

Hire Terms and Conditions

This document sets out the terms and conditions of an agreement with you, the hiring customer, and us, the hirer, in respect of all present and future hires of equipment and all logistics services provided.

1) DEFINITIONS

In this Agreement, unless the context requires otherwise, includes the following defined terms:

- (a) **Agreement** means these terms and conditions and the Quote.
- (b) **Bankruptcy Act** means the *Bankruptcy Act 1966* (Cth).
- (c) **Claims** means any and all liabilities, Losses, damages, costs, expenses, debts, notices, judgments, awards, petitions, allegations, actions, proceedings, penalties or other like claims made under any cause of action or by any person or entity including a third party.
- (d) **Damage Waiver** means the damage waiver stipulated in the Quote.
- (e) **Equipment** means the equipment stipulated in the Quote.
- (f) **Gross Negligence** means such wanton and reckless conduct as constitutes a complete and knowing disregard for the harmful, obvious, approximate and easily avoidable consequences which result, or may result, from it.
- (g) **Guarantor** means the guarantor stipulated in the Quote.
- (h) **Hire Fees** means the fees stipulated in the Quote.
- (i) **Hire Form** means the hire form on the cover of this Agreement.
- (j) **Hire Term** means the hire term stipulated in clause 4(a) of this Agreement.
- (k) **Hiree** means the hiree stipulated in the Quote or if a Quote was not given, the Hire Form.
- (l) **Hirer** means Climatight Containers Pty Ltd (ACN 614 895 546) of 14/4 Roper Street, O'Connor WA 6163.
- (m) **Insolvency Event** means any one or more of the following:
 - (i) a natural person being or stating that he or she is unable to pay his or her debts as and when they fall due;
 - (ii) an administrator being appointed, or any step taken to appoint an administrator;
 - (iii) a receiver, receiver and manager, official manager, trustee administrator, liquidator or other controller or similar officer being appointed over the assets;
 - (iv) entering into or resolving to enter into any arrangement, composition or compromise with or for the benefit of creditors or any class of them;
 - (v) committing an act of bankruptcy within the meaning of section 40 of the Bankruptcy Act; or
 - (vi) becoming a bankrupt within section 5 of the Bankruptcy Act.
- (n) **Logistic Services** means the logistic services stipulated in the Quote.
- (o) **Losses** means all losses including financial losses, damages, legal costs and other expenses of any nature whatsoever.
- (p) **Perth Metropolitan Area** means the area within 100 kilometres radius from Perth CBD.
- (q) **PPSA** means the *Personal Property Securities Act 2009* (Cth).
- (r) **PPSR** means the register established and maintained in accordance with the PPSA.
- (s) **Quote** means the attached quote provided by the Hirer to the Hiree at the Hiree's request and which form part of this Agreement.
- (t) **Security Interest** means:
 - (i) any interest held as security for the payment of a monetary obligation or the performance of any other obligation, including a mortgage, charge, encumbrance, lien, pledge or hypothecation; and
 - (ii) any other right, interest or arrangement that:
 - (A) in substance secures the payment of money or the performance of an obligation; or

