

# Terms and Conditions of Container Sale and Hire

Qube Logistics (Aust) Pty Ltd (ACN 123 003 930)

(Effective from 11 December 2023; Available at <https://qube.com.au/commercial-terms-conditions>)



## 1. DEFINITIONS AND APPLICATION

1.1 The following terms have the following meanings unless the context otherwise provides:

**ACL** means the Australian Consumer Law Schedule of the *Competition and Consumer Act 2010* (Cth) and its associated Regulations as amended;

**Agreement** means any agreement for the provision of Goods or Hire Equipment to you by Qube. Such Agreements incorporate these Conditions;

**Chapter 5 Body Corporate** has the meaning given to that term in the *Corporations Act 2001* (Cth);

**Charges** means the fees payable by you for the Hire Equipment specified in the quotation or Hire Schedule, and includes any ancillary fees and charges payable by you in connection with the supply of the Hire Equipment specified in the quotation or Hire Schedule, including but not limited to any cost of delivery pursuant to clause 7.1, any storage fee payable under clause 7.5, any cleaning fee payable under clause 15.3, lifts, container park fees and other charges;

**Conditions** means these Terms and Conditions of Container Sale and Hire;

**Consequential Loss** means indirect or consequential losses, damages, costs and expenses or which do not flow naturally from a breach of an Agreement, including loss of profits, loss of revenue, loss of opportunity, loss of business, loss of the use of any plant or facility or contract, loss of data or information, loss of reputation, loss of goodwill, and any special or punitive damages;

**Consumer** is as defined in the ACL and in determining if you are a consumer, the determination is made if you are a consumer under the Agreement;

**Default** means a default under Clause 21.1;

**Goods** means goods in the nature of the Hire Equipment and any other goods supplied by Qube to you from time to time;

**GST** means any tax including additional tax imposed on the supply of or payment for Goods or Hire Equipment which is imposed or assessed under GST Law;

**GST Law** has the meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and its associated Regulations as amended;

**Hire Equipment** means any shipping, freight or intermodal container or other like transport and storage unit for transporting or storing property (including any container designed for the transportation or storage of refrigerated goods, including any power pack, genset or equipment used in connection with providing power to, and/or actively maintaining a container's atmosphere), or any items of modified containers (including crib rooms, site offices, ablution blocks) and any other plant or equipment hired by you from Qube from time to time;

**Hire Schedule** means a document which Qube may require you to sign (or accept in a way Qube requires) which includes particulars of the Hire Equipment, the Charges and such other information relating to the hire. The Hire Schedule may have a range of titles including 'Master Hire Agreement Form' and 'Quote Acceptance & Hire Agreement Form';

**Hire Term** has the meaning set out in clause 15.1;

**Invoice** means an invoice for the supply of Goods and/or Hire Equipment;

**Latent Defect** means an inherent or hidden defect which was not apparent to you at the time when you initially inspected the Hire Equipment (or when you initially had an opportunity to inspect it, but failed to inspect) and which would not have been apparent to a reasonable competent person in your position;

**PPSA** means the *Personal Property Securities Act 2009* (Cth) and its associated Regulations as amended;

**Purchase Price** is the amount payable by you for the Goods;

**Qube** or **we** or **us** means Qube Logistics (Aust) Pty Ltd (ACN 123 003 930) or any of its Related Bodies Corporate involved in the provision of the Goods or Hire Equipment.

**Related Bodies Corporate** has the meaning given to that term in section 9 of the *Corporations Act 2001* (Cth);

**Unpaid Goods** has the meaning set out in clause 21.3; and

**you** or **Customer** means the person, jointly and severally if more than one, purchasing any Goods and/or hiring any Hire Equipment from Qube.

1.2 Unless otherwise agreed by Qube in writing:

(a) these Conditions; and

(b) any other terms and conditions which are imposed by law that cannot be excluded,

apply exclusively to every Agreement and, other than in respect of payment terms we have agreed with you in writing from time to time, cannot be varied or replaced by any other terms, including the Customer's terms and conditions of purchase or hire (if any).

