sale issued by the Client and/or any amendment to these Terms and Conditions applicable, (a) to the Equipment or the subject matter of these Terms and Conditions shall apply unless agreed by the Seller in writing. (b) (c)

3. Equipment / Services

- 3.1 The Equipment is described on the invoices, hire contract, hire agreement, or any other hire commencement forms as provided by the Seller to the Client.
- 3.2 In the case of second hand Equipment the Client acknowledges that they have had full opportunity to inspect the same and that they accept the same with all faults and that no warranty is given by the Seller as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded to the extent legally possible to do so. The Seller shall not be responsible for any loss or damage to the Equipment, or caused by the Equipment, or any part thereof however arising. (a)
- 3.3 Where Equipment is sold pursuant to a Layby Sale the Layby Sales Act 1974 shall apply in addition to other acts or laws that apply to such sale which are not lawfully excluded by these Terms and Conditions. (b)

4. Price and Payment

- 4.1 (a) If the Price or Rent is contained in an official written quotation of the Seller the Client's written acceptance of the quotation must be delivered to the Seller within twenty-eight (28) days of the date of the quotation or such shorter time as may have been notified by the Seller to the Client in writing time to be of the essence. (a) (b)
- 4.2 Time for payment of the Price/Rent shall be of the essence and may be stated on the Front Page invoice, hire agreement, quotation, tender documents, work authorisation form or any other document issued by the Seller. If no time is stated then payment shall be due on delivery of the Equipment.
- 4.3 Payment will be made by cash or by Bank Cheque or such other method agreed in writing between the Client and the Seller.
- 4.4 Unless expressly stated in writing the Price (including rates of hire) shall be GST exclusive and GST is payable by the Client to the Seller at the same time as and in addition to the Price.
- 4.5 As a condition of the Hiring the Seller may in its discretion require a Bank Guarantee in favour of the Seller and/or a deposit of funds with the Seller of such amount as the Seller shall require prior to the Hire Commencement Date to the intent that the guarantee be discharged and/or the deposit be refunded at the end of the hiring and after return of the Equipment to the Seller in accordance with and upon the Client's proper performance of these Terms and Conditions.

5. Hire Period

- 5.1 The Hirer's liability to the Seller for payment of the Rent commences on the Hire Commencement Date and continues until the Return Date or if later the date of return of the Equipment to the Seller's premises in the state and condition as required under these Terms and Conditions provided where the hire period has been left blank on the Front Page then unless other terms shall have been agreed in writing between the Seller and the Client a periodic rental shall come into being on delivery of the Equipment to the Client (which shall be the Commencement Date)

terminable by the Seller or the Client by notice in writing equivalent to the period by which Rent is payable provided such notice shall not be given by the Client so as to expire before expiry of the Minimum Hire Period.

6. Client's Responsibilities

- 6.1 The Client shall:
 - (a) use the Equipment properly with all due care and for the purpose for which it is designed and in accordance with the manufacturer's instructions.
 - (b) keep the Equipment in its possession and under its control and not copy or part with possession of all or any part of the Equipment nor assign the benefit of all or any part of this Agreement nor create any lien over the Equipment nor encumber the Equipment in any way. The Client accepts full responsibility for the safekeeping of the Equipment and will indemnify the Seller for all loss and expense arising from theft or damage to the Equipment howsoever caused and without limiting the generality of the foregoing whether or not such loss theft or damage is attributable to any negligence failure or omission of the Client.
 - (c) not alter or make any additions to the Equipment in any way including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfering with the Equipment.
 - (d) The Equipment must be returned to the Seller on the Return Date or upon earlier termination of the Hire Agreement in the same state of repair and condition as it was at the Commencement Date (fair wear and tear accepted) and any damage will be repaired/replaced as necessary at the expense of the Client together with any loss of rental the Seller may suffer by reason of the Equipment being unavailable for rental from the Return Date during the period of repair.

7. Seller's Right to Terminate

- 7.1 Without prejudice to any other remedies available to the Seller and notwithstanding any period of hire specified in this Hire Agreement, the Seller may terminate this Hire Agreement without notice and without payment of compensation if:
 - (a) the Seller reasonably believes the Equipment is in imminent danger of damage or destruction;
 - (b) the Client commits a material breach of these Terms and Conditions or the Client commits any act of bankruptcy or being a company an application is made or a resolution is passed for its winding up or a receiver of its assets is appointed or if any execution or distress shall be levied upon the Equipment or if any judgment against the Client shall remain unsatisfied for seven (7) days or more or if the Client makes an assignment or compromise for the benefit of their creditors or being a company is placed under statutory management or ceases to carry on business.

