

TERMS AND CONDITIONS OF HIRE

WHAT THIS DOCUMENT DOES

This document sets out the terms and conditions of an agreement (“**Agreement**”) with you the hiring customer (“**you**”) in respect of all present and future hires of containers, equipment and accessories (“**Equipment**”) and all delivery, carriage, collection or relocation services (“**Carriage**”) provided, by Royal Wolf Trading Australia Pty Ltd ABN 38 069 244 417 (“**we**” or “**us**”) to you. If you wish to hire Equipment or obtain Carriage from us we may ask you to sign or otherwise authorise or accept a quote or other document we present to you (“**Quote**”). The Quote is not a separate contract but is part of and must be read together with this Agreement. You enter into this Agreement by signing or otherwise authorising or accepting a Quote. A Quote may include special conditions which apply in addition to these terms and conditions. We may decline to hire Equipment to you in our discretion.

1) OWNERSHIP

- (a) At all times we own the Equipment hired to you. You do not have any right, interest or claim in or over the Equipment except as hiree.
- (b) You must not sell, charge, grant any interest or lien in or over the Equipment.
- (c) You must not alter the Equipment or change or obscure the identification lettering and numbering on the Equipment. If you fail to remove any markings you have added to the Equipment upon its return, we may do so at your cost.

2) WHAT FEES, AND CHARGES ARE PAYABLE BY YOU?

- (a) **Hire Fees.** You agree to pay us the charges (including the Hire Fees specified) for each unit of Equipment hired or services or Carriage supplied. Charges are due and payable in accordance with the terms you have agreed with us from time to time (and if not otherwise agreed, within 14 days of invoice). If your hire under this Agreement is not for a fixed term we may in respect of the hire increase the charges, and we also may change our payment terms on one month’s written notice to you (in which case you may terminate the relevant hire on one month’s notice if you are not agreeable to the increase or change).
- (b) **Calculation of Hire Fees.** We charge a periodic amount for hires if you hire for a period or part of the period and so you must 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 on the due date, without deduction or set off. Unless we have agreed to credit terms the charges will be automatically debited to your nominated credit card or bank account as set out in the Quote until all Equipment has been returned and you have fulfilled your obligations under this Agreement.
- (d) **Late payments.** If any charges are not paid on the due date, you must pay interest on the unpaid charges at a rate of 8% per annum calculated monthly.
- (e) **Damage Waiver.** The Damage Waiver referred to in the Quote will be automatically charged to you daily or monthly, as applicable, unless you provide your ABN and a Certificate of Currency in accordance with clause 7(b), and we, acting reasonably, approve such insurance. The Damage Waiver is not insurance and does not cover Equipment that is lost, stolen, destroyed or not returned to us. Your payment of the Damage Waiver relieves you of liability for the first \$150 excluding GST in repair costs of each item of Equipment when the Equipment is returned from hire.

3) TERM OF THE AGREEMENT; DELIVERY OF EQUIPMENT

- (a) The term of a hire (“**Hire Term**”) commences on the date you take possession of the Equipment or sign a receipt acknowledging delivery, and terminates on the date you return the Equipment as specified in Section 4 or on the date this Agreement is terminated.
- (b) Risk in and responsibility for the Equipment passes to you when the Equipment is loaded onto a vehicle for transport at our premises or the

premises of our subcontractor. This paragraph (b) does not apply if the hire is under a consumer contract or a small business contract for the purposes of section 23 of the Australian Consumer Law, in which case risk and responsibility passes on delivery to you.

- (c) You must not move the Equipment from the location specified in the Quote without our prior written consent, and must never move the Equipment out of Australia.
- #### 4) RETURN OF EQUIPMENT
- (a) At the end of the Hire Term, you must return the Equipment to us at the depot fairly specified by us. The Equipment will be considered returned to us only if, and on the day that, we actually receive it.
 - (b) You must ensure the Equipment is empty prior to return.

