

## 1. OWNERSHIP

- (a) Royal Wolf Trading Australia Pty Ltd ABN 38 069 244 417 ("we" or "us") own the equipment at all times, and the Equipment is our sole property. You do not have any right, interest or claim in or over the Equipment except as expressly set out in this Agreement.
- (b) You do not have any express or implied right or entitlement to, sell, re-hire, lease, sublease, encumber, grant any right or interest (of any nature) in or over the Equipment.
- (c) You must not alter the Equipment in any way or change or obscure the identification lettering and numbering on any Equipment. If you fail to remove any markings you have added to the Equipment upon return of the Equipment, we may do so at your cost.

## 2. WHAT FEES AND CHARGES ARE PAYABLE BY YOU?

- (a) **Hire Fee.** You agree to pay us the Charges (including the Hire Fees in the Rate Schedule) for each unit of Equipment hired. Charges are due and payable in accordance with agreed terms. We may increase the Charges upon prior notice to you.
- (b) **Calculation of Hire Fee.** You shall pay all Charges for each period regardless of the number of days in such Period you hired the Equipment.
- (c) **Payments.** You must pay the Charges, without deduction, set off or counterclaim. Unless we have agreed to credit terms the Charges will be automatically debited to your nominated credit card or bank account on the seventh working day of each month until all Equipment has been returned and you have fulfilled all your obligations under this Agreement.
- (d) **Late payments.** If any Charges are not paid on the due date, you will pay interest on the unpaid Charges (**Overdue Amount**). Interest on any Overdue Amount will be calculated monthly, at the rate of 18% per annum on the Overdue Amount, from and including the due date to and including the date that we receive the Overdue Amount.
- (e) **Damage Waiver.** The Damage Waiver will automatically be charged to you unless you deliver written proof of an insurance policy covering the Equipment and we approve such insurance. The Damage Waiver is not insurance. Your payment of the Damage Waiver relieves you of liability in excess of the Damage Waiver Limits for loss or damage caused by graffiti, theft, forced or attempted forced entry, earthquake, hail, windstorm, hurricane and tornado. The Damage Waiver Limits are Storage Containers (Minicube, 10', 20' 40') \$100; Hazardous Goods \$500; Refrigerated Containers, Site Office/Changerooms / Lunchrooms, Ablution Blocks and Accommodation Units \$1,000. The Damage Waiver will not limit your liability under the preceding sentence unless you (i) take reasonable precautions against theft and forced entry, (ii) notify us of loss or damage to Equipment within 3 business days of discovery of such event, (iii) deliver to us satisfactory proof of the loss or damage and the police report regarding such event within 30 days of discovery of such event and (iv) you comply with the terms of this Lease.

## 3. TERM OF THE AGREEMENT; DELIVERY OF EQUIPMENT

The term of this Agreement (**Hire Term**) commences upon the date you take possession of the Equipment or sign a receipt (**Receipt**) acknowledging delivery and acceptance of the Equipment in good condition and terminates on the date you return the Equipment as specified in Section 4 hereof or on the date that we terminate the Agreement.

## 4. RETURN OF EQUIPMENT

- (a) At the end of the Hire Term, you must return the Equipment to us at the depot specified in the Rate Schedule or such other depot we identify. The Equipment will be returned to us only if and on the day that we issue to you a written receipt for the return of the Equipment and all Charges and repair and damages costs assessed by us are paid by you to us.
- (b) You must ensure all waste receptacles are emptied prior to return.

## 5. WHO BEARS THE RISK OF DAMAGE?

Except for normal wear and tear, you will pay us on demand for all damage to, loss or destruction of, the Equipment that occurs during the Hire Term or while Equipment is in your control or possession (the **Control Period**). **YOU ARE SOLELY RESPONSIBLE FOR ANY DAMAGE TO, SPOILAGE OF OR THEFT OF ANY CONTENTS STORED IN OR ANY EQUIPMENT (CONTENTS) DURING THE CONTROL PERIOD, INCLUDING, WITHOUT LIMITATION, DAMAGE CAUSED BY LEAKING OF ANY EQUIPMENT, FAILURE OR MALFUNCTION OF ANY REFRIGERATION UNIT THAT IS PART OF OR LEASED IN CONNECTION WITH THE EQUIPMENT, CONDENSATION, HUMIDITY, TRANSPORT, THEFT, FIRE, VANDALISM, VERMIN, INSECTS INCLUDING TERMITES/WHITE ANTS, HEAT, COLD, DUST, WATER OR LOSS CAUSED BY FORCES OF NATURE. IN REFERENCE A HIGH RISK OF TERMITE INGRESS AND DAMAGE WHICH YOU WILL BE LIABLE FOR.**

