

# Terms and Conditions

## 1. About Tree Hut Village

1.1. Thank you for visiting [www.treehutvillage.com.au] (the “Website”). The Website is a peer-to-peer marketplace that provides the Members with an opportunity to facilitate interactions between:

- (a) individuals or organisations who own baby equipment (the “Equipment”) and wish to rent it to the Borrowers (the "Owners"); and
- (b) individuals who wish to rent the Equipment for short term use (the "Borrowers").

In essence, we make it easier for Owners and Borrowers to locate, communicate, arrange payment and rent baby goods in a fast and secure manner (the "Services").

1.2. The Website is operated by Treehutvillage Pty. Ltd. [(ACN 603 572 738 (“THV”). Access to and use of the Website, or any of its associated products, is provided by THV. Please read these terms and conditions (the “Terms”) carefully. By using or browsing the Website, this signifies that you have read, understood and agree to be bound by the Terms. If you do not agree with the Terms, you must cease usage of the Website immediately.

1.3. THV reserves the right to review and change any of the Terms by updating this page at its sole discretion. When THV updates the Terms, it will use reasonable endeavours to provide you with notice of same. Any changes to the Terms take immediate effect from the date of their publication. Before you continue, you should print off or save a local copy of the Terms for your records.

## 2. Acceptance of the Terms

2.1. You accept the Terms by remaining on the Website. You may also accept the Terms by clicking to accept or agree to the Terms where this option is made available to you by THV through the Website.

## 3. The Services

3.1. In order to access the Services, you are required to provide personal information about yourself (such as identification or contact details) as part of the registration process, or as part of your continued use of the Services. You will also be requested to provide THV with:

- (a) an email address;
- (b) bank account details / credit card;
- (c) personal identification (i.e. passport or drivers’ license); and
- (d) a password.

3.2. If you are accessing the Services as an Owner, you are required to provide confirmation on whether or not you:

- (a) are registered for GST; and

- (b) have n Australian Business Number(“ABN”) or Australian Company Number (“ACN”).
- 3.3. You agree that any registration information you give to THV will always be accurate, correct and up to date.
- 3.4. Once you have completed the registration process:
  - (a) you will be a registered member of the services (“Member”); and
  - (b) THV will send you an email verifying your email address. By completing the registration process, you agree to be bound by the Terms.
- 3.5. You may not use the Services and may not accept the Terms if:
  - (a) you are not of legal age to form a binding contract with THV; or
  - (b) you are a person barred from receiving the services under the laws of Australia or other countries including the country in which you are resident or from which you use the services.

#### **4. Your Account Obligations**

- 4.1. As a Member, you agree to comply with the following:
  - (a) not to share your profile with any other person;
  - (b) use the Services only for purposes that are permitted by:
    - (i) the Terms; and
    - (ii) any applicable law, regulation or generally accepted practices or guidelines in the relevant jurisdictions;
  - (c) you have sole responsibility for protecting the confidentiality of your password and/or email address. Use of your password by any other person may result in the immediate cancellation of the Services;
  - (d) any use of your registration information by any other person, or third parties, is strictly prohibited. You agree to immediately notify THV of any unauthorised use of your password or email address or any breach of security of which you have become aware;
  - (e) you must not expressly or impliedly impersonate another Member or use the profile or password of another Member at any time;
  - (f) you understand that THV makes no representations or warranties as to the conduct of its Members or their compatibility with any current or future Borrowers or Owners;
  - (g) you agree that you will not broadcast, publish, transmit, up-load, post or upload content to the Website which is false, misleading, defamatory or contains sexually explicit material, references or innuendos;
  - (h) you agree not to harass, impersonate, stalk or threaten another Member of the Website;

- (i) access and use of the Website is limited, non-transferable and allows for the sole use of the Website by you for the purposes specified in the Terms and only for the duration of the membership;
- (j) you will not use the Services or the Website in connection with any commercial endeavours except those that are specifically or approved by the Terms;
- (k) you will not use the Services or Website for any illegal and/or unauthorised use which includes collecting email addresses of other Members by electronic or other means for the purpose of sending unsolicited communication or unauthorised framing of or linking to the Website;
- (l) you agree that commercial advertisements, affiliate links, and other forms of solicitation may be removed from Member profiles without notice and may result in termination of the Services. Appropriate legal action will be taken by THV for any illegal or unauthorised use of the Website; and
- (m) acknowledge and agree that any automated use of the Website or the Services are prohibited.