1.3 These Conditions may include additional terms in Qube's quotation and Hire Schedule, which are not inconsistent with these Conditions (other than in respect of payment terms we have agreed with you in writing from time to time).

1.4 Acceptance of a quotation or Hire Schedule by you for the supply of Goods and/or the provision of Hire Equipment by Qube (which you may do expressly, or by your conduct) constitutes acceptance of these Conditions by you.

1.5 An Agreement is accepted by Qube when Qube accepts, in writing or electronic means, an order from you or provides you with the Goods or Hire Equipment.

1.6 Qube has absolute discretion to refuse to accept any order. Qube may make its acceptance of an order conditional (e.g. upon a satisfactory credit assessment or the pre-payment of the Purchase Price or the Charges).

1.7 You must provide Qube with your specific requirements in writing, if any, in relation to the Goods or Hire Equipment when you place an order with Qube.

## 2. PRICE

- 2.1 Any quotation or Hire Schedule provided by Qube may be withdrawn by Qube at any time prior to acceptance by you and is not to be construed as an obligation on Qube to supply the Goods or provide the Hire Equipment in accordance with these Conditions or otherwise, until that quotation or Hire Schedule has been accepted by you (which you may do expressly, or by your conduct).
- 2.2 To the extent permitted by law and unless otherwise specifically set out in the quotation or Hire Schedule, the Purchase Prices quoted for the supply of Goods and Charges quoted for Hire Equipment do not include GST and any other taxes or duties imposed on or in relation to the Goods and Hire Equipment. You are required to pay GST and taxes in addition to the quoted Purchase Price or quoted Charges at the same time as payment is made under clauses 3 and/or 4.
- 2.3 While Qube takes care in preparing quotations and Hire Schedules, Qube's costs of supplying the Goods or providing the Hire Equipment may vary and so Qube is entitled to vary any quotation or Hire Schedule at any time prior to the quotation or Hire Schedule being accepted or adopted by you. Qube may also vary any quotation at any time (even after you accept or adopt it) to correct any material or blatant errors and omissions in the quotation, because the right to correct errors and omissions is necessary in relation to the kind of Goods and Hire Equipment which Qube provides. A quotation or Hire Schedule is deemed to be withdrawn upon the issuance of a varied quotation or Hire Schedule and only the latest varied quotation or Hire Schedule is capable of acceptance.
- 2.4 If you request any variation to the Agreement, Qube may notify you whether Qube is able and willing to agree the variation and may specify the conditions upon which Qube will be willing to accept the variation request, including but not limited to an increase in the Purchase Price or the Charges (as applicable) to account for the variation. If a variation is agreed by the parties, then the variation must be in writing, and the Purchase Price or the Charges will be adjusted accordingly. Otherwise, a requested variation will have no effect on this Agreement and the Purchase Price or the Charges payable by you will remain unchanged.
- 2.5 Where there is any change in the costs incurred by Qube in supplying the Goods or providing the Hire Equipment after an Agreement is accepted by Qube in accordance with clause 1.5, Qube may vary its Purchase Price or the Charges (as applicable) to take account of any such change by providing 14 days' prior notice to you (**Variation Notice**). Qube cannot provide a Variation Notice in respect of Goods which it has already provided to you. Through that Variation Notice, Qube may make any variations to Charges or Purchase Price which are reasonable to compensate Qube for relevant changes affecting Qube's ability to provide the Goods or Hire Equipment and for any change in Qube's cost base for providing the Goods or Hire Equipment and may include Qube's typical margin within the varied Charges or Purchase Price, for example, a change in the location from where the Goods or Hire Equipment is sourced could result in a change to transport rates, lift charges and booking fees. You may cancel any order made under the Agreement prior to the date of the Variation Notice by giving Qube written notice before the varied Purchase Price or Charges take effect, without incurring any liability to Qube by reason of such cancellation. In relation to any Hire Equipment, you must return it within 14 days of you giving us notice of the cancellation. In the interim, you must continue to pay the Charges for each unit of Hire Equipment until it is returned to Qube in accordance with these Conditions, and the Charges payable by you for each unit of Hire Equipment under the cancelled order will be the Charges in effect immediately prior to the Variation Notice. If you do not cancel any order made under the Agreement prior to the date of the Variation Notice by giving Qube written notice before the varied Purchase Price or Charges take effect, then the varied Purchase Price or Charges take effect.

