



TERMS AND CONDITIONS FOR HIRING PRODUCTS

Last Updated: 28th March 2022

In these terms, we also refer to ACES as “our”, “we, or “us”.

And you are you!

What are these terms about?

These terms apply when you use this Website, being <https://www.aces.edu.au/> (“**Website**”).

These terms apply when you hire our products (and any accessories) through this Website, including any air sampling devices, mould testing equipment and electromagnetic field meters (“**Products**”) as part of our educational courses.

Please let us know if you have any questions about these terms, and don’t hire any Products unless you have read and agree to these terms.

Once we receive the ‘Hire Agreement Contact Form’ from you, these terms will apply to your hire of those Products. However, please note that we may change any part of these terms at any time by updating this page of this Website, so you may find that different terms apply next time you use this Website or hire Products. You can check the date at the top of this page to see when we last updated these terms.

1. OUR PROCESS - MAKING AN ENQUIRY

- (a) To hire a Product from us, we will first ask you to complete the Hire Agreement Contact Form (**Contact Form**) to check whether or not we have availability of the Product you want for your requested hire period.
- (b) Once we have confirmed that we have Products available during your requested date(s) we will then reach out to confirm with you, at which point you will be asked to submit your order and pay our invoice before we ship the Products to you.

2. SUBMITTING AN ORDER

- (a) By making an enquiry, completing a Contact Form or otherwise submitting an order for hire of a Product using our Website's functionality (**Order**) you represent and warrant that:
 - (i) you intend to place a binding order to hire the Products;
 - (ii) you acknowledge and agree that these terms apply to your Order;
 - (iii) you will return the Products on or before the date agreed at the time of placing your Order at the end of the Hire Period;
 - (iv) you have the legal capacity and are of sufficient age to enter into a binding contract with us; and
 - (v) you are authorised to use the debit or credit card you provide under or in connection with your Order.
- (b) Submitting an Order constitutes your intention and offer to enter into these terms where we will provide you with the Products you have ordered in exchange for your payment of the fees as set out in our invoice to you (which includes a security deposit required under clause 7).

3. HIRE PERIOD

- (a) Our Products are to be hired by you for a 9-day period, commencing on the date you receive the Products (**Hire Period**). This Hire Period is intended to cover a 7-day use period and a maximum of 2 days return time.



- (b) If you want to extend the hire period, you may do so by contacting us (**1300 889 845**) and completing another Contact Form. All Extensions are subject to availability and you will be provided with an additional quote for additional fees which must be paid by you for an Extension to be valid.
- (c) If you don't return the Product to us before the end of the Hire Period, you must pay us a late charge of \$55 includes GST (**Late Charge**) for each 24-hour period after the end of the Hire Period during which the Product has not been returned to us.

4. PRODUCTS

- (a) We will endeavour to ensure that the Products provided will be substantially the same as the Products displayed on our Website, or as otherwise agreed with you in writing prior to you placing your Order. Please note that due to screen display, colour and brightness, and image quality, Products may not exactly match the image on our Website.
- (b) The Products are, and will at all times be and remain, our property. You will not have or accrue any right, title or interest in or the Products under these terms.

5. RISK, LOSS AND DAMAGE

- (a) Risk in the Products will pass to you on delivery in accordance with clause 8 and remain with you until the Products are returned to us.
- (b) You will be fully liable to us for:
 - (i) any loss or damage to the Products or any part of the Products (whether due to accident, theft or otherwise) during the Hire Period, or otherwise when a Product is in your possession, and must give reasonable notice to us in writing of any such loss or damage; and
 - (ii) all damage to the property of any person which is caused or contributed to by the Products during the Hire Period, or otherwise when the Product is in your possession.
- (c) You are responsible for taking all appropriate precautions to protect the Products from damage or destruction until you return them to us.
- (d) You must not, without our prior written consent, part with possession of the Products during the Hire Period.
- (e) You must not allow any third person to use the Products without our prior written consent.
- (f) You must not allow children or pets to access the Products.

6. FEES AND PAYMENT

- (a) You must pay the fees to us in the amounts and at the times set out in our invoice to you, or as otherwise agreed in writing (**Fees**).
- (b) Unless otherwise agreed we will issue you an invoice for payment of the Fees after we confirm your Order. Payment must be made by the time(s) and in the manner specified in such an invoice.
- (c) Prices are for a standard Hire Period, are in Australian Dollars and subject to change prior to you completing an Order without notice.
- (d) Unless otherwise indicated, amounts stated on the Website and any invoice include GST.
- (e) We may use third-party payment providers (**Payment Providers**) to collect payments for Products. The processing of payments by the Payment Provider will be, in addition to these terms, subject to the terms, conditions and privacy policies of the Payment Provider and we are not liable for the security or performance of the Payment Provider. We reserve the right to correct, or to instruct our Payment Provider to correct, any errors or mistakes in collecting your payment.