4.2. As a Member you will use reasonable endeavours to comply with any “Code of Conduct” that is available for review on the Website. THV reserves the right to change the Code of Conduct from time to time, and any such changes will take immediate effect from the date of their publication. 4.3. You acknowledge that, as a Member, other Members have the opportunity to rate your use of the Services for the purposes of providing a rating score, which will be viewable on your Profile Page on the Website, in order to assist other Members to assess whether you are a person who they would like to transact with (the “Rating System”). The Rating System will be listed on your Profile Page as an average score, calculated through aggregate rating you have received divided by the number of Members who have provided you with a rating (“Your Rating”).

4.4 You acknowledge and agree that THV only facilitates the Rating System and is not responsible for Your Rating. However, should you believe that Rating is incorrect or unwarranted then please contact THV at [info@treehutvillage.com.au](mailto:info@treehutvillage.com.au) to discuss this in more detail.

## **5. Using the Website as an Owner**

5.1. As an Owner, the Website provides you with an opportunity to post advertisements on the Website for Equipment that you have available for rent (the “Ads”), so that it can be viewed and ultimately rented by the Borrowers (the “Rental Services”).

5.2. In order to use the Services, you must:

- (a) register as a member; and
- (b) post an Ad on the Website which states:
  - (i) the Equipment available for rent;
  - (ii) a picture of the Equipment referred to in the Ad;
  - (iii) the Rental Price for the Equipment (the “Rental Price”);

- (iv) the delivery and collection method for the Equipment; and
  - (v) the available rental period(s).
- 5.3. You acknowledge that, in using the Website as an Owner, you are not employed by THV in any capacity and, accordingly, you do not have any rights as an employee, agent or independent contractor of THV. You agree that when posting the Ads, contacting the Borrowers and providing the Rental Services, or anytime thereafter; you will:
- (a) ensure that the Equipment listed is not more than 6 years old from the manufacturing year;
  - (b) ensure that the Equipment listed complies with any and all applicable safety standards, information standards and other similar standards published by the Australian regulatory authorities and any association approved by the regulatory such as the Standards Australia;
  - (c) comply with all laws and regulations which apply to the Rental Services. This includes, but is not limited to:
    - (i) the Consumer Guarantees Act 1986 with respect to the Rental. This includes that the Rental Services will be; offered and completed with reasonable care and skill; fit for a particular purpose; completed within a reasonable period of time if no time is set; and
    - (ii) the Fair Trading Act 1986 with respect to the Rental. This includes not misleading or deceiving Borrowers regarding any facet of the Ads or Rental Services, such as the length, scope, nature, quality, suitability or anything else which may, for a reasonable person, be misleading or deceptive (or likely to mislead or deceive).
  - (d) that the Equipment is in a suitable condition to be safely used by Borrowers for its intended purpose; and
  - (e) comply with THV's Refund Policy when a Borrower has contacted you regarding a refund of the Rental Price (as set out in Clause 9 of the Terms).
- 5.4. Acknowledge that THV assists in facilitating your sale of the Rental Services to its Borrowers. By THV offering the Services to you, you agree that:
- (a) Borrowers will transfer the Rental Price to THV, who will deduct fifteen percent (15%) of the Rental Price which is payable to THV as commission for the provision of the Services (the "Commission Fee");
  - (b) the remaining eighty-five percent (85%) of the Rental Price (the "Owner's Funds") will be held on behalf of the Owner by THV until such time as a request is made by the Borrower to transfer the Owner's Funds, in part or full (the "Cash Payment").;
  - (c) should the Owner, in its sole discretion, request to withdraw either part or all of the available Owner's Funds, THV will transfer the Owners' Funds to the Owner within five (5) business days, less any merchant banking service and/or charges (the "Service") incurred by THV in processing the Rental Price, Commission Fee and/or Cash Payment (the "Withdrawal");

- (d) transferring of funds to the Owner will occur when the Borrower has received the Equipment and accepts that it is as described in the listing; and
- (e) the Owner is unable to make a Withdrawal of the Rental Price from the Owner's Funds until the conclusion of the Rental Services.

## **6. Using the Website as a Borrower**

- 6.1. As a Borrower, the Website provides you with an opportunity to review Ads posted on the Website by the Owners, contact the Owners through the Website and arrange to hire the Equipment particularised in the Ad for the Rental Price.
- 6.2. You acknowledge that the Rental Price must be paid to THV in full prior to an Owner being advised to undertake the Rental Services.
- 6.3. You acknowledge that THV is only a website which facilitates the Services and THV does not offer the Rental Services to you. You also understand that THV receives the Commission Fee from the Owner.

