

# ROYALWOLF TRADING NZ LIMITED

## CONDITIONS OF HIRE

### 1. HIRE OF EQUIPMENT

- 1.1 Royalwolf Trading NZ Limited ("the owner") Hires to the customer and the customer accepts a Hire of the Equipment for the Hire period subject to the terms and conditions contained in this Agreement.
- 1.2 The Hire shall commence on the Delivery Date and shall, unless sooner terminated, end at the Expiry Date.

### 2. RENTAL AND OTHER CHARGES

- 2.1 The customer agrees to pay the Rent for the Equipment from the Delivery Date until the date that the Equipment is returned to the owner or the Rent ceases to be payable pursuant to clause 3.4.
- 2.2 All payments due to the owner shall be paid without deduction or set-off in NZ dollars (unless other currency is indicated in this Agreement) on the 7<sup>th</sup> of the month following invoice.
- 2.3 If the customer fails to pay any Rent or other monies due to the owner on the due date the owner may, without prejudice to any other remedy it may have:
  - 2.3.1 charge interest on the overdue amount at the rate of 5% per annum above the base or indicator lending rate of the owner's bankers for commercial overdrafts calculated on a daily basis from the due date for payment until payment is received by the owner;
  - 2.3.2 withhold the supply of any Equipment ordered by the customer under any contract and/or withhold and retain any property of indebtedness to the owner;
  - 2.3.3 cancel any order or contract or arrangement between the owner and the customer and retain as liquidated damages any monies paid by the customer without being liable to the customer for any losses of any kind that it might suffer.
- 2.4 The customer shall upon demand reimburse the owner for all costs (including all collection and legal costs on a solicitor/client basis), expenses or other sums incurred by the owner in exercising any right or remedy available to it consequent upon default by the customer which sum shall also carry interest on the rate specified in clause 2.3.1 if unpaid within one calendar month of demand having been made.

### 3. DELIVERY

- 3.1 The owner will deliver the Equipment to the delivery address (if any) described in this Agreement.
- 3.2 The owner will endeavor to deliver the Equipment on the date and at the time required in this Agreement but will not be responsible for any delay or any loss or damage incurred in the delivery of the Equipment.

### 4. RETURN OF AND RISK OF DAMAGE AND LOSS

- 4.1 The customer shall, at its cost and expense, return all Equipment to the drop off location described in this Agreement on the Expiry Date.
- 4.2 The customer shall give prompt written notice to the owner in the event of damage to or loss or destruction of the Equipment.
- 4.3 The customer is liable to the owner for all damage to or loss or destruction of the Equipment subsequent to delivery and prior to return to the owner except that caused by fair wear and tear. Fair wear and tear shall not include damage by forklifts or other handling equipment or damage or deterioration, which could have been prevented by normal maintenance and/or reasonable care in use.
- 4.4 If the customer fails to repair damaged Equipment prior to returning it to the owner, the owner will present a repair estimate to the customer for acceptance. If the customer does not authorize the owner to proceed with the repair within fourteen (14) days of the owner sending the repair estimate to the customer the owner may at its discretion proceed to arrange the repair at the customer's cost. The customer shall be liable to the owner for the cost of each repair and for the Rent, which shall continue to accrue until the day on which damaged Equipment has been repaired and is fit for subsequent rental.
- 4.5 In the event of loss, theft or destruction of the Equipment or damage thereto which the owner, in its sole discretion, shall determine is not repairable, the Rent shall cease to be payable upon receipt of the owner of written notice of such event, provided payment of the replacement value for the Equipment as stated in this Agreement is made to the owner within thirty (30) days of such notice. If payment is not made within 30 days, Rent shall continue unabated until such payment is received the owner. Payments by the customer shall not be applied to charges for the replacement value of Equipment unless so specified by the owner.