## 3. PAYMENT FOR GOODS

- 3.1 Subject to Clause 3.2, you agree to pay to Qube on or before the due date specified in the Invoice, the full Purchase Price for the Goods.
- 3.2 Qube reserves the right to require payment in full prior to or upon delivery or collection of the Goods.

## 4. PAYMENT FOR HIRE EQUIPMENT

- 4.1 Unless otherwise stated on a quotation or Hire Schedule (or otherwise agreed in writing):
- you agree to pay Qube the Charges for the Hire Term in advance for each unit of Hire Equipment. Charges are due and payable prior to delivery or collection of the Hire Equipment;
  - any agreement by Qube to an extension of the Hire Term is conditional on receipt of payment in advance for each unit of Hire Equipment prior to expiry of the original Hire Term;
  - without affecting any other right or remedy of Qube, you agree to continue to pay Qube the Charges for any Hire Equipment that is not returned to Qube in accordance with clause 15.2(a); and
  - regardless of whether you return the Hire Equipment prior to the end of the Hire Term (and subject to any rights you may have under the ACL), Qube will not offer a refund for any part of the Hire Term unused by you. It is your responsibility to enter into an Agreement for Hire Equipment for an appropriate period of time for your purposes.
- 4.2 Subject to clause 4.3, Qube will issue a tax invoice to you for the relevant Charges in accordance with the requirements of the law relating to GST and you must pay the Charges in accordance with clause 4.1.
- 4.3 Where Qube agrees for you to pay the Charges by credit card, you agree to the Charges being charged to your nominated credit card until all Hire Equipment has been returned to Qube and you have fulfilled all your obligations under the Agreement. Qube reserves the right to add a credit card surcharge reflecting our actual costs of offering payment by credit card.
- 4.4 Qube will not permit direct debit payment arrangements nor accept payment by cheque.
- 4.5 Qube may consider making more flexible terms available to business customers. These more flexible conditions will not apply to you unless this is clearly indicated in the relevant quotation or Hire Schedule or otherwise agreed in writing by Qube with you. These more flexible terms may include provision of an invoice each calendar month, which will be due for payment in accordance with the business customer's agreed payment terms, payment by other methods such as by bank transfer, and pro-rata invoices for the relevant number of hire days during the first and last month of hire of the relevant Hire Equipment.

## 5. TERMS OF PAYMENT

- 5.1 Subject only to this clause 5.1, you must pay the full Purchase Price and/or Charges (as applicable) to Qube, without deduction, set-off or counterclaim. Where you genuinely dispute that any Goods specified on an Invoice have not been delivered or any unit of Hire Equipment specified on an Invoice was not on hire for the relevant period or was otherwise unable to be used due to a Latent Defect of the Hire Equipment, you must provide written notice of such payment dispute before the due date for payment (or in the case where pre-payment of the Purchase Price and/or Charges has occurred, as soon as reasonably practicable) and pay any undisputed portion of the Invoice by the due date (if not already paid). Qube and the Customer must communicate about the dispute in good faith and must attempt to resolve the dispute within 7 days. Following that attempt:

- (a) if the dispute relates to a pre-payment of the Purchase Price and/or Charges: if Qube reasonably considers that any disputed amounts paid by you were not due and payable to Qube under the Agreement, then Qube must promptly either provide a refund to you or credit your account by that amount; or
- (b) unless clause 5.1(a) applies: if Qube reasonably considers that the disputed amount remains payable then it may notify you accordingly and require you to pay the disputed amount. If that occurs, then you must pay the disputed amount within the later of the original due date specified on the invoice and 7 days after Qube's written notice. If you do not pay this outstanding amount, then Qube may exercise any of its rights under these Conditions as if the outstanding amount was due and owing to Qube.

