

## TERMS AND CONDITIONS OF SALE

### WHAT THIS DOCUMENT DOES

This document sets out the terms and conditions of an agreement (“**Terms**”) with you the customer (“**you**”) in respect of all present and future sales of containers, equipment and accessories (“**Equipment**”), and all delivery and carriage services (“**Carriage**”) provided, by Royal Wolf Trading Australia Pty Ltd ABN 38 069 244 417 (“**we**” or “**us**”) to you, as purchaser. If you wish to purchase Equipment or obtain Carriage from us we may ask you to sign or otherwise authorize 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 these Terms. You enter into this agreement by signing or otherwise authorizing or accepting a Quote. A Quote may include special conditions which apply in addition to these Terms. We may decline to supply goods to you in our discretion.

### 1. PAYMENT

You agree to pay us the specified price plus GST and related charges (“**Purchase Price**”) of the Equipment before delivery or by the due date, as we determine.

### 2. LATE PAYMENTS

If any amount is not paid on the due date, you will pay interest on the amount not paid under the Quote (“**Overdue Amount**”). Interest on any Overdue Amount will be calculated monthly, at the rate of eight (8%) percent per annum on the Overdue Amount, from and including the due date to and including the date we receive the Overdue Amount.

### 3. RISK AND USE

3.1 Risk in the Equipment passes to you on delivery to you, your agent or carrier.

3.2 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.

### 4. RETENTION OF TITLE

4.1 You acknowledge and agree that title to the Equipment will only pass or be transferred to you when we receive payment in full of all money owing to us in relation to the Equipment. Until we receive payment of such money you will hold the Equipment, at our sole discretion, as bailee only. Prior to receipt by us of the full Purchase Price you must:

- (a) not intermingle the Equipment with any other property;
- (b) not change the Equipment in any way;
- (c) not change or obscure in any way any identification marking that we have placed on the Equipment by lettering and numbering;
- (d) not sell the Equipment except to a bona fide purchaser for full value;
- (e) keep all proceeds from the sale of the Equipment in trust for, and on, our behalf in a separate trust account; promptly pay the proceeds of any sale of the Equipment to us.

4.2 The payment of the proceeds from the sale of the Equipment by you does not relieve you of your obligation to pay to us the full Purchase Price.

### 5. PERSONAL PROPERTY SECURITIES ACT

5.1 You acknowledge and agree that the provisions of section 4 constitute the security agreement between us creating a security interest in all present and future supplies. This security interest in the Equipment extends to the proceeds of any sale or insurance claim in respect of the Equipment and monies held in a separate

account arising from the sale of the Equipment for the purposes of the Personal Property Securities Act 2009 (Cth) (the “**PPS Act**”) and to the extent applicable the PPS Act applies. For the purposes of the PPS Act the collateral is described as containers and related goods and the collateral may be further described in a Quote.

5.2 You acknowledge and warrant that any Equipment or materials purchased from us are not purchased predominantly for personal, domestic or household purposes.

5.3 You acknowledge that we may do anything reasonably necessary, including but not limited to registering any security interest which we have over the Equipment on the Personal Property Securities Register established under section 147 of the PPS Act in order to perfect the security interest and comply with the requirement 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 section 157 (3)(b) of the PPS Act the right to receive notice of a verification statement in relation to any registration event.

5.4 You and we agree that, pursuant to section 115 of the PPS Act, the following provisions in the PPS Act do not apply in relation to a security interest in the Equipment to the extent, if any, mentioned (words in this provision have the same meaning as in the PPS Act):

- (a) section 95 (notice of removal of accession)
- (b) section 125 (obligation to dispose of or retain collateral) in that we may extend the time for delay as we consider appropriate
- (c) section 129 (disposal by purchase)
- (d) section 130 (notice of disposal), to the extent that it requires the secured party to give a notice to the grantor before disposal
- (e) paragraph 132(3)(d) (contents of statement of account after disposal)
- (f) subsection 132(4) (statement of account if no disposal)
- (g) section 135 (notice of retention)
- (h) section 142 (redemption of collateral)
- (i) section 143 (reinstatement of security agreement).

5.5 You agree not to disclose information of the kind that can be requested under section 275(1) of the PPS Act. You must do everything necessary on your part to ensure that section 275(6)(a) continues to apply.