- (f) In the event that we discover an error or inaccuracy in the price at which your order was made, we will attempt to contact you and inform you of this as soon as possible. You will then have the option of purchasing your order at the correct price, or cancelling your order. If you choose to cancel your order and payment has already been debited, the full amount will be credited back to you (in the manner you choose).
- (g) Immediately on request by us, you will need to pay:
 - (i) the replacement cost of any Product which is for whatever reason not returned to us;
 - (ii) the full cost of repairing any damage to the Products caused or contributed to by you;
 - (iii) all costs incurred by us in delivering and recovering possession of the Products where you fail to return them to us; and
 - (iv) any expenses and legal costs (including commission payable to a commercial agent) incurred by us in enforcing this Agreement due to your default.

7. SECURITY DEPOSIT

- (a) We require (as specified in an invoice) the payment of a security deposit of \$400 to cover any fees, damage, or issues with a Product (**Security Deposit**) before accepting your Order. We will communicate the amount of any Security Deposit to you in writing (either through an invoice or by email) along with instructions of how to pay the Security Deposit. We will also require you to provide us with bank details for the transfer back of any residual Security Deposit not claimed by us.
- (b) We may claim some or all of the Security Deposit on account of any amount owed by you to us under or in connection with this Agreement (including costs for damage to the Products, Late Charges and unpaid fees). If no amount is owed by you to us, we will return the Security Deposit to you within 10 business days after:
 - (i) the end of Hire Period; and
 - (ii) the date all Products and accessories have been returned to us, whichever occurs later.
- (c) We will notify you if we intend on making a claim against the Security Deposit.

8. DELIVERY

- (a) The costs of delivering the Products to you will be in addition to the hire fee. Delivery will be made by a third-party courier to the delivery point specifically accepted by us, being the address you insert in your Contact Form. You should contact us urgently if you want to change your delivery address, but we cannot make any guarantee that our third-party courier will be able to change the delivery address without incurring additional fees (which must be paid by you).
- (b) Third party courier terms will apply to the delivery of the Products to you. Any problems with delivery should be directed to us to troubleshoot the issue first. All delivery times provided to you are estimates only and are subject to delays and reasons beyond our control. We do not warrant or make any representation that your order will be delivered within the times indicated. We will not be liable for any loss or damage suffered as a result of or in connection with late deliveries.
- (c) You must ensure you are available for delivery of the Products on the delivery date communicated by us to you. We will require you to sign for delivery or otherwise indicate acceptance of the Products. It is your responsibility to make sure you are available for delivery. Any delay in delivery or accepting the Product due to your acts or omissions will not delay the start of your Hire Period, and you will be liable for any costs incurred in the re-attempted delivery of your Products (if necessary). You are responsible for ensuring you provide us with the correct address details.



9. RETURNS

- (a) You must return the Products by sending them to us at our nominated address (as specified on our invoice and documented on the inside of the Products case, or as otherwise communicated to you by us in writing). You must ensure that the Products arrive at our nominated address on or before the last day of your Hire Period, and that you comply with any delivery instructions as specified in our invoice(s) to you. You must use an express courier (with a tracking number) to return the Products, and you will be liable for all courier costs. You must provide us with all details provided to you by your selected courier, including when the return is expected to occur.
- (b) Late Charges as set out in clause 3(c) will apply for each day that the Product is not returned within the Hire Period, even where that delay is caused by a third-party delivery partner, or is out of your control. As a result, you should ensure that you allow for sufficient time to return the Products to us within the Hire Period.
- (c) If you do not return the Product to us at all, we will charge you the full amount for the replacement cost of the Product. If you do not return any accessories that are sent to you included with a Product, then we will charge you for the cost of replacing those accessories.