- (B) gives a creditor priority over other creditors in relation to any property.
- (u) **Wilful Misconduct** means:
- (i) any fraud, fraudulent concealment or dishonesty;
 - (ii) any conduct, act or omissions being substantially harmful consequences done or omitted to be done intentionally and with conscious disregard or indifference to, the rights or welfare of those who are or may be thereby affected; or
 - (iii) any illegal or malicious act or omission.
- 2) **OWNERSHIP**
- (a) At all times the Hirer owns the Equipment and the Hiree does not have any right, interest or claim in or over the Equipment, except as hiree.
 - (b) The Hiree must not sell, charge, grant any interest or lien in or over the Equipment.
 - (c) The Hiree must not add or remove any existing accessories, markings or other features to the Equipment. If the Hiree fails to remove any markings added to the Equipment upon its return, the Hirer may do so at the Hiree's cost.
- 3) **WHAT FEES AND CHARGES ARE PAYABLE BY YOU?**
- (a) Hire Fees. The Hiree agrees to pay the Hirer the Hire Fees for the hire of the Equipment and the provision of the Logistic Services. The standard billing period is 30 days payable in advance with 14 day terms.
 - (b) Calculation of Hire Fees. The Hiree must pay all charges for each period regardless of the number of days in such period the Equipment was hired.
 - (c) Payments. The Hiree must pay the Hire Fees on the due date, without deduction or set off.
 - (d) Late payments. If any of the Hire Fees are not paid on the due date, the Hiree will pay interest on the unpaid amounts at the rate of 20% per annum, calculated monthly.
 - (e) Damage Waiver. The Damage Waiver will automatically be charged to the Hiree unless the Hiree delivers written proof of an insurance policy covering the Equipment, which policy needs to be approved in writing by the Hirer. The Damage Waiver is not insurance and does not cover any of the Equipment not returned to the Hirer. Payment of the Damage Waiver by the Hiree relieves the Hiree of liability in excess of the Damage Waiver limits for damage caused by graffiti, theft, forced or attempted forced entry, earthquake, hail, windstorm, hurricane and tornado. The Damage Waiver is limited to Storage Containers (20' 40' ft containers) - \$100 and Refrigerated Containers - \$1,000. The Damage Waiver will not limit the Hiree's liability unless the Hiree:
 - (i) takes reasonable precautions against theft and forced entry;
 - (ii) notifies the Hirer of damage to the Equipment within 3 business days of discovery of such event;
 - (iii) delivers to the Hirer satisfactory proof of damage and the police report in the events of theft and forced entry within 30 days of discovery of such event; and
 - (iv) complies with the terms of this Agreement to the extent that non-compliance means that the Hirer would incur some cost or loss in providing Damage Waiver that the Hirer would not have incurred had there been compliance by the Hiree.
- 4) **TERM OF THE AGREEMENT; DELIVERY OF EQUIPMENT**
- (a) The term of a hire commences on the date the Hiree takes possession of the Equipment and terminates on the date the Hiree returns the Equipment to the Hirer or on the date this Agreement is terminated (whichever occurs earliest).
 - (b) Risk in and responsibility for the Equipment passes to the Hiree when the Equipment is loaded onto a vehicle for transport at the Hirer's premises or at the premises of the Hirer's subcontractor. The Hiree must not move the Equipment from the location specified to the Hirer without its prior written consent and must not move the Equipment outside Australia.

5) RETURN OF EQUIPMENT

At the end of the Hire Term, the Hiree must return the Equipment to the Hirer at the depot specified by the Hirer or have the equipment removed from the Hiree's premises at which point the equipment will be considered returned to us and at that point the risk in and responsibility for the Equipment passes to back to the Hirer.

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

- (a) Except for normal wear and tear and subject to clause 3(e), the Hiree must pay the Hirer for any damage to, loss or destruction of, the Equipment that occurs during the Hire Term.
- (b) To the maximum extent permitted by law, the Hirer is not responsible for theft, damage to, spoilage of, deterioration or loss of the Equipment any contents stored in the Equipment (collectively, **Loss**) during the Hire Term, including, without limitation, any Loss caused by leaks, mechanical breakdown, failure or malfunction of any part of 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 the Hiree should be aware that in many areas, placing containers directly on bare ground represents a high risk of termite ingress and damage for which the Hiree will be liable.
- (c) The Hiree is not liable under clauses 6(a) or (b) to the extent that the damage, loss or destruction of the Equipment is caused by a latent defect in the Equipment or by a breach of this Agreement by the Hirer.

7) FAULTS AND DEFECTS

- (a) The Hirer will take reasonable steps to ensure that the Equipment is in working order on the Commencement Date.
- (b) During the Hire Term it is the Hiree's responsibility to monitor and immediately report any faults or defects in the Equipment to the Hirer.
- (c) Upon receiving notice of any fault or defect, the Hirer may, without diminishing any of the Hirer's rights under this Agreement, do any or all the following:
 - (i) send an employee or contractor to the site where the Equipment is located to inspect the fault or defect and do any necessary repairs;
 - (ii) request that the Hiree return the Equipment; and
 - (iii) supply a replacement.
- (d) The Hiree will be liable for any damage sustained to the Equipment due to the Hiree's delay in reporting any faults or defects to the Hirer.
- (e) The Hiree acknowledges and accepts that the Hirer is not liable for any costs arising from the repair, return or re-supply of Equipment that is located outside the Perth Metropolitan Area and the Hirer's liability (if any) will only commence when the Equipment is returned to the Perth Metropolitan Area.