## **7. Payment Policy**

- 7.1. All payments made in the course of your use of the Services are made using [Stripe Payments Australia Pty Ltd (ACN 160 180 343) ("Stripe")]. By using the Website, the Services or when making any payment in relation to same, you warrant that you have read, understood and agree to be bound by the terms and conditions that are available on Stripe's website.
- 7.2. To enable payments to be processed through Stripe, you agree that any information you provide to THV will always be accurate, complete and up-to-date. You further authorise THV to share with Stripe any of your information necessary to facilitate the payment through Stripe and any information related to your use of the Stripe's services.

## **8. Policy**

- 8.1. As a Borrower, you will be required to pay the Rental Price to THV pursuant to Clauses 6.2 of these Terms. THV acknowledges that, on receipt of the Rental Price, it will provide you with a summary statement, which can be viewed under your Account, for the amount of the Rental Price inclusive of GST (where applicable) acknowledging receipt of the same.
- 8.2. As an Owner, you will be offering Rental Services to the Borrower. Therefore, you are obliged to declare any income on your tax return, unless you are registered as a company.

## **9. Cancellation and Refund Policy**

- 9.1. Where the Borrower or the Owner cancels the booking, the following clauses apply:
  - (a) with respect to the Security Deposit, if you cancel the booking at any time before it starts, you will get a full refund of any Security Deposit that you have paid.
  - (b) with respect to the Rental Price,
    - (i) If you cancel the Rental Services more than seven (7) days before the date of the Rental Services, you will be charged a cancellation fee of

15% of the Rental Price plus any merchant banking/transaction fees and the remaining balance will be refunded to you;

- (ii) If you cancel the Rental Services between two (2) and seven (7) days before the date of the Rental Services, you will be a cancellation fee of 50% of the Rental Price plus any merchant banking/transaction fees and the remaining balance will be refunded to you; and
- (iii) If you cancel the Rental Services 24 hours before the date of the Rental Services, you will not be entitled to any refund.

- 9.2. You acknowledge and agree that since THV is only a facilitator in introducing the Borrower to the Owner and providing a system to make safe payment, THV does not have any liability to the Borrower directly and will not refund them any Rental Price if, for whatever reason:
- (a) the Owner does not complete the Rental Services; or
  - (b) the Owner is unable to complete the Rental Services due to incorrect, incomplete or insufficient instructions provided by the Borrower as to the location, timeframe or other information relevant to the provision of the Rental Services.
- 9.3. Should the Owner fail to rectify the problem or arrange for a suitable replacement, a penalty will be charged against the Owner. The amount of the penalty shall be equivalent to the amount incurred by the borrower in sourcing replacement rental equipment.
- 9.4. Notwithstanding clause 9.2 above, if a Borrower is unsatisfied with the Rental Services provided by the Owner or believes that they may be entitled to a refund with respect to the Rental Price, then THV requires the Borrower to:
- (a) contact the Owner directly to request a refund; and
  - (b) if contacting the Owner is not successful after fourteen (14) days, contact THV by sending an email to [info@treehutvillage.com.au](mailto:info@treehutvillage.com.au) outlining why you believe you are entitled to a refund of the Rental Price so we are able to determine if the Owner should be removed from the Services.
- 9.5. If THV finds that the Borrower is entitled to a refund, THV will assist the Borrower in contacting the Owner to facilitate a refund.
- 9.6. If contacted by THV or a Borrower who is requesting a refund pursuant to Clause 9.3 above, the Owner agrees that it will immediately:
- (a) complete the THV refund contact form (the "Contact Form") provided on the THV Website; and
  - (b) provide both the contact form and the email from the Borrower requesting the refund to THV.
- 9.7. If the Owner agrees to refund the Rental Price to a Borrower, or part thereof, it is acknowledged that the Owner will instruct THV to refund the Rental Price to the Borrower directly, less the Service Charge.

9.8. Both the Borrower and Owner agree that they will comply with the THV Refund Policy contained in this Clause 9 of these Terms.

## **10. Security Deposit**

10.1. As a Borrower, you may be required to provide a security deposit to help cover any incidental loss or damage to the Equipment in the course of your use of the Rental Services (the "Security Deposit"). When using the Services as an Owner, you can identify that the Rental Services are only available to Borrowers who are able to provide a Security Deposit.

10.2. The Owner may in its sole discretion decide the amount of the Security Deposit required. Notwithstanding same, the Owner must not exercise the discretion unreasonably. When required to provide a Security Deposit, the Borrower may transfer the Security Deposit at any time by transferring the money to THV pursuant to clause 7 of these Terms. The Security Deposit will be held by THV until such time as it is:

- (a) claimed by an Owner pursuant to clause 10.4 of these Terms; or
- (b) withdrawn by the Borrower, in part or full, after the rental period has concluded, by providing five (5) business days' notice to THV.