5) WHO BEARS THE RISK OF DAMAGE/LOSS/THEFT

- (a) Except for normal wear and tear and subject to clause 2(e), you must pay us for damage to, loss, theft or destruction of, the Equipment that occurs during the Hire Term.
- (b) To the extent permitted by law, you are responsible for any damage to, spoilage or theft of any contents stored in the Equipment during the Hire Term, 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 to termite/white ants you should be aware that in many areas, placing containers directly on bare ground represents a high risk of termite ingress and damage for which you will be liable.

6) REPAIRS AND MAINTENANCE

- (a) During the Hire Term, you must at your cost maintain the Equipment in good repair and safe operating condition. You agree to: (i) return the Equipment in clean and good condition and free of labels and graffiti unless we applied those labels or the graffiti was written when we had possession of the Equipment; and (ii) pay us on request for the reasonable costs necessary to remove and dispose of contents, clean, repair (less any amount you are relieved of under clause 2(e)) and ready the Equipment for hire by our customers.
- (b) Upon return of the Equipment, we will inspect and fairly assess if there is any repair cost, removal cost, disposal or cleaning costs for the Equipment returned. Those costs will be payable by you within 14 days.
- (c) **Compliance with law.** You must use and operate the Equipment safely, in compliance with all applicable laws, regulations, standards, Codes of Practice, Building Codes, local, state and federal requirements, and only for its intended use. We may inspect the Equipment at any time to check your compliance.

7) LOSS OR TOTAL DAMAGE

- (a) If during the Hire Term the Equipment is lost, stolen, destroyed or damaged beyond reasonable repair, you must: (i) immediately notify us in writing of such occurrence; (ii) pay us the full as new replacement value for the Equipment as fairly specified by us and available on request during the Hire Term and (iii) continue to pay us the hiring charges for the Equipment until that replacement value is paid which is to compensate us for our loss of revenue. Payments for hire charges do not reduce your obligation to pay replacement value.
- (b) During the Hire Term you must maintain an insurance policy with a reputable insurer covering loss or damage to the Equipment for the full as new replacement value and note us as an interested party on the policy. You agree to provide us with certificates of currency on request.

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8) OPERATION DURING HIRE TERM

You are responsible to comply with any operation instructions or conditions displayed in or on the Equipment or which may be provided to you.

9) 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) business days of the date that we notify you in writing of your failure; (ii) you fail to perform any other obligation under this Agreement and you do not remedy your failure within five (5) business days of the date that we notify you in writing of your failure; or (iii) you cease doing business, have a liquidator, administrator, receiver and manager, controller or other like officer appointed over any or all of your assets, 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) If a charge to any nominated credit card, direct debit or other manner of payment is not honoured, then you will be liable for an administration fee as fairly determined by us from time to time, without limiting our rights upon such default.
- (c) **What are our rights after an event of default?** If an event of default occurs, we may (but are not obliged to) immediately 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 (discounted by our cost of borrowing), and we will refund any amounts we obtain from re-hiring the Equipment during the balance of the Hire Term; (iii) retake possession of the Equipment; and (iv) remedy any default that you commit under this Agreement (at your cost).
- (d) **Your rights to use the Equipment cease.** On termination of this Agreement you must immediately return the Equipment to us and pay us all charges owing under this Agreement, and any legal fees to recover possession of the Equipment. We will be entitled to treat any Equipment not returned as stolen, and report the matter to the Police for action.
- (e) **Right to recover Equipment.** In an event of default you authorise us at your cost to enter upon the property where the Equipment is located for the purpose of removal of the Equipment, and you authorise us at your cost to take possession of any property in, on or attached to the Equipment. You grant us a particular and general lien over property removed from the Equipment as security for any amounts owed by you and authorise us to sell such property and apply the sale proceeds towards any amounts owed by you.
- (f) **Replacement of non-returned Equipment.** If you do not return any Equipment within 14 days of the termination of this Agreement, you must pay to us an amount equal to the full as new replacement value as fairly specified by us and available on request.
- (g) **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.
- (h) **Your right to terminate.** You may terminate this Agreement by written notice if:
 - (i) we are in breach of this Agreement and the breach is not remedied within five (5) business days of written notice being received by us requiring the breach to be remedied; or
 - (ii) we cease doing business or a liquidator, administrator, receiver and manager, controller or other like officer is appointed over any or all of our assets.

