

## CLEVELAND CONTAINERS LTD TERMS & CONDITIONS OF HIRE

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### 1. Definitions

The following definitions and rules of interpretation apply in these Terms (as defined below):

- a) The "Owner" is the person hiring the Units to the Hirer as specified in the Hire Agreement/relevant Quotation.
- b) The "Hirer" is the person hiring the Units from the Owner as specified in the Hire Agreement/relevant Quotation.
- c) The "Units" are the units/equipment listed in the Quotation that is/are being hired to the Hirer by the Owner under the Contract including all substitutions, replacements or renewals of such units/equipment and all related accessories, manuals and instructions provided for them.
- d) The "Terms" are these terms and conditions as set out in this document.
- e) The "Contract" is the contract between the Owner and the Hirer for the hire of the Units incorporating the Hire Agreement, these Terms and each relevant Quotation.
- f) The "Hire Agreement" is the written agreement between the Owner and the Hirer signed by both of the aforementioned parties.
- g) The "Hire Period" is the period specified in clause 2 below.
- h) "Business Day" is a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.
- i) The "Commencement Date" is the date the Hirer takes Delivery of the Units.
- j) "Delivery" is the transfer of physical possession of the Units to the Hirer at such place as is agreed between the parties or, if not so agreed, the last place where the Units were employed (as the case may be).
- k) "Total Loss" means the Units are, in the Owner's reasonable opinion, damaged beyond repair, lost, stolen, seized or confiscated.
- l) "VAT" means value added tax chargeable under the Value Added Tax Act 1994.
- m) The "Hire Payments" are all payments to be made by or on behalf of the Hirer (including, without limitation, for the hire of the Units and for transport of the Units) as specified in the relevant Quotation.
- n) "Quotation" means an individual Quotation issued by the Owner to the Hirer in respect of the hire of Units in accordance with the Hire Agreement and the Terms.
- n) a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors and permitted assignees. A reference to a company shall include any company, corporation or other body corporate, wherever incorporated or established.
- o) unless the context otherwise requires:
  - i) words in the singular shall include the plural and vice versa; and
  - ii) a reference to one gender shall include a reference to other genders.

### 2. Hire and Hire Period

- a) The Owner shall hire the Units to the Hirer subject to the Contract.
- b) The Owner shall not, other than in exercise of its rights under the Contract or applicable law, interfere with the Hirer's quiet possession of the Units.
- c) The Hire Period shall commence on Delivery and shall continue until physical possession of the Units is given to the Owner at the Owner's premises (or such other place as agreed by the Owner) or, if earlier, the Contract is terminated in accordance with its terms.
- d) The Units are offered subject to being available when required.
- e) At the end of the Maximum Hire Period (as defined in the Hire Agreement or Quotation), the Hirer has the option to return the Units as per the terms of this Agreement or enter into a new Hire Agreement, this clause only applies to Individuals and/or Sole Traders.

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### 3. Hire Payments

- a) The Hirer shall pay the Hire Payments to the Owner in accordance with the payment terms set out in the Hire Agreement and the relevant Quotation.
- b) Unless otherwise specified in the Hire Agreement and/or relevant Quotation, all Hire Payments (and any other sums payable by the Hirer to the Owner in connection with the Contract) are exclusive of VAT and any other applicable taxes and duties or similar charges which shall be payable by the Hirer at the rate and in the manner from time-to-time prescribed by law.
- c) All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than deduction or withholding of tax as required by law).
- d) If the Hirer fails to make any payment due to the Owner under the Contract by the due date, then, without limiting the Owner's remedies under the Contract, the Hirer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgement. Interest under this clause shall accrue each day at 8% per annum above the Bank of England's base rate from time to time but 8% per annum for any period where the Bank of England's base rate is below 0%.
- e) For the avoidance of any doubt, the Hire Payments are payable throughout the whole Hire Period and Risk Period regardless of the availability (or not) of the Units for whatever reason including Total Loss.