10.3. Where the Owner or the Borrower withdraws the Security Deposit, and it is not done in accordance with clause 10.2, a penalty may be applied.

10.4. Where an Owner believes that they are entitled to claim the Security Deposit (the "Claim"), then within twenty-four (24) hours of becoming aware of goods having been lost or damaged, the Owner must formally report the issue by sending an email to THV at [info@treehutvillage.com.au](mailto:info@treehutvillage.com.au), which includes the following:

- (a) a completed Security Deposit Claim Form, which is available for download on the Website;
- (b) evidence of the goods having been lost or damaged; and
- (c) evidence of the value being claimed against the Security Deposit.

10.5. Once the Claim has been received, THV will contact the Borrower in any manner and advise them of the Claim. THV will then act as a facilitator between both the Owner and the Borrower to attempt to resolve the issue. In accordance with clause 19, the default position is to apportion the bond between the parties where there is common damage to the equipment.

10.6. As an Owner, you acknowledge and agree that the maximum money recoverable from the Security Deposit is limited to the amount set in the Ad, however, nothing in this clause 10 limits or excludes your right to claim the fair market value of repair or replacement costs from the Borrower through alternative means.

10.7. Where the Security Deposit is insufficient to cover the fees required to rectify the damage and that the Borrower is unable and/or unwilling to pay for the remaining balance, THV may, at its sole discretion, decide to pay the remaining balance on behalf of the Borrower to the Owner. THV's discretion shall only be exercised as a last resort to resolve the dispute. Where THV elects to exercise its discretion, there shall be a cap of a maximum amount of \$500.00.

## **11. Delivery**

- 11.1. As part of the Services, THV's Website will provide you with an opportunity to arrange for either pick-up or delivery of the Equipment (the "Handover"). You acknowledge and agree that THV only facilitates the communications between the Owners and Borrowers when arranging the Handover and that THV assumes no responsibility to either the Owners or the Borrowers in relation to same.
- 11.2. Notwithstanding clause 11.1 above, THV values your safety and security, and we strongly advise that any Handover should:
  - (a) take place in a public environment;
  - (b) not require the use of any access codes to secure buildings or areas; and
  - (c) never include your exact address or contact details.
- 11.3. You agree that you will never meet another Member in a non-public setting such as a park or other quiet area.
- 11.4. You warrant that in arranging the Rental Services, you agree to be bound by the time agreed to for the Handover, taking into account a fifteen (15) minute margin on either side of the nominated time. You acknowledge and agree that, in the event that either the Owner or Borrower fails to meet at the designated time and place of the Handover, then any prior agreement between the parties becomes unenforceable and either party is free to arrange alternative Rental Services without further consultation with the other party.

## **12. Liability Coverage and Exclusions**

- 12.1. During each rental period, THV's insurer will bear the liability of up to \$20 million for the Equipment and indemnity for liability, for any damage caused to third party property caused by, contributed to by, resulting from, arising out of or in connection with, the Equipment, subject to these Terms and the insurance policy THV has with its insurers.
- 12.2. THV and/or its insurers are not responsible for:
  - (a) any payments or rental arrangements that are not processed through THV;
  - (b) anything that occurs outside the rental periods;
  - (c) any liability caused by or contributed to by or resulting from or arising out of or in connection with any Equipment or component part that does not comply with any applicable safety standards published by Standards Australia or where at the time of listing the Equipment is over [6] years old from the manufacturing year; and
  - (d) any liability resulting from your breach of these Terms.

## **13. Copyright and Intellectual Property**

- 13.1. The Website, the Services and all of the related products of THV are subject to copyright. The material on the Website is protected by copyright under the laws of Australia and through international treaties. Unless otherwise indicated, all rights (including copyright) in the site content and compilation of the Website (including but not limited to text, graphics, logos, button icons, video images, audio clips, software, code, scripts, design elements and interactive features) (the "Content") are owned or controlled for these purposes, and are reserved by THV or its contributors.



13.2. All trademarks, service marks and trade names are owned, registered and/or licensed by THV, who grants to you a worldwide, non-exclusive, royalty-free, revocable license whilst you are a Member to:

- (a) download and access the Website to a computer or mobile device via a web browser;
- (b) use the Website pursuant to the Terms;
- (c) copy and store the Website and the material contained in the Website in your computer or mobile devices cache memory; and
- (d) print pages from the Website for your own personal and non-commercial use.