## 6. WHEN DOES THIS AGREEMENT TERMINATE?

- (a) **Termination.** This Agreement terminates on the earlier of the date (i) all Equipment is returned to us pursuant to Section 4 hereof or (ii) we terminate this Agreement.
- (b) **What are the consequences of termination?** Upon the termination of this Agreement you must immediately return the Equipment and pay us all Charges and legal fees owed under this Agreement, to clean and repair the Equipment and to recover possession of the Equipment.

## 7. REPAIRS; COMPLY WITH ALL LAWS

- (a) We will assess if there is any damage to the Equipment. Within 10 working days of the return of the Equipment to us we will notify you in writing of the costs of any repair or cleaning costs for the Equipment returned.
- (b) You must clean the Equipment. You agree to: (i) return the Equipment in clean condition and free of labels and graffiti; and (ii) pay us on demand for any costs necessary to clean and ready the Equipment for lease by our customers.
- (c) **Compliance with law.** You shall use the Equipment in compliance with applicable law. We may inspect the Equipment at any time.

## 8. LOSS OR TOTAL DAMAGE

If during the Hire Term or Control Period, the Equipment is lost, stolen, destroyed or damaged (which our sole opinion) is not repairable, you must: (i) immediately notify us in writing of such occurrence; (ii) continue to pay us all Charges owed until the end of the Hire Term; and (iii) pay us the Replacement Value for the Equipment. Payments for Charges will not be applied to charges for the Replacement Value. The Replacement Value of the Equipment is listed in the Rate Schedule.

## 9. OPERATION, MAINTENANCE AND REPAIR DURING HIRE TERM; SUPPORT SERVICES

You will be responsible to fully comply with the operation, maintenance and repair instructions or conditions (**Maintenance Conditions**) displayed in or on the Equipment, delivered to you or available on our website <http://www.royalwolf.com.au/>.

## 10. YOU WAIVE CERTAIN RIGHTS

- (a) **Force majeure.** Your obligations under this Agreement are absolute and will not be affected by any circumstance or event beyond your control, of whatever nature, including, but not limited to, fire, storm, flood, earthquake, explosion, accidents, terrorism, sabotage, riots, civil disorder, insurrection, war, strikes, lockouts, labor shortages, stoppages or disputes, transportation embargoes or delays, failure or shortage of material, equipment, fuel, electricity

or other supplies, failure of suppliers to deliver as requested, inability to finish repairs, acts of God, and acts, orders, directions or regulations of any government or its branches or agencies.

- (b) **Waiver.** To the full extent permitted by law, you waive all rights you may have under any statute, law or treaty limiting your liability or the liability of any vessel or vehicle on which the Equipment is used or any person having an interest in any such vessel or vehicle.

## 11. DEFAULT, REMEDIES UPON DEFAULT

- (a) **What is an event of default?** You commit an event of default under this Agreement if (i) you fail to pay any Charges when due under this Agreement and you do not remedy your failure within two (2) working days of the date that we notify of your failure; (ii) you fail to perform any other obligation under this Agreement and you do not remedy your failure within 10 working days of the date that we notify of your failure; or (iii) you cease doing business, become insolvent, commit an act of bankruptcy or become the subject of any proceeding under any bankruptcy act, or its counterpart under the law of Australia or any territory outside of the jurisdiction of Australia.
- (b) **What are our rights after an event of default?** If an event of default occurs, we may (but are not obliged to) immediately without notice to you and without releasing you from any accrued obligations do one or more of the following (i) terminate this Agreement; (ii) declare the balance of the Charges due and payable by you; (iii) retake possession of the Equipment; and (iv) remedy any default that you commit under this Agreement (at your cost).
- (c) **Your rights to use the Equipment cease.** In the event that we terminate this Agreement you must immediately return the Equipment to us.
- (d) **Right to recover Equipment.** You irrevocably authorise us to enter upon any property occupied by you for the purpose of removal of any Equipment hired to you by us if and when this Agreement is terminated, and in doing so you irrevocably authorize us to take possession of any property in, on or attached to the Equipment which is not our property, remove any locks from any Equipment and you acknowledge and agree that we are not liable for the care or safekeeping of any property removed from any Equipment.
- (e) **Replacement of non-returned Equipment.** If you do not return any Equipment within 30 days of the termination of this Agreement, you must pay to us an amount equal to the Replacement Value (such amount will not include depreciation).
- (f) **Termination does not discharge your obligations.** Termination of this Agreement will not relieve or discharge you from any obligations under this Agreement incurred prior to termination.