8. Delivery and Passing of Risk

- 8.1 Delivery of the Equipment may be made by the Seller to the Client's address on the Application Form or such other address subsequently advised by the Client to the Seller in writing. The Client shall make all arrangements necessary to take delivery of the Equipment whenever they are tendered for delivery and the Seller shall be entitled at any time before delivery to elect (by notice in writing to the Client) to deliver the Equipment to the Client at the Seller's address.
- 8.2 The costs of carriage and any insurance which the Client reasonably directs the Seller to incur shall be reimbursed by the Client (without any set-off or other withholding whatever) and shall be due on the date for payment of the Price. The carrier shall be deemed to be the Client's agent.
- 8.3 The failure of the Seller to deliver shall not entitle either party to treat this contract as repudiated.
- 8.4 All risk in or relating to the Equipment passes to the Client on delivery from which time all losses and costs (including but not limited to freight and insurance) are to be borne by the Client to the exclusion of the Seller.

9. Defects

- 9.1 The Client shall inspect the Equipment on delivery and shall and shall within seven (7) days of delivery notify the Seller in writing of any alleged defect, shortage in quantity, damage or failure to comply with description of the Equipment and failing such notice the Equipment shall be conclusively deemed to be in accordance with the contract and free from any defect or damage which would be apparent on a reasonable examination of the Equipment.

10. Return

- 10.1 Where there is no breach by the Seller of these Terms or of any warranty conferred by law in respect of the Equipment then at the sole discretion of the Seller the Client may return the Equipment within seven (7) days of delivery providing the Equipment and all the following are returned to the Seller in "as new condition":
 - All packaging material and brochures.
 - All instruction manuals, videos or any other material supplied with the Equipment.
 - All tools and accessories.
- 10.2 The Seller may (in its discretion) accept the Equipment for credit but this will incur a re-stocking fee of 20% of the invoice price (or such amount advised by the Seller in writing) of the returned Equipment plus any freight which shall be tendered by the Client to the Seller on return of the Equipment.
- 10.3 Where there has been a breach by the Seller of any warranty conferred by law in respect of the Equipment the Seller will (if requested to do so by the Client) and subject to the Seller regarding the request appropriate, accept return of the Equipment upon mutually agreeable terms and under this condition the Seller's liability to the Client is limited at the Seller's discretion to either:
 - replacing the Equipment with equivalent goods; or
 - paying or crediting the Client the cost of acquiring equivalent goods.

11. Repairs and replacements

- 11.1 Subject to the provisions of the CGA if applicable the Seller does not undertake that repair facilities and/or parts will be available for the Equipment nor any liability or obligation to repair any defective Equipment but at its discretion the Seller may:
 - notify the manufacturers of the Equipment of any defect notified to the Seller by the Client in writing; and
 - request the manufacturers to repair or replace any defective Equipment.

12. Supply for Business Purpose

- 12.1 Where these Terms would otherwise be subject to the provisions of the CGA and where the supply of the Equipment is a supply for business purposes, the Client agrees that the Equipment is supplied to the Client for business purposes in terms of Sections 2 and 43 of the CGA and that the provisions of the CGA do not apply to that supply. Accordingly such a client is not a Consumer for the purpose of these Terms and the Client will indemnify and hold harmless the Seller from and against any claim by the Client not covered by any express written guarantee given by the Seller.

13. Warranties

13.1 This condition 13.1 shall apply where the Purchaser is not a consumer under the CGA and the only warranty in respect of the Equipment shall be the current warranty provided by the manufacturer of the Equipment. The Seller shall be under no liability whatsoever except to use reasonable endeavours to assist the Client in obtaining performance by the manufacturer of the express conditions as detailed and stipulated in the manufacturer's warranty. The Client shall read, understand and comply with all "Safety Notices" stipulated by the manufacturer of the Equipment.

13.2 This condition 13.2 shall apply where the Client is a consumer under the CGA and subject to the client's rights and remedies contained in the CGA if as the result of some fault on the part of the Seller the Equipment is defective in that:

it is not of acceptable quality; or

(c) it is not reasonably fit for any particular communicated purpose where the Client has reasonably relied on the Seller's skill or judgment then, the Client must notify the Seller within seven (7) days of when such defect was discovered or ought to have been discovered and, where possible return the goods to the Seller when:

(i) If appropriate, the Seller will (at its sole discretion and subject to Condition 13.2(c)(ii) below) remedy the defect by way of repair, replacement or (if necessary) refund;

(ii) Where the defect cannot be remedied or is of substantial character (as defined in the CGA) the Seller will refund the Client's money or replace the Equipment, or compensate the Client (in the case of a sale) for the amount of any reduction in value of the Equipment below the price.