If Qube does not provide a refund to you or credit in accordance with clause 5.1(a) or the Customer pays the outstanding amount in accordance with clause 5.1(b), and a further resolution of the dispute subsequently determines that such amount or portion thereof was not payable to Qube, then Qube must repay the that amount to the Customer within 7 days of such determination, plus interest as set out in clause 5.4(a).

5.2 If Qube makes credit available to you, Qube may amend, alter or terminate your trading account, terms of credit or alter its payment terms (for example, where Qube perceives that there is a relevant change in circumstances or that Qube faces increased credit risk in connection with extending credit to you) on 7 days' notice and will use reasonable endeavours to provide reasons (**Payment Terms Notice**). If Qube ceases to extend credit to you, then:

- (a) the Purchase Price and Charges relating to all Goods and Hire Equipment provided after the Payment Terms Notice is effective, will be payable immediately at the time when they are invoiced, because credit will no longer be available; and
- (b) the Purchase Price and Charges relating to Goods and Hire Equipment provided before the Payment Terms Notice is effective, will, whether or not previously due for payment, become due and payable 7 days after the Payment Terms Notice is effective, and the Customer acknowledges that any acceleration of the obligation to pay the Purchase Price and Charges is reasonable due to the legitimate business interest which Qube has in being paid quickly, when Qube perceives that there are adverse circumstances or increased credit risk.

You may elect to terminate the Agreement upon the provision of 7 days' written notice from the date of the Payment Terms Notice, if you do not wish to continue trading with Qube based on the alterations set out in the Payment Terms Notice.

5.3 The time for payment is of the essence.

5.4 If any amount due to Qube is not paid by the due date, then all money which would become payable by you to Qube at a later date on any account, becomes immediately due and payable upon demand by Qube, and Qube may, without prejudice to any of its other accrued or contingent rights:

- (a) charge you interest on the amount not paid (**Overdue Amount**). Interest on any Overdue Amount is calculated on a daily basis, at the rate being 4% above the cash rate target determined by the Reserve Bank of Australia applicable during the period that the amount is overdue, on the Overdue Amount, from the due date of payment to the actual date that Qube receives the Overdue Amount;
- (b) charge you for, and you must indemnify Qube from, all costs and expenses (including without limitation all legal costs and expenses on a full indemnity basis) incurred by Qube resulting from the default or in taking action to enforce compliance with the Agreement, to recover any Goods and Hire Equipment (as applicable) and any Overdue Amount;
- (c) cease or suspend supply of any further Goods and Hire Equipment to you; and
- (d) by written notice to you, terminate any uncompleted contract with you.

Unless Qube has required you to pay the disputed amount as it may do pursuant to clause 5.1(b), this clause 5.4 does not apply to the extent that you have genuinely disputed an Invoice and provided written notice in the manner provided in clause 5.1.

## 6. PERFORMANCE OF AGREEMENT

6.1 There are many events and circumstances outside Qube's control which can affect the timing for the delivery of Goods or Hire Equipment, for example, the Goods or Hire Equipment may be sourced from various local, national and international locations and may be subject to delays in the supply chain. Any period or date for delivery of Goods or Hire Equipment stated by Qube is an estimate only and not a contractual commitment.

6.2 Qube will use its reasonable endeavours to meet any estimated dates for delivery of the Goods or Hire Equipment but will not be liable for any loss or damage that you or any third party may suffer for failure to meet any estimated date.

## 7. DELIVERY

7.1 Subject to Clause 7.5 and in consideration for the charges relating to carriage as set out in any accepted quotation or Hire Schedule or otherwise agreed between the parties, Qube will arrange for the delivery of the Goods or Hire Equipment (as applicable) to you.