### 4. Hire's Responsibilities

- a) During the Risk Period the Hirer shall:
  - i) ensure that the Units are kept and operated in a suitable environment, used only for the purposes for which they are designed and operated in a proper manner by trained competent staff in accordance with any operating instructions;
  - ii) take such steps (including compliance with all safety and usage instructions provided by the Owner) as may be necessary to ensure, so far as is reasonably practicable, that the Units are at all times safe and without risk to health when they are being set, used, cleaned or maintained by a person at work;
  - iii) maintain at its own expense the Units in good and substantial repair in order to keep it in as good an operating condition as it was on the Commencement Date (fair wear and tear only excepted) including replacement of worn, damaged and lost parts, and shall make good any damage to the Units;
  - iv) make no alteration to the Units and shall not remove any existing component(s) from the Units without the prior written consent of the Owner unless carried out to comply with any mandatory modifications required by law or any regulatory authority or unless the component(s) is/are replaced immediately (or if removed in the ordinary course of repair and maintenance as soon as practicable) by the same component or by one of a similar make and model or an improved/advanced version of it. Title and property in all substitutions, replacements, renewals made in or to the Units shall vest in the Owner immediately upon installation;
  - v) keep the Owner fully informed of all material matters relating to the Units;
  - vi) at all times keep the Units in the possession or control of the Hirer and keep the Owner informed of their location;
  - vii) permit the Owner or its duly authorised representative to inspect the Units at all reasonable times and for such purpose to enter upon any premises at which the Units may be located, and shall grant reasonable access and facilities for such inspection;
  - viii) not, without the prior written consent of the Owner, part with control of (including for the purposes of repair or maintenance), sell or offer for sale, underlet or lend the Units or allow the creation of any mortgage, charge, lien or other security interest in respect of them;

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- ix) not without the prior written consent of the Owner, attach the Units to any land or building so as to cause the Units to become a permanent or immovable fixture on such land or building. If the Units does become affixed to any land or building then the Units must be capable of being removed without material injury to such land or building and the Hirer shall repair and make good any damage caused by the affixation or removal of the Units from any land or building and indemnify the Owner against all losses, costs or expenses incurred as a result of such affixation or removal.
- x) not do or permit to be done any act or thing which will or may jeopardise the right, title and/or interest of the Owner in the Units and, where the Units has become affixed to any land or building, the Hirer must take all necessary steps to ensure that the Owner may enter such land or building and recover the Units both during the term of the Contract and for a reasonable period thereafter, including by procuring from any person having an interest in such land or building, a waiver in writing and in favour of the Owner of any rights such person may have or acquire in t the Units and a right for the Owner to enter onto such land or building to remove the Units;
- xi) not suffer or permit the Units to be confiscated, seized or taken out of its possession or control under any distress, execution or other legal process, but if the Units is so confiscated, seized or taken, the Hirer shall notify the Owner and the Hirer shall at its sole expense use its best endeavours to procure an immediate release of the Units and shall indemnify the Owner on demand against all losses, costs, charges, damages and expenses incurred as a result of such confiscation;
- xii) not use the Units for any unlawful purpose;
- xiii) ensure that at all times the Units remains identifiable as being the Owner's property;
- xiv) notwithstanding anything else in these Terms, not transfer the Units outside of the United Kingdom;
- xv) deliver up the Units at the end of the Hire Period or on earlier termination of the Contract at such address as the Owner requires, or if necessary, allow the Owner or its representatives access any premises where the Units are located for the purpose of removing the Units; and
- xvi) not do or permit to be done anything which could invalidate the insurances referred to in clause 7.

b) The Hirer acknowledges that the Owner shall not be responsible for any loss of or damage to the Units arising out of or in connection with any negligence, misuse and/or mishandling of the Units or otherwise caused by the Hirer or its officers, employees, agents and contractors, and the Hirer undertakes to indemnify the Owner on demand against the same, and against all losses, liabilities, claims, damages, costs or expenses of whatever nature otherwise arising out of or in connection with any failure by the Hirer to comply with the terms of the Contract.

## 5. Delivery, Loading and Unloading

- a) Delivery of the Units shall be made by the Owner. The Owner shall use reasonable endeavours to effect Delivery by the date and time agreed between the parties. Title and risk shall transfer in accordance with clause 7.
- b) The Hirer shall procure that a duly authorised representative of the Hirer shall be present at Delivery of the Units. Acceptance of such Delivery by such representative shall constitute conclusive evidence that the Hirer has examined the Units and has found it/them to be in good condition, complete and fit in every way for the purpose for which it/ they is/ are intended. If required by the Owner, the Hirer's duly authorised representative shall sign a receipt (the Receipt") confirming such acceptance which shall allow the Hirer's authorised representative to note any damage to the Units before acceptance of them in accordance with this clause.
- c) To facilitate Delivery, the Hirer shall, at its sole expense, provide all requisite materials, facilities, access and suitable working conditions to enable Delivery to be carried out safely and expeditiously (if relevant).
- d) The Hirer is to ensure that there is a sound and accessible road to enable Delivery (if relevant).
- e) The Hirer is to ensure that the vehicle making Delivery has adequate and proper access to and from place of Delivery (if relevant).