8) REPAIRS AND MAINTENANCE

- (f) The Hiree must at its cost maintain the Equipment in good repair and safe operating condition. The Hiree agrees to:
 - (iv) return the Equipment in clean and good condition and free of labels and graffiti; and
 - (v) pay the Hirer on request for any costs necessary to clean, repair and ready the Equipment for hire by preceding customers.
- (g) The Hirer will assess if there is any damage to the Equipment and will notify the Hiree in writing of the costs of any repair or cleaning costs for the Equipment returned.
- (h) Compliance with law. The Hiree must use and operate the Equipment safely and only for their intended use. The Hirer may inspect the Equipment at any time to check compliance.

9) LOSS OR TOTAL DAMAGE

- (a) If during the Hire Term the Equipment is lost, stolen, destroyed or damaged beyond reasonable repair, the Hiree must:
 - (i) immediately notify the Hirer in writing of such occurrence;
 - (ii) continue to pay the Hirer the Hire Fees owed until the end of the Hire Term; and
 - (iii) pay the Hirer the replacement value for the Equipment as specified by the Hirer and available on request. Payments for the Hire Fees will not be applied to charges for the replacement value.

10) OPERATION DURING HIRE TERM

The Hiree is responsible to fully comply with any operation instructions or conditions displayed in or on the Equipment or which may be provided by the Hirer to the Hiree.

11) DEFAULT, REMEDIES UPON DEFAULT

- (a) The Hiree commits an event of default under this Agreement if the Hiree:
 - (i) fails to pay the Hire Fees and / or any charges when due under the Quote or this Agreement and does not remedy its failure within two (2) business days of the date that The Hirer notifies the Hiree in writing of its failure;
 - (ii) fails to perform any other obligation under the Quote or this Agreement and does not remedy its failure within five (5) business days of the date that the Hirer notifies the Hiree in writing of its failure;
 - (iii) ceases doing business; or
 - (iv) threatens or resolves to become or is in jeopardy of becoming subject to any for of an Insolvency Event.
- (b) If an event of default occurs, the Hirer may (but is not obliged to) immediately and without releasing the Hiree from any accrued obligations do one or more of the following:
 - (i) terminate this Agreement;
 - (ii) declare the balance of the Hire Fees and / or any charges due and payable by the Hiree (discounted by the Hirer's cost of borrowing), and the Hirer will refund any amounts it obtains from re-hiring the Equipment during the balance of the Hire Term;
 - (iii) retake possession of the Equipment.
- (c) On termination of this Agreement the Hiree must immediately return the Equipment to the Hirer and pay the Hirer the Hire Fees and all charges owing under this Agreement and any fees to recover possession of the Equipment.
- (d) Right to recover Equipment. In an event of default the Hiree authorises the Hirer at the Hiree's cost to enter upon any property where the Equipment is located for the purpose of removal of the Equipment, and the Hiree authorises the Hirer at the Hiree's cost to take possession of any property in, on or attached to the Equipment which is not our property and remove locks from the Equipment. The Hiree grants the Hirer a particular and general lien over property removed from the Equipment as security for any amounts owed by the Hiree and authorises the Hirer to sell such property and apply the sale proceeds towards any amounts owed by the Hiree.
- (e) Replacement of non-returned Equipment. If the Hiree does not return any Equipment within 14 days of the termination of this Agreement, the Hiree must pay the Hirer an amount equal to the replacement value as specified by the Hirer and available on request.
- (f) Termination does not discharge obligations. Termination of this Agreement will not relieve or discharge the Hiree from any obligations under this Agreement incurred prior to termination.
- (g) Hiree's right to terminate. The Hiree may terminate this Agreement by written notice if The Hirer is in breach of this Agreement and the breach is not remedied within five (5) business days of written notice being received by The Hirer from the Hiree requiring the breach to be remedied.

12) WARRANTIES

- (a) Application of this clause 12. This clause 12 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.
- (b) Application of consumer guarantees under the Australian Consumer Law. The Equipment comes with guarantees that cannot be excluded under the Australian Consumer Law. The Hiree is entitled to a replacement or refund for a major failure and to compensation for any other reasonably foreseeable loss or damage. The Hiree is 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.
- (d) The Hiree warrants that:
 - i. it has inspected the Equipment and acknowledged that it is fit for its purpose to be hired by the Hiree;
 - ii. the contents to be stored in the Equipment are fit for storage and carriage in the Equipment and have been suitable packaged for such purposes.
- (e) The Hirer provides no representation or warranty to the Hiree that any climate or temperature control/monitoring technology installed on any Refrigerated Containers the subject of hire under this Agreement will not malfunction or fail in operation from time to time.