7.2 You are responsible for all costs associated with delivery, including freight, insurance and other charges arising from the point of dispatch of the Goods or Hire Equipment to you to the point of delivery.

7.3 Qube may make part delivery of Goods or Hire Equipment and Qube may Invoice you for the Goods or Hire Equipment which are part-delivered.

7.4 Qube is authorised to deliver the Goods or the Hire Equipment to the address given to Qube by the Customer for delivery and Qube shall be deemed to have delivered the Goods or Hire Equipment in accordance with these Conditions if at that address, Qube obtains from any person a receipt or signed delivery docket for the Goods or Hire Equipment. Qube may also be able to substantiate delivery by other means (for example, written confirmation from the recipient or delivery site, transit records and similar evidence). If the address given to Qube for delivery is unattended or if delivery cannot otherwise be effected by Qube at that address, Qube may at its option:

- (a) deposit the Goods or the Hire Equipment at that address which shall be conclusively deemed to be delivery under these Conditions; or
- (b) store the Goods or the Hire Equipment and re-deliver the Goods or the Hire Equipment to the Customer at the Customer's cost. You are liable for storage charges payable monthly on demand and futile delivery charges.

7.5 If agreed that you will collect the Goods or Hire Equipment:

- (a) you must collect the Goods or Hire Equipment within 7 days of being advised they are ready or within such other period as agreed by Qube in writing; and

- (b) if you do not collect the Goods or Hire Equipment within this time, then you are liable for storage charges payable monthly on demand.

## **8. RISK**

- 8.1 Risk in the Goods and Hire Equipment, and all insurance responsibility for theft, damage or otherwise will pass to you immediately on the Goods or Hire Equipment (as applicable) being delivered to you or taken by you or on your behalf from Qube's premises.
- 8.2 The Goods are sold to you and the Hire Equipment is supplied to you on the basis that you have obtained all necessary licences or permits under all relevant laws and regulations in relation to the Goods or Hire Equipment (as applicable).
- 8.3 Given you will have control of the Goods and Hire Equipment and the manner in which they are used, you assume all risk and liability for loss, damage or injury to persons or to your property, or third parties arising out of:
- (a) the use, installation or possession of any of the Goods sold by Qube; and
  - (b) the use or possession of any of the Hire Equipment supplied by Qube.

However, this does not prevent Qube from having statutory obligations, in relation to consumer guarantees under the ACL, where they apply.

- 8.4 Given you will have control of the Goods and Hire Equipment and be responsible for its custody and use, to the extent permitted by law, you indemnify Qube against all losses, damage, costs, liabilities and expenses incurred by Qube as a result of:
- (a) loss of, or damage to, the Hire Equipment by any cause (including lawful confiscation);
  - (b) anything done by or with the Goods or Hire Equipment;
  - (c) the occurrence of any Default.
- 8.5 The indemnity provided in Clause 8.4 does not apply to the extent that any loss, damage, cost, liability and expense is reasonably attributable to an act or omission of Qube or Qube's, employees, agents or subcontractors.
- 8.6 You must pay to Qube on demand any amount payable under the indemnity provided in Clause 8.4. It is not necessary for Qube to incur an expense or make a payment before enforcing a right of indemnity conferred in these Conditions.