10) WARRANTIES – NON-CONSUMER EQUIPMENT

- (b) **Application of this clause 10.** This clause 10 applies only where the amount payable for provision of the hire of the Equipment during the Hire Term exceeds \$40,000 or the Equipment is not of a kind ordinarily acquired for personal, domestic or household use.

- (c) **State of the Equipment.** You acknowledge and agree that you: (i) have the opportunity to inspect the Equipment prior to or upon its delivery to you; and (ii) you accept it in its current state.
- (d) **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. This does not affect conditions and warranties that cannot be excluded under law including under the Australian Consumer Law.
- (e) **Specific warranties excluded.** Without limiting paragraph (c) above, we make no express 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.
- (f) **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.

11) WARRANTIES – CONSUMER EQUIPMENT

- (b) **Application of this clause 11.** This clause 11 applies only where the amount payable for provision of the hire of the Equipment during the Hire Term is \$40,000 or less or the Equipment is of a kind ordinarily acquired for personal, domestic or household use.
- (c) **Application of consumer guarantees under the Australian Consumer Law.**

Our Equipment comes with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and to compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the Equipment repaired or replaced if the Equipment fails to be of acceptable quality and the failure does not amount to a major failure.
- (c) Equipment presented for repair may be replaced by refurbished goods of the same type rather than being repaired. Refurbished parts may be used to repair the Equipment.

12) PERSONAL PROPERTY SECURITIES ACT

- (a) To the extent a hire under this agreement creates a PPS lease, as defined in the Personal Property Securities Act 2009 (Cth) ("**PPS Act**"), we have a security interest in the Equipment as well as its proceeds for the purposes of the PPS Act. For the purposes of the PPS Act the collateral is described as containers and related equipment and the collateral may be further described in a Quote.
- (b) You warrant that any Equipment or materials hired from us are not hired predominantly for personal, domestic or household purposes.
- (c) You acknowledge that we may do anything reasonably necessary, including but not limited to registering any security interest which we have over the Equipment and/or any property inside the Equipment on the Personal Property Securities Register in order to perfect the security interest as a first priority security interest and comply with the requirements of the PPS Act. You agree without charge to provide all information and do all things reasonably necessary to assist us to undertake the matters set out above. You waive pursuant to s.157(3)(b) of the PPS Act the right to receive notice of a verification statement in relation to any registration on the register.
- (d) You agree not to disclose information of the kind that can be requested under section 275(1) of the PPS Act.

13) SUB-HIRING

- (b) You may only on-hire the Equipment to a third party with our prior written consent and provided the hire agreement ("**sub-hire**") includes express acknowledgement from the third party that:
 - (i) a person other than you is the legal owner of the Equipment and that you have entered into an agreement to hire the Equipment from us;

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- (ii) the third party is aware the sub-hire will breach our security interest in the Equipment unless we consent to the sub-hire and they are bound by the terms of our consent;
- (iii) the third party's rights in respect of the Equipment are expressly subject and subordinated to our rights; and
- (iv) if our agreement with you terminates:
 - we may by notice to the third party terminate the sub-hire and the third party must return the Equipment to us, even if the third party may not be in breach or default of its obligations under the sub-hire; and
 - we may enter any premises where any Equipment is located to exercise our rights or your rights under the sub-hire including, if the need arises, the right to remove the Equipment.
- (v) if you sub-hire Equipment in accordance with clause 13(a), you must do everything required to ensure that your security interest is and remains perfected by registration as a first priority purchase money security interest (PMSI).
- (c) You hereby grant us a security interest over all sub-hires and chattel paper arising in respect of sub-hires to secure your obligations to us under this agreement.
- (d) We may perfect any security interest held by us against any third party (including a third party who sub-hires the Equipment) in any manner we consider appropriate to protect our interest in the Equipment, the sub-hire and chattel paper.
- (e) If requested by us, you must provide us with all details as to the location of the Equipment and the identity of any person hiring Equipment under a sub-hire.