13.3 With the exception of the relevant statutory warranties contained in the CGA, no warranty or condition shall be implied against the Seller by any other statute, at common law or otherwise.

14. Sellers liability

14.1 In the event of any breach of this contract by the Seller the remedies of the Client shall be limited to damages which shall not exceed the Price of the Equipment.

14.2 The Seller shall be under no liability whatever to the Client for any indirect loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Seller of this Agreement.

14.3 All warranties and conditions whether implied by statute or otherwise are excluded from this Agreement provided that nothing in this contract shall restrict or exclude liability for death or personal injury caused by the gross negligence of the Seller (provided there is full proof of gross negligence on behalf of the Seller) or affect the statutory rights of a(a) Client dealing as consumer.

14.4 The Client hereby disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any misrepresentation made by any servant or agent of the Seller and the Client acknowledges that they buy the Equipment relying solely upon their own skill and judgement and that the Seller shall not be bound by nor responsible for any term, condition or representation.

15. Default & Consequences of Default

15.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% compounding per calendar month and shall accrue at such a rate after as well as before any judgement.

15.2 If the Client defaults in payment of any invoice when due, the Client shall indemnify the Seller from and against all of (c) the Seller's costs of collection (including disbursements) including legal costs on a solicitor and own client basis.

15.3 Without prejudice to any other remedies the Seller may have, if at any time the Client is in breach of any obligation (including those relating to payment), the Seller may suspend or terminate the supply of Equipment to the Client and any of its other obligations under the terms and conditions. The Seller will not be liable to the Client for any loss or damage the Client suffers because the Seller exercised its rights under this clause.

15.4 If any account remains unpaid at the end of the second month after supply of the Equipment the following shall apply: An immediate amount of the greater of \$20.00 or 10.00% of the amount overdue shall be levied for administration fees which sum shall become immediately due and payable in addition to the interest payable under clause 15.1 hereof.

15.5 In the event that:

(a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Client will be unable to meet its payments as they fall due, or;

(b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors, or;

(c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client,

then without prejudice to the Seller's other remedies at law:

(i) the Seller shall be entitled to cancel all or any part of any order of the Client which remains unperformed in addition to and without prejudice to any other remedies; and

(ii) all amounts owing to the Seller shall, whether or not due for payment, immediately become due and payable.

16. Equipment Damage

16.1 The Client is liable to the Seller for any theft, loss and/or damage to the equipment whilst on hire. The Client will be liable for the costs of replacement or repairs to the equipment. The Client must notify the Seller immediately a theft, loss and/or damage has occurred. The Seller may elect that the Equipment be immediately returned to the Seller at the Client's cost.

17. Assignment

17.1 The Seller may deal or dispose in any way with all or any part of its rights and obligations under this contract without the Client's consent.

18. Resale of Equipment and Indemnity

18.1 Where the Client re-sells the Equipment or any part of them for the purpose of its business, the Client undertakes to obtain written agreement from its customer contracting out of the provisions of the CGA and further the Client hereby agrees to indemnify and hold harmless the Seller against all actions, suits, claims, costs and demands in respect of any claim made against the Seller by any customer of the Client who is not a consumer and which is not covered by any express written guarantee of the Seller covering the relevant Equipment.

19. Privacy Act

19.1 The Client and the Guarantor/s (if separate to the Client) authorises the Seller to:

(a) collect, retain and use any information about the Client, for the purpose of assessing the Client's creditworthiness or marketing products and services; and

(b) to disclose information about the Client, whether collected by the Seller from the Client directly or obtained by the Seller from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Client.

19.2 Where the Client is a natural person the authorities under (clause 19.1) are authorities or consents for the purposes of the Privacy Act 1993.

19.3 The Client shall have the right upon written request to receive from the Seller a copy of the information about the Client retained by the Seller and to have the Seller correct any incorrect information about the Client held by the Seller.