## 12. EXCLUSION OF WARRANTIES

- (a) **State of the Equipment.** You acknowledge and agree that you: (i) have inspected the Equipment prior to or upon its delivery to you; and (ii) you accept it in its current state.
- (b) **Exclusion of warranties.** To the full extent permitted by law, we exclude and are not liable for any condition or warranty (of any kind) which is not expressly set out in this Agreement.
- (c) **Specific warranties excluded.** Without limiting paragraph (b) above, we make no express or implied warranty in relation to: (i) the fitness of the Equipment for any particular purpose; (ii) the merchantability of the Equipment; or (iii) the description, state, quality or condition of the Equipment.
- (d) **Limitation of Liability.** You agree that if you suffer a loss (including economic loss), damage, cost, expense or claim howsoever arising as a result of the hiring or our maintenance and support of the Equipment including, without limitation, any defect in the Equipment, our liability to you is limited to the repair or replacement of the Equipment. We are not liable under any circumstances for any direct, indirect, economic, special or consequential loss or damage of any nature whatsoever that you may suffer from the use or hire of the Equipment.

## 13. NOTICES

All notices must be given to the address shown in this Agreement, or to such other address as may be designated in writing by either party to the other.

## 14. INDEMNITY

You indemnify and will hold us harmless from all liability, damage, cost or expense arising out of any: (i) failure by you to comply with your obligations under this Agreement; (ii) any claim for personal injury or death, and for loss of or damage to person, property, cargo, vessels or vehicles, arising out of or incident to the ownership, selection, possession, leasing, operation, control, use, storage, loading, unloading, moving, maintenance, delivery or return of the Equipment; (iii) any forfeiture, seizure, or impounding of, or claim of charge, lien or encumbrance on the Equipment. This indemnity survives the termination of this Agreement.

## 15. YOU CANNOT SUBHIRE OR ASSIGN YOUR RIGHTS

You have no right to assign this Agreement or to sublet, rent or otherwise hire out or part with possession of the Equipment, to any other party without our prior written consent.

## 16. GENERAL

- (a) **Binding:** This Agreement binds the parties, their successors and assigns and shall be governed by the laws of New South Wales. (b) **Costs:** Should it be necessary by us to incur legal and/or other expenses (including commercial agent and private enquiry fees) in enforcement of its rights under this agreement or in obtaining or attempting to obtain payment of any amount due by you, you expressly undertake to be liable to reimburse us on an indemnity basis the whole amount of such expenses and fees. (c) **Waiver of rights:** No failure to exercise nor delay in exercising any right, power or remedy by us operate as a waiver. (d) **Cumulative Rights:** Our rights under this Agreement are in addition to, and do not exclude, any right at common law, equity or any other agreement between you and us. (e) **Variation of terms and conditions:** We may amend the terms and conditions of this Agreement upon written thirty (30) days notice to you of the proposed changes. (f) **Taxes:** You are responsible for the payment of all taxes and levies, duties or charges which arise under or in connection with this Agreement (including, if any, stamp duty). (g) **GST:** (i) The prices shown for the Equipment in this Agreement do not include GST. (ii) If we become liable to pay GST in respect of the hire or supply of the Equipment, the Hire Fee payable under this Agreement will be increased by the amount of the GST payable by us in respect of that hire or supply (being GST on the increased price including the GST). (iii) The GST amount will be notified by us to you and must be paid by you to us in the same manner and at the same time as the rest of the Hire Fee. (iv) This clause is an essential term of this Agreement. (h) **Further Assurances:** You agree to execute and deliver any instruments and do such other actions as we request in connection with the enforcement of our rights under this Agreement. (i) Drawings provided are the property of us and is conditionally loaned to the recipient – who by receiving it has agreed not to reproduce it in whole or in part, nor make any use of it that has not been approved in writing by us.