14) NOTICES

All notices must be given to the address shown in the Quote, or to such other address as may be designated in writing by either party to the other. Business day in this Agreement means any day which is not a Saturday, Sunday or public holiday in New South Wales.

15) INDEMNITY

You indemnify and hold us harmless from all losses, liabilities, damages, costs and expenses ("**Loss**") arising out of or in connection with 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 or property, arising out of or incidental to the possession, hire, operation, control, use, storage, contents (including dangerous goods), delivery or return of the Equipment; (iii) any forfeiture, seizure, or impounding of, or claim of charge, lien or encumbrance on the Equipment; but only to the extent that we did not cause or contribute to the Loss and it was not outside your control. This indemnity survives the termination of this Agreement.

16) NOT LIABLE

To the full extent permitted by law, we are not liable for any indirect, economic, special or consequential loss or damage of any nature, including, without limitation, any loss of business or revenue, loss of profits, loss of opportunity, loss of goodwill, anticipated savings or expenses, in connection with or arising out of this Agreement or the hire of the Equipment or Carriage. Nothing in this clause does, or is intended to, exclude or limit any rights you may have under the Australian Consumer Law. To the extent permitted by s.64A of the Australian Consumer Law in respect of goods and services other than of a kind ordinarily acquired for personal, domestic or household use or consumption, our liability is limited to the re-supply of the relevant goods or services.

17) YOU CANNOT ASSIGN YOUR RIGHTS

You must not assign this Agreement or part with possession of the Equipment to any other party without our prior written consent, which will not be unreasonably withheld or delayed.

18) GENERAL

- (a) This Agreement binds the parties, their successors and assigns and is governed by the laws of New South Wales. The parties submit to the non-exclusive jurisdiction of the Courts of New South Wales.
- (b) Should it be necessary for us to incur legal and/or other expenses (including commercial agent and private enquiry fees) in enforcement of our rights under this Agreement or in obtaining or attempting fairly to obtain payment of any amount due by you, you undertake to reimburse us on an indemnity basis the amount of such expenses and fees.
- (c) No failure to exercise or delay in exercising any right, power or remedy by us or you operates as a waiver.
- (d) This Agreement may only be modified or varied if agreed in writing by the parties. This Agreement overrides and excludes any terms and conditions imposed by you.
- (e) You are responsible for the payment of any taxes and levies, duties or charges which arise under this Agreement (including any stamp duty).
- (f) We normally quote Hire Fees and other charges on a GST-inclusive basis. However if we have quoted GST-exclusive Hire Fees or other charges then amounts payable under this Agreement will be increased by the amount of the GST we are liable for in respect of the relevant hire or supply. The GST amount will be notified to you and must be paid by you in the same manner and at the same time as the Hire Fees or other charges.
- (g) We own all intellectual property rights attributable to the Equipment or anything we do in connection with this Agreement including in any inventions, drawings, designs or other work. Drawings provided are our property and are conditionally loaned to you. You agree not to reproduce them in whole or in part, nor make any use of them that has not been approved in writing by us.
- (h) You consent to us using and disclosing your personal information for the purposes of direct marketing.

19) CARRIAGE

- (a) Where we or our subcontractors provide Carriage for you, we and our subcontractors are not common carriers and accept no liability as such.
- (b) All Carriage is performed at your risk. You bear all risk of loss or damage to or arising out of the Equipment or its contents. This clause 19(b) does not apply to regulated transactions. For the purposes of this clause a regulated transaction is one under a consumer contract or a small business contract for the purposes of section 23 of the Australian Consumer Law.
- (c) You must not tender for Carriage any dangerous, explosive, flammable, hazardous or damaging goods without presenting a full description of those goods.
- (d) We and our subcontractors are not liable for failure to deliver, delay in delivery of, or misdelivery of the Equipment or its contents due to weather or other circumstances beyond our control. In this event we or our subcontractors will deliver as soon as reasonably possible.
- (e) Clauses 10, 11 and 16 of these terms (with any necessary changes) apply to Carriage with references to the hire of Equipment in those clauses to be read as references to the provision of Carriage.