10. USE OF AND DAMAGE TO PRODUCTS

- (a) In this clause, any reference to Products includes any accessories provided with the Products.
- (b) The proper use of the Products is your responsibility. You must ensure you use the Products in accordance with any manuals, directions, documents or other instructions that are provided with the Products, including any links to manufacturer's websites and terms of use.
- (c) You must not:
 - (i) use the Products for any dangerous or illegal purpose;
 - (ii) make any alterations to the Products, including by unauthorised repair; or
 - (iii) use a Product when it is damaged or unsafe.
- (d) You will be fully liable to us for any loss or damage to the Products during the Hire Period, or otherwise when the Products are in your possession. You must let us know in writing of any such loss or damage as soon as possible.
- (e) If the Products are returned damaged (other than fair wear and tear) we will charge you the amount necessary to fix the Products. You also acknowledge that Products are rented out in a clean condition. You must return the Products in the same state of cleanliness they were in when provided to you.

11. PICK UP / DROP-OFF

- (a) We may offer you the option to pick up the Products from us, or drop them off to us at the end of the Hire Period.
- (b) Any pickup options, including location and timing will be discussed with you prior to pick up / drop-off. We will agree on a location and date with you for any pickups or drop-offs (**Pick Up Date**).
- (c) If for any reason you are unable to pick up the order on the Pick Up Date and time, you must contact us to arrange another time. If you do not collect the Products on the Pick Up Date then we will post the Products to you in accordance with the delivery clause above. We reserve the right to charge additional fees or lessen your Hire Period where you do not pick up your Products on the Pick Up Date.
- (d) If you choose to drop off the Products to us on or before the end of the Hire Period, you do not need to arrange for a courier to deliver the goods.



12. CHANGES TO YOUR ORDER

12.1 CANCELLATION BY US

We reserve the right to cancel your order for any reason, and will notify you of this as soon as possible. Where payment has already been made, the full amount will be credited back to you.

12.2 CANCELLATION BY YOU

You may cancel your Order up to the time that we confirm your Order. Once we confirm your Order, your Order is binding and cannot be changed by you.

13. FAULTY PRODUCTS

- (a) If a Product is faulty, breaks down or becomes unsafe to use during the Hire Period (**Breakdown**), you must immediately:
- (i) notify us;
 - (ii) stop using the Product;
 - (iii) take all steps necessary to prevent injuries from occurring to any person or property as a result of the condition of the Product;
 - (iv) take all steps necessary to prevent the Product from sustaining any further damage;
 - (v) not repair or attempt to repair the Product without our written consent; and
 - (vi) comply with our directions in relation to the return of the Product.
- (b) Subject to subclause (c) below, if, upon inspection of the Product, we determine that a Breakdown was:
- (i) caused by a fault in the Product not caused or contributed to by you (**Product Fault**) then we will provide you with a pro-rata refund of any Fees paid for the period of the Hire Period during which the Breakdown persisted; or
 - (ii) not caused by a Product Fault, then you will still be required to pay Fees in accordance with your Order, as well as any cost required for a licenced professional to inspect and repair the Product.
- (c) If the Breakdown is not a Product Fault, and repair is not possible or economically feasible in the opinion of the relevant licensed professional who inspects the Product, you will be liable for replacement costs of the Product subject to the Breakdown in accordance with the terms of this agreement.
- (d) This clause does not limit any of your rights under the *Competition and Consumer Act 2010* (Cth) or any rights or remedies we may have access to in relation to a Breakdown, under this Agreement or otherwise.

14. INCIDENTS AND INSURANCE

14.1 INSURANCE

- (a) You acknowledge that we may, in our discretion, hold insurances in relation to the Product but such insurances may not cover you or your use of the Product and we will have no obligation or requirement to insure your use of the Product under this Agreement. You are strongly encouraged to take out adequate insurance to cover all potential liabilities that could arise from your use of the Product.
- (b) If we notify you that we hold insurance in relation to the Product, you must not do or permit anything to be done which may make our insurance invalid or able to be cancelled or do anything which may increase our insurance premiums.
- (c) We reserve the right to apply any insurance policy we hold in respect of the Product during the Hire Period, to damage or loss caused or contributed to by you, however we are under no obligation to. If we choose to make a claim under an applicable insurance



policy in accordance with this clause in respect of any damage or loss during the Hire Period, you will be required to pay any excess payable by us in respect of such a claim.