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f) Any time spent, which is, in the Owner's absolute and sole discretion, excessive (beyond the free time stated in quotation) or resultant from inadequate delay on the Hirer's part, will be charged for accordingly by the Owner to the Hirer at the Owner's standard charging rate of £75.00 per hour plus VAT.

g) Unless otherwise agreed between the parties in writing, the Hirer is responsible for the loading of the Units following Delivery and the unloading of the Units on return to the Owner at the end of the Hire Period in accordance with the Contract.

## 6. Liability

a) Without prejudice to clause 6b) below, the Owner's maximum aggregate liability for breach of the Contract (including any liability for the acts or omissions of its employees, agents and subcontractors), whether arising in contract, tort (including negligence), misrepresentation or otherwise, shall in no circumstances exceed the Hire Payments actually paid to the Owner by the Hirer up to the date on which the relevant liability arises.

b) Nothing in the Contract shall exclude or in any way limit:

- i) either party's liability for death or personal injury caused by its own negligence;
- ii) either party's liability for fraud or fraudulent misrepresentation; or
- iii) any other liability which cannot be excluded by law.

c) The Contract sets forth the full extent of the Owner's obligations and liabilities in respect of the Units and its hiring to the Hirer. In particular, there are no conditions, warranties or other terms, express or implied, including as to quality, fitness for a particular purpose or any other kind whatsoever, that are binding on the Owner except as specifically stated in the Contract. Any condition, warranty or other term concerning the Units which might otherwise be implied into or incorporated within the Contract whether by statute, common law or otherwise, is expressly excluded.

d) Without prejudice to clause 6b) above, neither party shall be liable under the Contract for any:

- i) loss of profit;
- ii) loss of revenue
- iii) loss of business; or
- iv) indirect or consequential loss or damage, in each case, however caused, even if foreseeable.

## 7. Title, Risk and Insurance

a) The Units shall at all times remain the property of the Owner, and the Hirer shall have no right, title or interest in or to the Units (save for the right to possess and use the Units subject to the Contract).

b) The risk of loss, theft, damage or destruction of the Units shall pass to the Hirer on Delivery. The Units shall remain at the sole risk of the Hirer during the Hire Period and any further term during which the Units are in the possession, custody or control of the Hirer ("Risk Period") until such time as the Units are redelivered to the Owner. During the Hire Period and the Risk Period, the Hirer shall, at its own expense, obtain and maintain the following:

- i) insurance of the Units to a value not less than their full replacement value comprehensively against all usual risks of loss, damage or destruction by fire, theft or accident, and such other risks as the Owner may from time to time nominate in writing;
- ii) insurance for such amounts as a prudent owner or operator of the Units would insure for, or such other amount as the Owner may from time to time reasonably require, to cover any third party or public liability risks of whatever nature and however arising in connection with the Units; and
- iii) insurance against such other or further risks relating to the Units as may be required by law, together with such other insurance as the Owner may from time to time consider reasonably necessary and advise the Hirer.

c) All insurance policies procured by the Hirer shall be endorsed to provide the Owner with at least twenty (20) Business Days' prior written notice of cancellation or material change (including any reduction in coverage or policy amount) and shall upon the Owner's request name the Owner on the policies as a loss payee in relation to any claim relating to the Units. The Hirer shall be responsible for paying any deductibles due on any claims under such insurance policies.

d) The Hirer shall give immediate written notice to the Owner in the event of any loss, accident or damage to the Units arising out of or in connection with the Hirer's possession or use of the Units.

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e) If the Hirer fails to effect or maintain any of the insurances required under this agreement, the Owner shall be entitled to effect and maintain the same, pay such premiums as may be necessary for that purpose and recover the same as a debt due from the Hirer.

f) The Hirer shall, on demand, supply copies of the relevant insurance policies or other insurance confirmation acceptable to the Owner and proof of premium payment to the Owner to confirm the insurance arrangements.