THV does not grant you any other rights whatsoever in relation to the Website or the material on the Website. All other rights are expressly reserved by THV.

13.3. THV retains all rights, title and interest in and to the Website and all related Content. Nothing you do on or in relation to the Website will transfer any:

- (a) business name, trading name, domain name, trade mark, industrial design, patent, registered design or copyright, or
- (b) right to use or exploit a business name, trading name, domain name, trade mark or industrial design, or
- (c) thing, system or process that is the subject of a patent, registered design or copyright (or an adaptation or modification of such a thing, system or process),

to you.

13.4. You may not, without the prior written permission of THV and the permission of any other relevant rights owners: copy, broadcast, reproduce, republish, download, up-load to a third party, transmit, post, distribute, show or play in public, adapt or change in any way the Content or third party contact for any purpose. This prohibition does not extend to materials on the Website which are not THV Content and are freely available for re-use or are in the public domain.

13.5. If you broadcast, publish, upload, transmit, post or distribute any content on the Website ("Your Content"), then you grant to THV a non-exclusive, transferrable, perpetual, royalty-free, irrevocable, worldwide licence to broadcast, republish, up-load to a third party, transmit, post, distribute, show or play in public, adapt or change Your Content.

13.6 You must not use data mining, robots, screen scraping, or any other automated data gathering, extraction or publication tools on THV's Website (including without limitation for the purposes of establishing, maintaining, advancing or reproducing information contained on THV's Website on your own website or in any other publication), except with THV's prior written consent.

## **14. THV Website**

14.1 In THV's sole discretion and without prior notice or liability, THV may discontinue, modify or alter any aspect of the Website.

- 14.2 Access to and use of THV's Website may be subject to interruptions, restrictions or delays beyond THV's control, which may delay the provision of THV's services to you. THV does not warrant or guarantee that the Website will be available to you continuously at any time or that the operation of the Website will be error free. Given the nature of the Internet, THV does not warrant:
- (a) that access to the Website will always be immediate or uninterrupted; or
  - (b) that the material on the Website will be free from infection, viruses or destructive code.
- 14.3 THV's Website (including the information, services and products provided on, or accessible through, the Website) may become unavailable at any time without notice. THV assumes no responsibility and accepts no liability whatsoever to you or any other person for any loss or damage arising from or in connection with any delays, interruptions, errors or omissions in the delivery of the information, services supplied to you through the Website.
- 14.4 From time to time, TVH may host third party content on its Website (e.g. advertisements). Responsibility for the content of such material rests with the owners of that material and THV is not responsible for any errors or omissions in any third party material or its failure to comply with relevant laws or regulations.
- 14.5 THV may also have on its Website from time to time hyperlinks to other websites. Such links are provided for convenience only and THV takes no responsibility and gives no guarantee for the content and maintenance of or privacy compliance by any linked website, or its compliance with relevant laws or regulations. Inclusion of any link does not imply any endorsement of the linked website by THV nor of the information, services and/or products provided within that linked website. You access such websites and use their information, services and/or products at your own risk.
- 14.6 THV takes care to ensure its Website is free of any virus, infection or destructive code, however THV are not responsible and shall not be liable to you on any basis for any damage or loss suffered by you as a result of any damage to your computer equipment, software and any other electronic device or other property which arises in connection with your use of THV's Website or any linked website.

## **15. General Disclaimer**

- 15.1. Nothing in the Terms limits or excludes any guarantees, warranties, representations or conditions implied or imposed by law, including Australian Consumer Law (or any liability under them) which by law may not be limited or excluded.
- 15.2. Subject to Clause 15.1, and to the extent permitted by law:
- (a) all terms, guarantees, warranties, representations or conditions which are not expressly stated in the Terms are excluded; and
  - (b) THV will not be liable for any special, indirect or consequential loss or damage (unless such loss or damage is reasonably foreseeable resulting from our failure to meet an applicable Consumer Guarantee), loss of profit or opportunity, or damage to goodwill arising out of or in connection with the Services or these Terms (including as a result of not being able to use the Services or the late supply of the Services), whether at common law, under contract, tort (including negligence), in equity, pursuant to statute or otherwise.