14.2 INCIDENTS, LOSS AND DAMAGE

- (a) Subject to any insurance policy held by us that covers you, and us confirming in writing that we will claim against such insurance to cover you, if the Product is lost, damaged, destroyed or stolen during the Hire Period, or otherwise while the Product is in your possession, you must compensate us for any costs of repair or replacement.
- (b) If the Product is involved in an accident or claim, damaged, destroyed, stolen or if damage or loss is sustained to the property of any third party in connection with the Product during the Hire Period, or otherwise when the Product is in your possession (**Incident**), you:
 - (i) must promptly report the Incident to the local police (if required by applicable law, but in any event, theft);
 - (ii) must report the Incident to us in writing within one business day;
 - (iii) must, if such damage, destruction or theft is covered by and compensated to us under an insurance policy, pay the relevant excess amount to us, as well as any other reasonable costs that we incur in relation to such damage, destruction or theft;
 - (iv) must not, without our prior written consent, make or give any offer, promise of payment, settlement, waiver, release or admission of liability in relation to the Incident, except as required by applicable law;
 - (v) must, if requested, permit us or our insurer to bring, defend, enforce or settle any legal proceedings in your name in relation to the Incident; and
 - (vi) must, if requested, provide to us, within a reasonable time, any statement, information or assistance which we or our insurer requests, including by attending a lawyer's office or a court to give evidence.

15. LIABILITY

- (a) To the maximum extent permitted by Law, our liability for all claims in aggregate (whether those claims be for breach of contract, negligence or otherwise, and whether those claims are for economic loss, or for personal injury or other damage) arising under or in connection with this Agreement:
 - (i) is totally excluded, to the extent it concerns liability for indirect, special and consequential damages, and damages (whether direct or indirect) reflecting loss of revenue, loss of profits and loss of goodwill (except to the extent this liability cannot be excluded under the *Competition and Consumer Act 2010* (Cth)); and
 - (ii) is limited, insofar as it concerns other liability, to the total money paid to us under this Agreement as at the date the event giving rise to the relevant liability occurred (or, where there are multiple events, the date of the first such event).
- (b) To the maximum extent permitted by applicable law, all express or implied representations and warranties (whether relating to fitness for purpose or performance, or otherwise) not expressly stated in this Agreement are excluded.
- (c) Nothing in this Agreement is intended to limit the operation of the Australian Consumer Law contained in the *Competition and Consumer Act 2010* (Cth) (**ACL**). Under the ACL, the Customer may be entitled to certain remedies (like a refund, replacement or repair) if there is a failure with the goods or services provided.
- (d) You indemnify us from and against all losses, claims, expenses, damages and liabilities (including any taxes, fees or costs) which arise out of:



- (i) the casual maintenance, use, storage or operation of the Products during the Hire Period or otherwise when the Product is in your possession;
- (ii) injuries to or deaths of persons and damage to property in connection with the Products during the Hire Period or otherwise when the Product is in your possession;
- (iii) any breach of this Agreement by you; or
- (iv) any negligent, fraudulent or criminal act or omission by you.

16. GENERAL

- (a) This agreement is governed by the law applying in Victoria, Australia.
- (b) Each party irrevocably submits to the exclusive jurisdiction of the courts of Victoria, Australia and courts of appeal from them in respect of any proceedings arising out of or in connection with this agreement. Each party irrevocably waives any objection to the venue of any legal process on the basis that the process has been brought in an inconvenient forum.
- (c) Any notice given under these terms must be in writing and addressed to us at the details set out in the Contact Form or otherwise provided to you when you hire a product or contact us. A notice may be sent by standard post or email and will be regarded as given and received 48 hours in the case of post, or 24 hours after the email was sent.
- (d) Neither party may commence court proceedings relating to any dispute arising from, or in connection with, these terms without first meeting with the other party to seek (in good faith) to resolve that dispute (unless that party is seeking urgent interlocutory relief or the dispute relates to compliance with this clause).
- (e) No party to these terms may rely on the words or conduct of any other party as a waiver of any right unless the waiver is in writing and signed by the party granting the waiver.
- (f) Any term of these terms which is wholly or partially void or unenforceable is severed to the extent that it is void or unenforceable. The validity and enforceability of the remainder of these terms is not limited or otherwise affected.
- (g) Each party must promptly do all further acts and execute and deliver all further documents required by law or reasonably requested by another party to give effect to these terms.
- (h) A party cannot assign, novate or otherwise transfer any of its rights or obligations under these terms without the prior consent of each other party.
- (i) We may subcontract our obligations under these terms without obtaining your prior approval.
- (j) These terms, and any accepted Order or Contact Form under these terms, embody the entire agreement between the parties and supersede any prior negotiation, conduct, arrangement, understanding or agreement, express or implied, in relation to the subject matter of this agreement. To the extent of any inconsistency between these terms and the terms of an accepted order, these terms prevail.