20. Title and Security

20.1 Title to the Equipment in the case of a sale passes to the Client only when the Client has made payment in full to the Seller in cleared funds for all the Equipment and of all other sums due to the Seller by the Client on any account. Until all sums due to the Seller by the Client have been paid in full the Seller has a security interest in all Equipment now or in the future sold or supplied by the Seller to the Client and in the proceeds arising from the Equipment (including any insurance claim regarding the Equipment) and/or any article purchased with such proceeds.

20.2 Until title to the Equipment passes to the Client:

(a) The Client shall hold the Equipment solely as fiduciary bailee for the Seller and insure the Equipment to full replacement cost and store the Equipment separately from its own goods or property and in such matter as to clearly identify the Equipment as the property of the Seller;

(b) The Client is authorised to sell the goods only as agent and fiduciary for the Seller and the entire proceeds of sale must be held in a separate bank account on trust for the Seller;

(c) The Client gives irrevocable authority to the Seller to enter any premises on which the Equipment is situated at any time after default or likely default of the Client to remove and repossess the Equipment and the Seller shall not be liable for any costs, damages, expenses or losses incurred by the Client or any third party as a result of this action unless by statute such liability cannot be excluded. The Seller may either resell any repossessed Equipment and credit the Client's account with the net proceeds of sale (after deduction of all storage, selling and related costs) or retain the repossessed equipment and credit the Client's account with the invoice value less such sum as the Seller reasonably determines on account of wear and tear, depreciation, obsolescence, loss of profit and/or costs.

20.3 If the Equipment is attached, fixed or incorporated into any property of the Client by way of any manufacturing or assembly process by the Client or any third party, title in the Equipment shall remain with the Seller until the Client has made payment for all the Equipment, and where the Equipment is mixed with other property so as to be part of or a constituent of any new goods, title to these new goods shall be deemed to be assigned to the Seller as security for full satisfaction by the Client of the full amount owing to the Seller.

Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:

these terms and conditions constitute a security agreement for the purposes of the PPSA; and

(b) a security interest is taken in all Equipment previously supplied by the Seller to the Client (if any) and all Equipment that will be supplied in the future by the Seller to the Client during the continuance of the parties relationship.

20.4 The Client undertakes to:

(a) sign any further documents and/or provide any further information, such information to be complete, accurate and up-to-date in all respects, which the Seller may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;

(b) indemnify, and upon demand reimburse, the Seller for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Equipment charged thereby; not register a financing change statement or a change demand without the prior written consent of the Seller;

(d) give the Seller not less than fourteen (14) days prior written notice of any proposed change in the Client's name and/or any other change in the Client's details (including but not limited to, changes in the Client's address, facsimile number, or business practice); and

(e) immediately advise the Seller of any material change in its business practices of selling the Equipment which would result in a change in the nature of proceeds derived from such sales.

20.5 The Seller and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these Terms and Conditions.

20.6 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.

20.7 Unless otherwise agreed to in writing by the Seller, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.

20.8 The Client unconditionally ratifies any actions taken by the Seller under clauses 19.1 to 19.5. under and by virtue of the power of attorney given by the Client to the Seller.

21. Miscellaneous

21.1 If any provision of these terms and conditions shall be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

21.2 All Equipment and services supplied by the Seller are subject to the laws of New Zealand and the Seller takes no responsibility for changes in the law which affect the Equipment or services supplied.

21.3 Neither party shall be liable for any default due to any act of god, war, strike, lock out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.

21.4 The Client shall not set off against the Price amounts due from the Seller whether under the applicable contract of sale or otherwise.

21.5 Any notice given under these Terms must be in writing and will be deemed to have been received by the person to whom it was sent in the case of hand delivery, upon delivery; in the case of pre-paid ordinary post, three (3) days after the date on which it was posted and in the case of facsimile upon the Sender obtaining confirmation that the transmission was successfully completed.

21.6 The Seller may amend these Terms from time to time but such amendments will not take effect until the Seller has notified the Client in writing of those amendments or the same appearing on the website and thereafter any orders placed with the Seller will be deemed to be offers to acquire or hire (as the case may be) Equipment on the amended Terms.

22. Guarantee

22.1 In consideration of the Seller at the request of the Guarantor selling, supplying and/or leasing the Equipment to the Client the Guarantor hereby (and if more than one jointly and severally) unconditionally guarantees to the Seller payment of any monies payable to the Seller by the Client and performance by the Client of any other obligation to be performed by the Client and the Client acknowledges and declares that this Guarantee is a continuing guarantee and the Seller is at liberty to regard the Guarantor in all respects as principal debtor and shall not be obliged to take action against the Client.