### 5. TITLE

- 5.1 The customer acknowledges that Title and Ownership to the Equipment shall at all times remain with the owner and that nothing contained in this Agreement or these conditions or otherwise shall confer on the customer any right or property or interest in or to the Equipment other than as Hire and the customer will be a bailee of the Equipment only subject to this Agreement.

### 6. QUIET ENJOYMENT

- 6.1 So long as the customer is not in default the customer shall have quiet enjoyment of the Equipment without interruption from the owner or any other person lawfully claiming for or under the owner.

### 7. OWNER MAY REMEDY DEFAULT

7.1 If the customer shall neglect or omit to do anything in relation to the Equipment whereby the owner's interest in the Equipment may be adversely affected, the owner may remedy such neglect or omission and all moneys expended in so doing shall immediately be payable by the customer to the owner and until repayment shall carry interest at the rate specified in Clause 2.3 accruing on a daily basis until payment in full is received by the owner.

## 8. OPERATION, MAINTENANCE AND REPAIR

8.1 The customer shall use the Equipment for the purpose for which it is designed.

8.2 The customer shall comply with all legislation, by-laws and regulations affecting the use of the Equipment (Note this is Clause 11 of your existing Agreement).

8.3 The customer shall at its sole cost and expense maintain the Equipment in good repair and safe operation condition.

8.4 The customer shall allow the owner to enter at all reasonable times, after prior reasonable notice to the customer, on all or any premises on which the Equipment may be or is supposed to be for any purpose including, without limitation, inspection, maintenance, repair or replacement.

8.5 The owner's Equipment is identified by appropriate lettering and numbering, which the customer agrees not to change or obliterate, except that, at the request of the owner, the customer may change or supplement such marks as the owner shall request. The customer may, however, add other markings as may be required, provided that the Equipment, as marked, when returned by the customer to the owner, shall be free of all such markings. If the customer fails to remove such markings, the owner may remove such markings at the cost in all things to the customer.

## 9. DEFAULT

9.1 Should the customer commit any of the following events of default:

9.1.1 Default in the payment of any sum payable to the owner for a period of fourteen (14) days after its due date for payment; or

9.1.2 Default in the performance of its other obligations under this Agreement; or

9.1.3 Cease business as a going concern;

9.1.4 Become insolvent

9.1.5 Commit an act of bankruptcy or become the subject of any proceeding under the Insolvency Act 1967 or its counterpart under the law of any territory outside the jurisdiction of New Zealand; or

9.1.6 Being a corporate body, a resolution is passed or application filed for the liquidation of the customer other than for the purpose of reconstruction or amalgamation; or

9.1.7 Becomes subject to the appointment of a receiver; or

9.1.8 Distress is levied against the customer's property or execution issued against the customer's property under a judgment in any court.

9.1.9 Any mortgage, charge or other encumbrance created or assumed by the customer over any of its assets is enforced.

9.1.10 Being an individual, the customer is declared mentally ill, is convicted of a criminal offence or dies.

then the owner may without notice and without releasing the customer from its obligations under this Agreement terminate this Agreement.

9.2 In the event of termination by the owner, the customer shall no longer be in possession of the Equipment with the owner's consent and the customer shall return the Equipment to the owner at such a place as the owner shall direct. The customer shall continue to pay Rent for the Equipment until the Equipment is returned in the same good and clean state of repair and condition as at the delivery date (normal wear and tear excepted) or settlement is otherwise made to the satisfaction of the owner. Termination shall not remove or relieve the customer from any liabilities or obligations incurred prior to such return or settlement.

9.3 The owner may, at any time after termination and without the need to give notice retake possession of the Equipment. If the owner retakes possession of all or any part of the Equipment the customer authorizes the owner to take possession of any property in, on or attached to, such Equipment which is not the property of the owner and, without liability for its care or safekeeping, to place such property in storage at the risk and expense of the customer, and if the customer fails within 30 days of the owner retaking possession of the Equipment to pay all Rent and other monies due to the owner under this Agreement, to sell such property by public auction or private treaty and to apply or appropriate any sale proceeds in and towards the payment of:

9.4 Firstly, the costs of an incidental to the storage and sale of such property;

9.5 Secondly, any unpaid Rent or other monies due to the owner under this Agreement; and

9.6 Any balance then remaining to the owner.

## 10. RELIANCE AND WARRANTIES

10.1 The customer acknowledges that, in deciding to enter into this Agreement, the customer has not relied in any way on the owner's skill or judgment and the customer has satisfied itself as to the condition and suitability of the Equipment and the fitness for the customer's purposes.