## **9. RETENTION OF TITLE IN GOODS**

- 9.1 Title in the Goods remains vested in Qube and does not pass to you until Qube receives full payment in cleared funds of the Purchase Price for the Goods, as well as all other amounts owing by you to Qube.
- 9.2 Until Qube receives payment in cleared funds of the full Purchase Price and all other amounts owing by you to Qube:
- (a) title and property in all Goods remain vested in Qube and does not pass to you;
  - (b) you hold the Goods as fiduciary bailee and agent for Qube and Qube is entitled to all rights and remedies of a bailor;
  - (c) you must not change the Goods in any way;
  - (d) you must not change or obscure in any way any identification marking or packaging that Qube has placed on the Goods showing that they are exclusive property of Qube;
  - (e) in the event that the Goods are sold to a third party, all proceeds from the sale of the Goods will be held on trust for Qube (however failure to do so will not affect your obligation as trustee) and you must promptly pay the proceeds of such sale of the Goods to Qube;
  - (f) if Qube reasonably considers that there is an adverse change in your circumstances or perceives that there is an increase in credit risk or other risk affecting, or otherwise likely to affect, Qube's rights in the Goods, in addition to its rights under the PPSA, Qube and its nominees may without notice, enter any premises where it believes the Goods are and remove them, notwithstanding that they may have been attached to other goods not the property of Qube, and for this purpose you irrevocably license Qube to enter such premises and also indemnify Qube from and against all costs, claims, demands or actions by any party arising from such action.
- 9.3 The payment of the proceeds from a sale of the Goods by you does not relieve you of your obligation to pay to Qube the full Purchase Price.

## **10. RETENTION OF TITLE IN HIRE EQUIPMENT**

- 10.1 The Hire Equipment is, and will remain, the sole property of Qube. You do not have any right, interest or claim in or over the Hire Equipment except as expressly set out in these Conditions.
- 10.2 You do not have any express or implied right or entitlement to sell, re-hire, lease, sublease, encumber, grant any right or interest (of any nature) in or over the Hire Equipment.
- 10.3 You must not alter the Hire Equipment in any way or change or obscure the identification lettering and numbering on any Hire Equipment. If you fail to remove any markings you have added to the Hire Equipment upon return of the Hire Equipment, Qube may do so at your cost.

## **11. PERSONAL PROPERTY SECURITIES ACT**

- 11.1 Notwithstanding anything to the contrary contained in these Conditions, the PPSA applies to these Conditions.
- 11.2 For the purposes of the PPSA, terms used in Clauses 11 to 14 (inclusive) that are defined in the PPSA have the same meaning as in the PPSA.

## **12. PURCHASE MONEY SECURITY INTEREST IN GOODS**

- 12.1 These Conditions are a security agreement and to the extent contemplated by the PPSA, Qube will have a Purchase Money Security Interest in all present and future Goods that it supplies to you and the proceeds of the Goods.
- 12.2 The security interest is a continuing interest irrespective of whether there are monies or obligations owing by you at any particular time.
- 12.3 You must do whatever is necessary in order to give a valid security interest over the Goods which is able to be registered by Qube on the Personal Property Securities Register.
- 12.4 You must immediately upon Qube's request:
- (a) do all things and execute all documents necessary to give effect to the security interest or security interests created under any Agreement; and