## 8. Termination

a) Without affecting any other right or remedy available to it, the Owner may terminate the Contract with immediate effect by giving notice to the Hirer if:

- i) the Hirer fails to pay any amount due under the Contract on the due date for payment;
- ii) the Hirer commits a material breach of any other term of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified to do so;
- iii) the Hirer repeatedly breaches any of the terms of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract;
- iv) the Hirer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the IA 1986, (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, being a partnership) has any partner to whom any of the foregoing apply;
- v) the Hirer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of the Hirer with one or more other companies or the solvent reconstruction of the Hirer;
- vi) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Hirer (being a company, limited liability partnership or partnership) other than for the sole purpose of a scheme for a solvent amalgamation of the Hirer with one or more other companies or the solvent reconstruction of the Hirer;
- vii) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Hirer (being a company);
- viii) the holder of a qualifying floating charge over the assets of the Hirer (being a company) has become entitled to appoint or has appointed an administrative receiver;
- ix) a person becomes entitled to appoint a receiver over the assets of the Hirer or a receiver is appointed over the assets of the Hirer;
- x) the Hirer (being an individual) is the subject of a bankruptcy petition, application or order;
- xi) a creditor or encumbrancer of the Hirer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Hirer's assets and such attachment or process is not discharged within 14 days;
- xii) any event occurs, or proceeding is taken, with respect to the Hirer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 8a)iv) to clause 8a)xi) (inclusive);
- xiv) the Hirer suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
- xv) the Hirer (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

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- b) For the purposes of clause 8a), material breach means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the Owner would otherwise derive from:
- i) a substantial portion of the Contract; or
  - ii) any of the obligations set out in clause 4, over the term of the Contract. In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.
- c) If a Total Loss occurs in relation to the Units, the Owner shall be able to terminate the Contract with immediate effect by giving notice to the Hirer to that effect.
- d) Upon termination of the Contract, however caused:
- i) the Owner's consent to the Hirer's possession of the Units shall terminate and the Owner may, by its authorised representatives, without notice and at the Hirer's expense, retake possession of the Units and for this purpose may enter any premises at which the Units are located; and
  - ii) without prejudice to any other rights or remedies of the Hirer, the Hirer shall pay to the Owner on demand all Hire Payments and other sums due but unpaid at the date of such demand together with any interest accrued and any costs and expenses incurred by the Owner in recovering the Units and/or in collecting any sums due under the Contract (including any storage, insurance, repair, transport, legal and remarketing costs).
- e) Upon termination of the Contract pursuant to clause 8, any other repudiation of the Contract by the Hirer which is accepted by the Owner or pursuant to clause 8c), without prejudice to any other rights or remedies of the Owner, the Hirer shall pay to the Owner on demand a sum equal to the whole of the Rental Payments that would (but for the termination) have been payable if the Contract had continued from the date of such demand to the end of the Minimum Hire Period (as defined in the Hire Agreement or Quotation).
- f) The sums payable pursuant to clause 8e) shall be agreed compensation for the Owner's loss and shall be payable in addition to the sums payable pursuant to clause 8d)ii).
- g) Termination or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.

## 8. Other Terms

- a) Force Majeure - Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed. If the period of delay or non-performance continues for 3 months, the party not affected may terminate the Contract by giving 7 days' written notice to the affected party.
- b) Assignment and other dealings – The Hirer shall not assign, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract. The Owner shall be able, at any time and without notice to the Hirer, to assign, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract in its absolute and sole discretion.
- c) Entire Agreement – The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract. Nothing in this clause shall limit or exclude any liability for fraud.
- d) Variation - No variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

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e) No partnership or agency - Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party. Each party confirms it is acting on its own behalf and not for the benefit of any other person.

f) Further assurance - At its own expense, each party shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may reasonably be required for the purpose of giving full effect to the Contract.

g) Third party rights - Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract. The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

f) Waiver - No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

g) Rights and remedies - Except as expressly provided in the Contract, the rights and remedies provided under the Contract are in addition to, and not exclusive of, any rights or remedies provided by law.

h) Severance - If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract. If any provision or part-provision of the Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

i) Governing law – The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

j) Jurisdiction - Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).

k) Conflict – if there is any inconsistency between the provisions of these Terms, the Hire Agreement and any Quotation, the following order of priority shall apply@

- i) Quotation;
- ii) Hire Agreement; and
- iii) Terms.

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