10.2 The customer acknowledges that prior to the acceptance of the Equipment by the customer the customer examined the Equipment and satisfied itself as to the condition, suitability and fitness.

10.3 The Equipment is Hired to the customer in an "as is where is" condition and except to the extent of any guarantees or warranties expressly conferred in writing by the owner all warranties, representation and conditions (including any warranties, representations and conditions implied by law to the extent that such warranties, representations and conditions can be excluded) are expressly excluded, waived and extinguished.

10.4 The customer expressly acknowledges that where it acquires or holds itself out as acquiring the Equipment for business purposes, the provisions of the Consumer Guarantees Act 1993 are excluded.

#### **11. LIMITATION OF LIABILITY**

11.1 The owner shall not be liable in any way whatsoever to the customer or any third party claiming through the customer, whether to contact, equity or otherwise for any indirect special or consequential loss or damage of any kind arising out of or attributable to any breach by the owner of its warranties, representations or conditions or obligations under this or any other contract or any obligation imposed by law or equity or negligence or otherwise.

11.2 Regardless of the legal basis of any claim of any kind made against the owner, the owner's maximum liability to the customer shall not exceed the Rent paid or payable for the Equipment supplied by the owner which gives rise to that claim.

#### **12. FORCE MAJEURE**

12.1 The customer's obligations under this Agreement are absolute and shall not be affected by any circumstance or event beyond the customer's control, of whatever nature, including, but not limited to fire, storms, floods, earthquakes, explosion, accidents, acts of the public enemy, sabotage, riots, civil disorder, insurrection, war, strikes, lockouts, labour disputes, labour shortage, work stoppages, transportation embargoes or delays, failure or shortage of material, equipment, fuel, electricity or other supplies, failure of suppliers to deliver as requested, facilities to finish repairs, acts of god, and acts, orders, direction, or regulations or priorities of any government or its branches or agencies. The customer hereby waives any and all rights it may have under any statute, law or treaty limiting the customer's liability in respect of any vessel on which the Equipment is used or any person having an interest in any such vessel, including, without limitation, any and all rights under the Carriage of Goods by Sea Act of the United States of America, Sections 4281 to 4288 of the Revised Statutes of the United States of America and the Hague Rules as set out in the International Convention of the Unification of Certain Rules relating to Bills of Lading dated 25 August 1924 and any subsequent revision.

#### **13. INDEMNITY**

13.1 The customer indemnifies the owner from all liability, damage, cost or expense (including, without limitation, expenses in defending any claim or proceeding such as solicitor's and counsel's fees, court costs and other expenses and consequential loss or damage) arising out of ;

13.1.1 Any failure of the customer to comply with its obligations under this Agreement;

13.1.2 Any claim, whether private or governmental, for personal injury or death, and for loss or damage to person, property, cargo or vessel arising out of or incidental to the customer, selection, possession, hiring, operation, control, use, storage, loading, unloading, moving, maintenance, delivery or return of the Equipment; and

13.1.3 Any forfeiture, seizure, claim, charge, lien or encumbrance on the Equipment.

13.2 Each party shall promptly give notice to the other party of any claims or action against it with respect to any of the matters described in Clause 13.1 and the customer agrees not to settle any action without the prior written consent of the owner.

13.3 The customer shall maintain physical loss and damage, all risks and third party liability satisfactory to the owner.

13.4 The customer shall upon request deliver to the owner copies of the relevant insurance policies, certificates of currency for the insurance and evidence of the due payment of premiums.