- (b) procure from any person considered by Qube to be relevant to its security position such agreements and waivers as Qube may at any time require.
- 12.5 The security interest arising under this Clause 12 attaches to the Goods at the earliest time when attachment can occur under the PPSA.
- 13. APPLICATION OF PPSA TO HIRE EQUIPMENT**
- 13.1 If Qube determines that any Agreement for the hire of the Hire Equipment is or contains a security interest for the purposes of the PPSA, you must, at your cost and immediately upon Qube's request:
- (a) do all things required (including execution of documents) to ensure Qube has a continuously perfected security interest (as defined in the PPSA) created in the Hire Equipment pursuant to any Agreement. This includes, but is not limited to:
- (i) providing details of any item of collateral sufficient to complete registration of the security interest in accordance with the requirements of the PPSA;
- (ii) enabling Qube to apply for registration of or give any notification in relation to the security interest;
- (iii) enabling Qube to exercise rights in relation to the security interest; and
- (b) procure from any person considered by Qube to be relevant to its security position, such agreements and waivers as Qube may at any time require to ensure Qube attains the highest ranking security possible in respect of the security interest.
- 13.2 In circumstances where any Agreement constitutes a PPS Lease, you acknowledge that you are the grantor and Qube is the secured party holder of a Purchase Money Security Interest by virtue of that Agreement and the PPSA.
- 13.3 You must not, except with the express written consent of Qube, allow to be, or be liable to become, perfected or attached in favour of any person, a security interest in any of the Hire Equipment, and whether to a provider of new value or otherwise.
- 14. GENERAL PPSA PROVISIONS**
- 14.1 Where permitted by the PPSA, you waive any rights to receive the notifications, verifications, disclosures or other documentation specified under sections 95, 118, 121(4), 130, 132(3)(d), 132(4), 135 and 157 of the PPSA.
- 14.2 Qube and you agree to contract out of and nothing in the provisions of sections 96, 125, 129, 142 and 143 of the PPSA will apply to these Conditions.
- 14.3 To the extent permitted by the PPSA, you agree that where Qube has rights in addition to those in the PPSA, those rights will continue to apply.
- 14.4 Qube may allocate amounts received from you in any manner Qube determines, including in any manner required to preserve any Purchase Money Security Interest it has in Goods or the Hire Equipment supplied by Qube.
- 14.5 For the purposes of section 275(6) of the PPSA, the parties agree and undertake that these Conditions and any information pertaining to the sale of Goods and hire of the Hire Equipment and details of the Goods and the Hire Equipment shall be kept confidential at all times. Neither party may disclose any information pertaining to these Conditions or the sale of the Goods or hire of the Hire Equipment, except as otherwise required by law or that is already in the public domain.
- 14.6 You hereby consent and appoint Qube to be an interested person and your authorised representative for the purposes of section 275(9) of the PPSA.
- 15. HIRE TERM AND RETURN OF HIRE EQUIPMENT**
- 15.1 In relation to Hire Equipment, the term of hire commences on the date you take possession of the Hire Equipment or when delivery is effected in accordance with these Conditions (whichever is earlier) and, subject to earlier termination in accordance with the Agreement or at law, terminates on the date for return of the Hire Equipment as specified in the quotation or Hire Schedule or, where the parties agree an extension of such date, the new date for return of the Hire Equipment as agreed in writing by the parties from time to time (**Hire Term**).
- 15.2 At the end of the Hire Term, you must return the Hire Equipment:
- (a) by either:
- (i) where Qube and the Customer agree that Qube will collect the Hire Equipment at the end of the Hire Term in consideration for the charges relating to carriage as set out in any accepted quotation or Hire Schedule or otherwise agreed between the parties, making the Hire Equipment available and providing all reasonable assistance to Qube at the agreed time and location to collect the Hire Equipment; or
- (ii) unless clause 15.2(a)(i) applies, delivering the Hire Equipment to Qube at the depot specified in the Hire Schedule or such other place that Qube reasonably identifies,
- and you must continue to pay the Charges until the Hire Equipment is physically returned to the effective control of Qube at the nominated return location or otherwise physically collected by Qube at the agreed location;
- (b) in substantially the same state of repair and condition as it was in at the hire commencement date (except for normal wear and tear), in a clean condition and free of labels, signage and graffiti; and
- (c) free from any goods or other property located inside the Hire Equipment.
- 15.3 Within 10 business days of the return of the Hire Equipment to Qube or collection of the Hire Equipment by Qube (as applicable), Qube will inspect the Hire Equipment and notify you in writing whether the returned Hire Equipment complies with the return conditions set out in clause 15.2(b) and 15.2(c) and if the Hire Equipment fails to satisfy those conditions, then notify you of the costs of any repair or cleaning costs for the returned Hire Equipment. You must pay Qube on demand for any costs necessary to clean, restore and prepare the Hire Equipment for hiring to other customers.
- 16. SPECIFIC TERMS FOR HIRE EQUIPMENT**
- 16.1 Except for normal wear and tear, you must pay to Qube on demand for all damage to, loss or destruction of the Hire Equipment that occurs during the Hire Term or while the Hire Equipment is in your control or possession.
- 16.2 You acknowledge that you are responsible for the operation, maintenance and repair of the Hire Equipment (other than any maintenance or repair directly resulting from a Latent Defect of the Hire Equipment) and will have control of the Hire Equipment and the manner in which they are used, and therefore you are responsible for any damage to, spoilage of or theft of any contents stored in or any Hire Equipment during the Hire Term. However, this does not reduce Qube's statutory obligations, in relation to consumer guarantees under the ACL, where they apply.