- 15.3. Use of the Website, the Services, and any of the products of THV, is at your own risk. Everything on the Website, the Services, and the products of THV, are provided to you “as is” and “as available” without warranty or condition of any kind. None of the affiliates, directors, officers, employees, agents, contributors, third party content providers or licensors of THV make any express or implied representation or warranty about its Content or any products or Services (including the products or services of THV) referred to on the Website. This includes (but is not restricted to) loss or damage you might suffer as a result of any of the following:
- (a) failure of performance, error, omission, interruption, deletion, defect, failure to correct defects, delay in operation or transmission, computer virus or other harmful component, loss of data, communication line failure, unlawful third party conduct, or theft, destruction, alteration or unauthorised access to records;
  - (b) the accuracy, suitability or currency of any information on the Website, the Service, or any of its Content related products (including third party material and advertisements on the Website);
  - (c) costs incurred as a result of you using the Website, the Services or any of the products of THV;
  - (d) the Content or operation in respect to links which are provided for the Owner’s convenience;
  - (e) any failure to complete a transaction, or any loss arising from e-commerce transacted on the Website; or
  - (f) any defamatory, threatening, offensive or unlawful conduct of third parties or publication of any materials relating to or constituting such conduct.

## **16. Limitation of liability**

- 16.1. THV’s total liability arising out of or in connection with the Services or these Terms, however arising, including under contract, tort (including negligence), in equity, under statute or otherwise, will not exceed the Commission Fee received by THV during the most recent Rental Services provided by you or where THV has not received a Commission Fee, then the total liability of THV is the resupply of Services to you.
- 16.2. You expressly understand and agree that THV, its affiliates, employees, agents, contributors, third party content providers and licensors shall not be liable to you for any direct, indirect, incidental, special consequential or exemplary damages which may be incurred by you, however caused and under any theory of liability. This shall include, but is not limited to, any loss of profit (whether incurred directly or indirectly), any loss of goodwill or business reputation and any other intangible loss.
- 16.3. THV is not responsible or liable in any manner for any content posted on the Website or in connection with the Services, whether posted or caused by Owners of THV, by third parties or by any of the services offered by THV.
- 16.4. THV does not control and is not responsible for the behaviours and actions of its members, their comments, posts or information that they upload. Accordingly, THV is not responsible for any offensive, inappropriate, obscene or unlawful content you may encounter on the Website or in connection with any of the services provided on the Website.

16.5 If a user encounters any offensive, inappropriate, obscene or unlawful content on the THV website they must inform THV immediately so that THV can take the appropriate action.

## **17. Termination of Contract**

17.1. The Terms will continue to apply until terminated by either you or by THV as set out below.

17.2. If you intend to terminate your membership with THV, you may do so by:

- (a) notifying THV by giving two (2) weeks' notice of your intention to terminate; and
- (b) closing your accounts for all of the services which you use, where THV has made this option available to you. Your notice should be sent in writing to THV.

17.3. THV may at any time, terminate your membership with THV if:

- (a) you have breached any provision of the Terms or intend to breach any provision;
- (b) THV is required to do so by law;
- (c) third parties with whom THV offered the Services to you has terminated its relationship with THV or ceased to offer the Services to you;
- (d) THV decides it will no longer provide the Services in the country in which you are resident or from which you use the service;
- (e) the provision of the Services to you by THV is, in the opinion of THV, no longer commercially viable; or
- (f) your account has been inactive for a period of twenty-four (24) months.

17.4. Subject to local applicable laws, THV reserves the right to discontinue or cancel your membership at any time and may suspend or deny, in its sole discretion, your access to all or any portion of the Website or the Services without notice if you breach any provision of the Terms or any applicable law or if your conduct impacts THV's name or reputation or violates the rights of those of another party.

17.5. The provisions of clauses 12 to 19 and 21 to 23, together with any other provision which by virtue of its nature is intended to survive the termination of these Terms, will survive the termination or expiration of these Terms.

## **18. Indemnity**

18.1. You agree to indemnify THV, its affiliates, employees, agents, contributors, third party content providers and licensors from and against:

- (a) all actions, suits, claims, demands, liabilities, costs, expenses, loss and damage (including legal fees on a full indemnity basis) incurred, suffered or arising out of or in connection with any content you post through the Website;
- (b) any direct or indirect consequences of you accessing, using or transacting on the Website or attempts to do so; and/or

(c) any breach of the Terms.

## 19. Dispute Resolution

### 19.1. Compulsory

If a dispute arises out of or relates to the Terms that involves THV, either party may not commence any Tribunal or Court proceedings in relation to the dispute, unless the following clauses have been complied with (except where urgent interlocutory relief is sought).

### 19.2. Notice

A party to the Terms claiming a dispute (“Dispute”) has arisen under the Terms must give written notice to the other party detailing the nature of the Dispute, the desired outcome and the action required to settle the Dispute. Depending on the nature of Dispute, the other party must carry out the action required as set out in the table as follows. The corresponding consequences shall apply if the other party fails to comply with the action required.