#### **14. SUBHIRING AND DIRECT INTERCHANGING**

14.1 The customer shall not have the right to assign this Agreement or sublet, rent, directly interchange, or otherwise hire out, part with possession of or encumber the Equipment, to any other party without the prior written consent of the owner and then subject to such conditions as the owner shall think fit.

#### **15. NO LIENS**

15.1 The customer shall not do or omit to do anything whereby any third party shall claim a lien in respect of the Equipment nor shall the customer pledge the credit of the owner for any repairs to the Equipment.

#### **16. HOLDING OVER**

16.1 If the customer fails to return the Equipment upon the Expiry Date or the termination of this Agreement the obligations of the customer (including, without limitation, the obligation to pay Rent) to the owner under this Agreement shall continue in effect until all Equipment Hired under this Agreement has been returned to the owner.

#### **17. NOTICES**

17.1 Any notice or other document required to be given or sent in writing by virtue of this Agreement shall be given or sent by hand delivery, by post or by facsimile to the last known address of the recipient.

17.2 Any notice or other document given or sent by post shall be deemed to have been given or sent two days after being deposited in the post. Any notice or document given by facsimile (providing the sending facsimile machine produces a printout of the time, date and uninterrupted transmission of the message), shall be deemed to have been served immediately upon completion of sending and if such completion is within business hours in the place where the recipient's facsimile machine is located but, if not, then at 9.00am on the following business day in such place.

#### **18. WAIVER**

18.1 The owner shall not be deemed to have waived any provision of this Agreement or any right or remedy which it may have under this Agreement or at law or in equity or otherwise unless the waiver is in writing signed by the owner or an authorized signatory of the owner. No waiver of a breach shall be deemed to be a waiver of any other or any further breach.

19. **SEVERABILITY**

19.1 If any part, term or provision of this Agreement shall be held invalid, void, illegal or unenforceable the validity, existence, legality or enforceability of the remainder of this Agreement shall not be affected, prejudiced or impaired.

20. **ENTIRE AGREEMENT**

20.1 The Agreement constitutes the entire Agreement of the parties in relation to its subject matter and supercedes all previous agreements, understandings and negotiations on that subject matter.

21. **MODIFICATIONS**

21.1 This Agreement may only be amended or modified by Agreement in writing signed by the parties.

22. **CONFLICT**

22.1 If these conditions conflict with the Confirmation of Hire the Confirmation of Hire shall prevail.

23. **GOVERNING LAW**

23.1 This Agreement and all the rights and obligations of the parties, shall be governed by and construed in accordance with the law of New Zealand except to the extent expressly negated or varied by this Agreement and the parties shall submit to the exclusive jurisdiction of the Courts of New Zealand.

24. **INTERPRETATION**

24.1 In this Agreement:

**Agreement**" means these conditions and the Confirmation of Hire;

**Confirmation of Hire**" means the form of confirmation of container Hire executed by the Parties;

**Equipment**" means the Equipment described in the Confirmation of Hire and, where the context requires, any part of that Equipment;

**Expiry Date**" means the last day of the Hire period;

**Rent**" means the rent payable for the Hire of the Equipment stipulated in the Confirmation of Hire.

24.2 Any terms that are defined in the Confirmation of Hire shall have the same meaning when used in these conditions.

24.3 In this Agreement unless the context otherwise requires;

24.3.1 Where a party includes more than one person, the covenants, agreements and warranties on the part of that party shall be deemed to be joint and several;

24.3.2 Reference to any party includes that party's executors, administrators, successors, permitted assigns and any agent, servant, employee or independent contractor of that party (as the case may be);

24.3.3 The singular includes the plural and vice versa and words importing one gender include all genders;

24.3.4 Any covenant not to do anything shall also constitute an obligation not to suffer, permit, cause or assist any other person to do that thing.

24.3.5 A right granted or received may be exercised from time to time and at all times.