13) PERSONAL PROPERTY SECURITIES ACT

- (a) To the extent a hire under this Agreement creates a PPS lease, as defined in the PPSA, the Hirer has a Security Interest in the Equipment as well as its proceeds for the purposes of the PPSA. For the purposes of the PPSA, the collateral is described as containers and related equipment and the collateral may be further described in the Quote.
- (b) The Hiree acknowledges and warrants that the Equipment and / or materials hired from the Hirer are not hired predominantly for personal, domestic or household purposes and the Hiree agrees to indemnify the Hirer against any loss (including but not limited to direct loss, indirect loss, consequential loss, special loss, economic loss, loss of business opportunity or loss of anticipated earnings or profits) or damage arising from a breach of such warranty.
- (c) The Hiree acknowledges that the Hirer may do anything reasonably necessary, including but not limited to registering any Security Interest which the Hirer has or may have over the Equipment and/or any property inside the Equipment on the PPSR in order to perfect the Security Interest as a first priority Security Interest and comply with the requirements of the PPSA. The Hiree agrees without charge to provide all information and do all things reasonably necessary to assist the Hirer to undertake the matters set out above. The Hiree waives, pursuant to s.157(3)(b) of the PPSA, the right to receive notice of a verification statement in relation to any registration on the PPSR.
- (d) The Hiree agrees not to disclose information of the kind that can be requested under section 275(1) of the PPSA.

14) SUB-HIRING

The Hirer expressly prohibits the sub-hiring of the Equipment to third parties and the Hiree warrants that it will not sub-hire the Equipment to third parties.

15) NOTICES

All notices must be given to the address (postal and / or via email) shown in the Quote.

16) LIABILITY AND INDEMNITY

The Hiree is liable for and indemnifies the Hirer, its related bodies and their officers, employees and agents from and against any direct or indirect Claims however suffered or incurred by the Hirer, its related bodies and their officers, employees and agents (including consequential losses, loss or revenue and related losses) in connection with:

- (a) failure by the Hiree to comply with any of its obligations under this Agreement;
- (b) the hire, use or return of the Equipment by the Hiree or other employee of the Hiree;
- (c) carriage of contents in the Equipment;
- (d) breach by the Hiree of any term, obligation, warranty, representation, undertaking or other acknowledgement contained in this Agreement;
- (e) tort, including negligence or breach of a legislative requirement;
- (f) breach of equitable duty;
- (g) loss of or damage to, deterioration, evaporation or contamination of the contents stored in the Equipment due to any fault or defect in the Equipment.

The indemnities contained in this clause 16) extend (without limiting the generality of the foregoing) to any Claims incurred by the Hirer by virtue of any injury or disability suffered by any employer of the Hiree, however and whenever arising.

The obligations of the Hiree to indemnify the Hirer under this Agreement or at law shall not be affected by the termination of this Agreement or the obligation of either the Hirer or the Hiree to effect insurance.

The liability of the Hirer to the Hiree for any loss of Claim arising under this Agreement shall be limited to the amount which the Hirer is able to recover under a policy of insurance held by the Hirer under this Agreement. The Hirer shall not be liable to Hiree for any indirect or inconsequential losses suffered by the Hiree in relation to this Agreement.

Nothing in this clause 16 does, or is intended to, exclude or limit any rights the Hiree 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, the Hirer's liability is limited to the re-supply of the relevant goods or services.

17) RELEASE BY HIREE

Notwithstanding the effect of any other provision of this Agreement, the Hiree agrees to release the Hirer, its related bodies and their officers, employees and agents from and against any direct or indirect Claims or Losses that the Hiree may suffer, incur, or become liable for, or have against the Hirer (including claims in negligence, tort, contract, or under the Australian Consumer Law) now or in the future as a result of or in connection with the performance and subject matter of this Agreement (including specifically in respect of any loss of stock or products by the Hiree due to the malfunction or failure of any temperature control/monitoring technology installed on any Refrigerated Containers the subject of hire under this Agreement, whether caused by power outages or otherwise), except to the extent directly caused or contributed to by any Wilful Misconduct or Gross Negligence of the Hirer.