<b>Nature of Dispute</b>	<b>Action required from the other party</b>	<b>Failure to comply</b>
<b>Equipment is not as described, faulty, or is unsafe</b>	<ul style="list-style-type: none"> <li>The Owner must rectify the problem.</li> <li>If the problem is not rectifiable, the Owner must arrange for a suitable replacement for the rental period.</li> </ul>	<ul style="list-style-type: none"> <li>Should the Owner fail to rectify the problem or arrange for a suitable replacement, a penalty will be charged against the Owner. [The amount of the penalty shall be equivalent to the amount incurred by the borrower in sourcing replacement rental equipment;] <ul style="list-style-type: none"> <li>the Rental Price will be refunded to the Borrower;</li> <li>the Commission Fee is charged to the Owner; and</li> <li>the Rating System shall reflect the outcome of the Dispute.</li> </ul> </li> </ul>
<b>Borrower fails to collect the Equipment at Handover</b>	<ul style="list-style-type: none"> <li>The Owner must contact the Borrower to enquire about the failure to collect.</li> <li>The Borrower must collect the Equipment from the Owner’s nominated address.</li> </ul>	<ul style="list-style-type: none"> <li>Should the Borrower fail to collect the Equipment,</li> <li>subject to clause 9 of these Terms, the Owner is entitled to the full amount of the Rental Price; and</li> <li>the Rating System shall reflect the outcome of the Dispute.</li> </ul>
<b>Owner fails to deliver the Equipment at Handover</b>	<ul style="list-style-type: none"> <li>The Borrower must contact the Owner to enquire about the failure to deliver.</li> <li>The Owner must deliver the Equipment to the Borrower’s nominated address.</li> </ul>	<ul style="list-style-type: none"> <li>Should the Owner fail to deliver the Equipment,</li> <li>a penalty will be charged against the Owner. The amount of the penalty shall be equivalent to the amount incurred by the borrower in sourcing replacement rental equipment;</li> <li>the Rental Price will be refunded to the Borrower;</li> <li>the Commission Fee is charged to the Owner;</li> <li>the Rating System shall reflect the outcome of the Dispute; and</li> <li>the Borrower may contact THV and THV may at its sole discretion decide to terminate the provision of its Services to the Owner.</li> </ul>
<b>Equipment is returned to the Owner</b>	<ul style="list-style-type: none"> <li>The Owner must report the damage to THV as soon as the Owner becomes aware of it and no later than 24 hours after becoming aware of it.</li> </ul>	<ul style="list-style-type: none"> <li>Should the Owner fail to report the damage promptly, the Owner acknowledges that THV may deny any</li> </ul>

<b>with damage</b>	<ul style="list-style-type: none"> <li>The Owner must secure evidence of the damage and cooperate with THV during the investigation.</li> <li>Both the Owner and the Borrower agree that THV will determine whether the damage occurred during the Rental Services and whether the Owner is eligible for compensation. Both the Owner and the Borrower further agree that they will be bound by the final determination of THV.</li> <li>Where THV determines that the damage is minor, THV will provide 50% of the Security Deposit to the Owner and will refund the remaining balance to the Borrower.</li> <li>Where THV determines that the damage is major, THV will provide 100% of the Security Deposit to the Owner and the Borrower will not be entitled to any refund of the Security Deposit.</li> <li>Clause 10.5 applies where the Security Deposit is insufficient to rectify the damage.</li> </ul>	<p>compensation which may be payable to the Owner.</p> <ul style="list-style-type: none"> <li>Should the Owner and/or the Borrower refuse to comply with THV's determination, all parties are subject to the requirements of clause 18.3.</li> <li>The Rating System shall reflect the outcome of the Dispute.</li> </ul>
<b>Equipment is not returned to the Owner</b>	<ul style="list-style-type: none"> <li>Where the Equipment is not returned to the Owner, the Owner must first contact the Borrower to enquire about the reasons for the failure to return the Equipment. The Owner must also notify THV promptly.</li> <li>THV will investigate and depending on the reasons for the failure to return the Equipment, THV may release the Security Deposit to the Owner.</li> </ul>	<ul style="list-style-type: none"> <li>If the Equipment is not returned to the Owner, because the Borrower has stolen the Equipment, the Borrower's Account will be terminated immediately. THV will also notify the police of the incident. THV will then release all the Security Deposit to the Owner.</li> <li>Until the Equipment is returned, THV will provide the Owner with similar Equipment (that may be used and of similar quality) or pay the Owner the value of the Equipment up to \$1000.</li> <li>If the Equipment is unrecoverable, THV will replace the Equipment (that may be used and of similar quality) or pay the Owner the value of the Equipment up to \$1000.</li> </ul>
<b>Equipment injures a child</b>	<ul style="list-style-type: none"> <li>The Borrower must contact THV as soon as possible.</li> <li>The Owner must provide proof of age of the Equipment.</li> </ul>	<p>Failure of the Borrower to notify THV may result in the Borrower being liable to pay for any loss or liabilities that occur in connection with the incident.</p> <p>Failure of the Owner to provide proof of age of the Equipment may result in the Owner being liable for the injury.</p> <ul style="list-style-type: none"> <li>A Borrower or Owner may be subject to other liability, such as criminal liability, depending on the circumstances relating to the injury. In such a case, the Borrower and/or Owner should seek their own legal advice.</li> </ul>