### 6. WHAT ARE OUR RIGHTS IF YOU COMMIT A BREACH?

If you (i) fail to pay any amount payable by you to us under these Terms on the due date and you do not remedy your failure within two (2) business days of the date that we notify you in writing of your failure, or (ii) you fail to perform any other obligation under this Agreement and you do not remedy your failure within (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 a proceeding under any bankruptcy act, or its counterpart under the law of any territory outside of the jurisdiction of Australia, then without limiting our rights or remedies in any way we may (but are not obliged to) immediately and without releasing you from any accrued obligations do one or more of the following:

- (a) terminate this agreement for the sale of the Equipment to you;
- (b) declare the balance of the Purchase Price due and payable by you;
- (c) retake possession of the Equipment; and
- (d) remedy any default that you commit under these Terms (at your cost).

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### **7. YOUR RIGHTS TO POSSESSION OF THE EQUIPMENT CEASE**

In the event that we terminate this agreement for the sale of the Equipment to you, you will no longer be entitled to possession of the Equipment and you must immediately return the Equipment to us (at your cost) in accordance with these Terms. After we terminate this agreement, nothing in these Terms gives you any express or implied right or entitlement to, and you must not attempt or purport to, sell, hire, lease, encumber, grant any right or interest (of any nature) in or over the Equipment.

### **8. RIGHT TO RECOVER EQUIPMENT**

If you commit a breach of this agreement and we elect to retake possession of the Equipment, you hereby irrevocably authorise us to enter upon any premises where the Equipment are located, and to use such reasonable force as may be necessary, for the purpose of removal of any Equipment sold to you and to do so at your cost.

### **9. WHAT HAPPENS TO PROPERTY ATTACHED TO THE EQUIPMENT?**

In the event that we retake possession of all or any part of the Equipment, you authorize us to take possession of any property in, on or attached to the Equipment which is not our property.

### **10. EXCLUSION OF WARRANTIES – NON-CONSUMER EQUIPMENT**

The terms and conditions in this section 10 apply only where the amount payable for the Equipment exceeds \$40,000 or the Equipment are not of a kind ordinarily acquired for personal, domestic or household use.

#### **10.1 State of the Equipment**

You acknowledge and agree that you:

(a) have the opportunity to inspect the Equipment prior to or upon their delivery to you; and (b) you accept them in their current state.

#### **10.2 Specific warranties excluded**

Without limiting paragraph 10.1 (b), we make no express or implied warranty in relation to:

- (a) the fitness of the Equipment for any particular purpose;
- (b) the merchantability of the Equipment; or
- (c) the description, state, quality or condition of the Equipment.

#### **10.3 Not Liable**

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 these Terms. This exclusion does not affect conditions and warranties that cannot be excluded under law including under the Australian Consumer Law.

#### **10.4 Limitation of Liability**

You agree that if you suffer any loss (including economic loss), damage, cost, expense or claim howsoever arising as a result of the use or purchase 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. CONSUMER GUARANTEES**

11.1 The terms and conditions in this section 11 apply only where the amount payable for the Equipment is \$40,000 or less or the Equipment are of a kind ordinarily acquired for personal, domestic or household use.

11.2 Application of consumer guarantees under the Australian Consumer Law. Our Equipment come 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 fail to be of acceptable quality and the failure does not amount to a major failure.

11.3 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. GENERAL**

#### **12.1 Notices**

All notices under these Terms must be in writing and 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.

#### **12.2 Binding**

These Terms are binding upon you and us, your and our successors and assigns and are governed by the laws of New South Wales. The parties consent to the non-exclusive jurisdiction of the Courts of New South Wales.

#### **12.3 Override and variation**

These Terms override and exclude any terms and conditions provided by you. These Terms may only be modified or varied if agreed in writing by the parties.

#### **12.4 No waiver of rights**

A failure to exercise or delay in exercising any right, power or remedy by either party does not operate as a waiver.

#### **12.5 Cumulative rights**

Our rights under these Terms are in addition to, and do not exclude, any rights at common law, equity or any other agreement between you and us.

#### **12.6 Intellectual property**

We own all intellectual property rights attributable to the **Equipment** or anything we do in connection with these Terms including in any inventions, drawings, designs or other work. Drawings provided are our property and are conditionally loaned to you and 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.

#### **12.7 Consent**

You consent to us using and disclosing your personal information for the purposes of direct marketing.

#### **12.8 Consequential Loss**

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 these Terms or a Quote or the supply 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 ordinary acquired for personal, domestic or household use or consumption our liability is limited to the re-supply of the relevant goods or services.

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### **12.9 Expenses**

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 these Terms 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 whole amount of such expenses and fees.

### **12.10 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.

### **13. 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 their contents. This clause 13(b) does not apply to regulated transactions. For the purposes of this clause a regulated transaction is one under a consumer contact 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 their 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 12.8 of these Terms (with any necessary changes) apply to Carriage with references to the provision of Equipment in those clauses to read as references to the provision of Carriage.