

TERMS AND CONDITIONS OF HIRE

These terms and conditions of hire govern all present and future hire arrangements between us and you.

WHAT THIS DOCUMENT DOES

This document sets out the terms and conditions of an agreement (this "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") by Royalwolf Trading New Zealand Limited Company No 1062072 ("we" or "us") to you. If you wish to hire Equipment from us, we may ask you to sign or otherwise approve or assent to 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 approving or assenting to 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 expressly set out in this Agreement.
- (b) You do not have any express or implied right or entitlement to sell, charge, encumber, grant any right, interest or lien (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.
- (d) At all times 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.

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, 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 as set out in the Quote 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 must pay interest on the unpaid charges ("**Overdue Amount**") to compensate us for your overdue payment. Interest on any Overdue Amount will be calculated monthly at the rate of 8% per annum from and including the due date to and including the date that we receive payment of the Overdue Amount.
- (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 NZBN and a Certificate of Currency in accordance with clause 7(b) and we, acting responsibly, 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) HIRE PERIOD AND DELIVERY OF EQUIPMENT

- (a) A hire begins when you take possession of the Equipment or sign a receipt acknowledging delivery, and terminates when 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 any vehicle for transport at our premises or the premises of our nominee, regardless of whether you collect the Equipment or we or our subcontractors deliver it.
- (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 New Zealand.

4) RETURN OF EQUIPMENT

- (a) At the end of the agreed period of hire, 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 on demand for all damage to, loss, theft or destruction of, the Equipment that occurs at any time before the Equipment is returned to us.
- (b) To the extent permitted by law, you are responsible for any damage to, spoilage of or theft of any contents stored in any Equipment, 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) From the beginning of the hire until the Equipment is returned to us 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, 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 damage to the Equipment and notify you in writing of the reasonable costs of any repair, removal and disposal or cleaning costs for the Equipment returned, which 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, provincial and federal requirements, and only for its intended use. We may inspect the Equipment at any time to check your compliance.

TERMS AND CONDITIONS OF HIRE

7) LOSS OR TOTAL DAMAGE

(a) If 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 replacement value for the Equipment as fairly specified by us and available on request; 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) For the period from the beginning of the hire until the Equipment is returned to us you must maintain an insurance policy with a reputable insurer covering loss or damage to the Equipment for the replacement value and note us as an interested party on the policy. You agree to provide us with certificates of currency on request.

8) OPERATION OF EQUIPMENT

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 the Quote or this Agreement and you do not remedy your failure within two (2) business days of the date that we notify you of your failure; (ii) you fail to perform any other obligation under the Quote or this Agreement and you do not remedy your failure within five (5) business days of the date that we notify you 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 New Zealand or any territory outside of the jurisdiction of New Zealand.

(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 agreed hire period; (iii) retake possession of the Equipment; and (iv) remedy any default that you commit under the Quote or 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 at the end of an agreed hire period as stolen, and report the matter to the Police for action.

(e) **Right to recover Equipment.** In an event of default you irrevocably authorise us at your cost to enter upon the property where the Equipment is located for the purpose of removal of any Equipment hired to you, and in doing so you irrevocably 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 any property removed from the Equipment as security for any amounts owed by you pursuant to this Agreement and authorize us to sell such property and apply the sale proceeds towards any amounts owed by you pursuant to this Agreement.

(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 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 has not been remedied within five (5) business days of notice being received by us requiring the breach to be remedied; or

(ii) we are declared bankrupt or a liquidator, administrator, receiver and manager, controller or other like officer is appointed over any or all of our assets.

10) WARRANTIES

(a) **State of the Equipment.** You acknowledge and agree that you: (i) have had the opportunity to inspect 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.

(e) You expressly acknowledge that where you acquire or hold yourself out as acquiring the Equipment for business purposes, the provisions of the *Consumer Guarantees Act 1993* are excluded.

11) PERSONAL PROPERTY SECURITIES ACT

(a) You authorise us to register a financing statement on the Personal Property Securities Register in respect of the Equipment and/or any property inside the Equipment.

(b) You must promptly execute any documents and do anything else required by us to ensure that the security interest over the Equipment and their proceeds including providing any information we reasonably require to complete a financing statement or a financing change statement. You waive any right to receive a copy of a verification statement under the *Personal Property Securities Act 1999*.

12) SUB-HIRING

(a) You may only on-hire the Equipment to a third party with our prior written consent and provided the third party has signed an agreement directly with us in a form provided by us and 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;

(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 this 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

TERMS AND CONDITIONS OF HIRE

• 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 this clause 12:

(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.

(b) 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.

(c) 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.

(d) 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.

13) 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 Zealand.

14) INDEMNITY

You indemnify and hold us harmless from all liabilities, losses damages, costs and expenses 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 or Carriage. This indemnity survives the termination of this Agreement.

15) NOT LIABLE

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 supply of the Equipment or Carriage.

16) 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.

17) GENERAL

(a) **Binding:** This Agreement binds the parties, their successors and assigns and is governed by the laws of New Zealand. The parties submit to the non exclusive jurisdiction of the Courts of New Zealand.

(b) **Costs:** 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 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.

(c) **No 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) This Agreement overrides and excludes any terms and conditions imposed by you.

(f) **Taxes:** You are responsible for the payment of any 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 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.

(j) You and we agree that if you are in business then we are both in trade and sections 9, 12A, 13 and 14(1) of the *Fair Trade Act 1986* are excluded and will not apply.

(k) **Privacy:** If you enter into this Agreement in a private capacity, you authorise the disclosure of personal information regarding your creditworthiness by any other party to us and that this personal information may be used by us in deciding whether to sell Equipment and/or advance credit to you. You have the rights of access to and correction of personal information held by us subject to the provisions of the *Privacy Act 1993*.

18) CARRIAGE SERVICES

(a) Where we or our subcontractors provide Carriage services for you, it is agreed to the fullest extent legally permitted that we and our subcontractors are not liable for any amount in excess of the sum set out in section 15(1) of the *Carriage of Goods Act 1979* and are not liable for any liability referred to in section 15(2)(b) or (c) of that Act.

(b) You must not tender for carriage any dangerous, explosive, flammable, hazardous or damaging goods without presenting a full description of those goods.

(c) We and our subcontractors are not liable for failure to deliver, delay in delivery of, or misdelivery of the Equipment or its contents, however caused.

19) CONSUMER GOODS

Where the Equipment is of a kind ordinarily acquired for personal, domestic, or household use or consumption then this clause will apply:

(a) In clause 2(c) the words "without deduction, set off or counterclaim" will be deleted.

(b) Clause 10 will not apply.

(c) Clause 14 will not apply

(d) Clause 15 will not apply and the following clause will apply instead: We are only responsible for losses suffered by you if the losses are a foreseeable consequence of our breach of this Agreement. We are not liable for any business losses suffered by you such as lost profits or business interruption.

(e) Clause 16 will not apply and the following clause will apply instead: Neither of us may assign our rights under this Agreement without the other party's prior consent which will not be unreasonably withheld if it can be shown the assignee is reasonably capable of performing the assignor's obligations under this Agreement.

(f) Clause 18(c) will not apply and the following clause will apply instead: We and our subcontractors will endeavor to deliver Equipment within any agreed timeframes, and will not be liable for failure to deliver, a delay in delivery of, or misdelivery of the Equipment or its contents, due to weather or other circumstances beyond our or our subcontractors' control. In this event we or our subcontractors will deliver as soon as reasonably possible.