### 19.3. Resolution

- (a) Both the Owner and the Borrower agree that they will endeavour in good faith to resolve the Dispute expeditiously by negotiation or such other means upon which they may mutually agree. Where THV deems necessary, THV will act as a mediator and attempt to resolve the Dispute.
- (b) If for any reason whatsoever, twenty-one (21) days after the date of the Notice, the Dispute has not been resolved, the Owner and the Borrower must either agree upon selection of a mediator or request that an appropriate mediator be appointed by the President of the Law Institute of Victoria or his or her nominee.

- (c) The Owner and the Borrower are equally liable for the fees and reasonable expenses of a mediator and the cost of the venue of the mediation and without limiting the foregoing undertake to pay any amounts requested by the mediator as a pre-condition to the mediation commencing. The Owner and the Borrower must each pay their own costs associated with the mediation. For the avoidance of doubt, THV, as a facilitator of the Services, is not in any way responsible or liable for any costs associated with the mediation.
- (d) Where one of the parties to the mediation is located outside Australia, a mediator who offers skype/video conferencing mediation will be appointed.
- (e) The mediation will be held in Melbourne, Australia or such other location in Australia agreed to by the Owner and Borrower.

#### 19.4. Confidential

All communications concerning negotiations made by the Parties arising out of and in connection with this dispute resolution clause are confidential and to the extent possible, must be treated as "without prejudice" negotiations for the purpose of applicable laws of evidence.

#### 19.5. Termination of Mediation

If thirty (30) days have elapsed after the start of a mediation of the Dispute and the Dispute has not been resolved, either Party may ask the mediator to terminate the mediation and the mediator must do so.

#### 19.6. Legal Proceedings

In the event that the Dispute is not resolved at the conclusion of the mediation, either Party may institute legal proceedings concerning the subject matter of the Dispute thereafter.

### 20. GST

- 20.1. Unless otherwise stated, all amounts, including out of pocket expenses, expressed and described on or in connection with these Terms, are listed in Australian Dollars (AUD) and are GST inclusive.

### 21. Venue and Jurisdiction

- 20.1. The Services offered by THV are intended to be viewed by residents of Australia. In the event of any dispute arising out of or in relation to the Website, you agree that the exclusive venue for resolving any dispute shall be in the courts of Victoria, Australia.

### 22. Governing Law

- 21.1. The Terms are governed by the laws of Australia. Any dispute, controversy, proceeding or claim of whatever nature arising out of or in any way relating to the Terms and the rights created hereby shall be governed, interpreted and construed by, under and pursuant to the laws of Australia without reference to conflict of law principles, notwithstanding mandatory rules. The validity of this governing law clause is not contested. The Terms shall be binding to the benefit of the parties hereto and their successors and assigns.

### 22. Severance

22.1. If any part of the Terms is found to be void or unenforceable by a Court of competent jurisdiction, that part shall be severed and the rest of the Terms shall remain in force.

**23. Assignment**

23.1. THV may transfer or assign the rights and obligations conferred by these Terms in its sole discretion.

23.2. The rights and obligations conferred by these Terms cannot be transferred or assigned by you unless express written consent is provided by THV, who will not unreasonably withhold such consent.

**24. Force majeure**

24.1. If a party is prevented from or delayed in performing an obligation by Force Majeure, and promptly acts to mitigate or remove the Force Majeure and its effect, then the obligation is suspended during, but for no longer than, the period the Force Majeure continues and any further period that is reasonable in the circumstances.

24.2. In this clause "Force Majeure" means an event beyond the reasonable control of the affected party, which occurs without the fault or negligence of the affected party.

**25. Contact Information**

25.1. THV may be contacted by email at [info@treehutvillage.com.au].