This clause 17 together with the indemnity provisions outlined at clause 16 may be pleaded as a bar to any legal proceedings the Hiree may bring against the Hirer, its related bodies and their officers, employees and agents in relation to any Claim or Losses in connection with the subject matter of this Agreement.

18) GUARANTEE

- (a) The Guarantor unconditionally guarantees to the Hirer:
 - (i) the due and punctual performance by the Hiree of:
 - (A) the Hire Fees and all moneys due and payable from time to time or to become due and payable from time to time by the Hiree to the Hirer with regard to or in connection with this Agreement; and

- (B) all other moneys which the Hiree either alone, jointly, severally, or jointly and severally with any other person, now or from time to time is, or becomes actually or contingently liable to pay to the Hirer with regard to or in connection with the Agreement; and
- (ii) the due and punctual observance and performance by the Hiree of all its other liabilities, obligations and agreements (whether monetary or non-monetary, present or future, actual or contingent) to the Hirer pursuant to or in connection with the Agreement.
- (b) If the Hiree defaults in the due and punctual payment of any money referred to in clause 18(a)(i), the Guarantor must pay that money to or as directed by the Hirer immediately on demand.
- (c) If the Hiree defaults or fails in the due and punctual performance of any of its liabilities, obligations and agreements referred to in clause 18(a)(ii), the Guarantor must indemnify the Hirer immediately against all Losses (including but not limited to direct loss, indirect loss, consequential loss, special loss, economic loss, loss of business opportunity or loss of anticipated earnings or profits), liabilities, damages, costs and expenses (including legal expenses on a full indemnity basis) which may be incurred (directly or indirectly), by the Hirer by reason of that default or failure.
- (d) This guarantee is a continuing guarantee and remains in full force until all the Hiree's obligations have been paid and performed in full.

19) HIREE CANNOT ASSIGN YOUR RIGHTS

The Hiree must not assign this Agreement or part with possession of the Equipment to any other party.

20) TERMINATION

Hire rates fluctuate depending on the length of the lease, the length of the lease and the hire rates are to be negotiated between the Hiree and the Hirer upon signing this Agreement.

If the Hiree remains in possession of the Equipment or fails to return the Equipment to the Hirer by the expiry of the Hire Term, a new month-to-month hire term shall be created on the same terms and conditions of this Agreement (**Holdover Term**). The Hiree may terminate the Holdover Term without cause at any time by giving at least 7 days notice to the Hirer.

21) TRUSTEES

If the Hiree enters into this Agreement as trustee of any trust (Trust) under any trust deed or other instrument (Trust Deed) and whether or not the Hirer has notice of the Trust, then the Trustee:

- (a) enters into this Agreement as trustee of the Trust as well as personally; and
- (b) represents and warrants that:
 - (i) the Trustee has power under the Trust Deed and in the case of a corporation, under its constitution, to enter into and execute this Agreement and to perform the obligations imposed under this Agreement as such trustee;
 - (ii) all necessary resolutions have been passed as required by the Trust Deed and, in the case of a corporation, by its constitution, in order to make this Agreement fully binding on the Trustee;
 - (iii) the execution of this Agreement is for the benefit of the Trust;
 - (iv) the Trustee is not now and will not as at the date on which the Settlement Sum is paid in full be in default under the Trust Deed;
 - (v) there is not now, and the Trustee will not do anything by virtue of which there will be in the future, any restriction or limitation on the right of the Trustee to be indemnified out of the assets of the Trust; and
 - (vi) there is no material fact or circumstance relating to the assets, matters or affairs of the Trust that might, if disclosed, be expected to affect the decision of the other party, acting reasonably, to enter into this Agreement.

22) ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the parties with respect to its subject matter and supersedes all other agreements or representations pertaining to the same.

23) SEVERABILITY

If any provision of this Agreement is, or any time becomes, prohibited by or unlawful under any applicable law, regulation or other condition actually applied or otherwise becomes void or unenforceable, it will be severed and rendered ineffective so far as is possible without modifying the remaining provisions of this Agreement. The remaining provisions will, to the extent permitted by law, continue in full force and effect.

24) JURISDICTION

This Agreement is governed by and construed in accordance with the laws of the State of Western Australia. The parties unconditionally submit to the non-exclusive jurisdiction of the courts of the State of Western Australia. Any legal proceedings or disputes commenced in relation to this Agreement must be commenced in the State of Western Australia and held in Perth.