- 16.3 You must protect the Hire Equipment from damage, loss or destruction.
- 16.4 If during the Hire Term, the Hire Equipment is damaged, you must:
- (a) immediately notify Qube in writing of such occurrence and provide full details of the incident and the condition of the Hire Equipment;
  - (b) provide a written report to Qube providing all relevant details of the condition of the Hire Equipment and the repairs proposed to be undertaken, or if you consider the Hire Equipment not to be capable of reasonable economic repair, then a statement to that effect; and
  - (c) comply with any reasonable direction of Qube in respect of any such repairs and provide to Qube any requested documentation in relation to the repairs undertaken.
- 16.5 If during the Hire Term, the Hire Equipment is lost, stolen, destroyed or damaged beyond reasonable economic repair (which Qube will determine, acting reasonably), you must:
- (a) immediately notify Qube in writing of such occurrence and providing full details of the condition of the Hire Equipment;
  - (b) compensate Qube for any loss or damage (such as for all Charges owed until the end of the period when the Hire Equipment would otherwise have been hired or until the replacement value for the Hire Equipment has been paid to Qube in accordance with clause 16.5(c), whichever is the earlier); and
  - (c) pay Qube the replacement value for the Hire Equipment.
- 16.6 Payments for Charges will not be applied to charges for the replacement value.
- 16.7 The replacement value of the Hire Equipment will be the market value of the Hire Equipment of the same age, condition and specifications.

## **17. OBLIGATIONS IN RELATION TO HIRE EQUIPMENT**

- 17.1 From the beginning of the hire until the Equipment is returned to Qube, you must at your cost maintain the Hire Equipment in good repair and safe operating condition. You must fully comply with the operation, maintenance and repair instructions or conditions displayed in or on the Hire Equipment provided to you and as specified to you in the Hire Schedule and any other document provided to you by Qube.
- 17.2 You must retain all records of any inspections (and monitoring of any refrigeration unit that is part of or hired in connection with the Hire Equipment), and any maintenance and repairs you perform on the Hire Equipment. You must promptly provide a copy of such records upon Qube's reasonable request.
- 17.3 You must retain the Hire Equipment at your premises or such other premises as approved by Qube (acting reasonably). The Hire Equipment must be retained under your personal control or the control of your employees.
- 17.4 You must not, without Qube's prior written consent:
- (a) make any replacement, alteration or addition of any nature on the Hire Equipment which may lead to a reduction in the value of the Hire Equipment or cause any warranty over the Hire Equipment to be invalidated;
  - (b) use the Hire Equipment for any purpose which is unlawful or which might prejudice Qube's interest in the Hire Equipment or invalidate any insurance in relation to the Hire Equipment;
  - (c) install the Hire Equipment in any manner that would cause it to become a fixture to land;
  - (d) agree, attempt, offer or purport to sell, assign, sublet, lend, pledge, mortgage, hire or otherwise deal with the Hire Equipment or part with or attempt to part with the personal possession of the Hire Equipment; or
  - (e) create any encumbrance, charge or lien of any kind on the Hire Equipment or any part of the Hire Equipment or to remain on the Hire Equipment.
- 17.5 You must allow Qube or its nominee access to your premises or to any place where the Hire Equipment is kept at any reasonable time and with reasonable notice for any purpose relating to any Agreement, including testing or inspection.
- 17.6 You must comply with all applicable laws, regulations, requirements and rules reasonably necessary for the safe and lawful operation of the Hire Equipment and all laws which apply to or relate to the Hire Equipment with respect to use, registration, storage, maintenance, and/or licensing of the Hire Equipment.

## **18. CANCELLATION**

- 18.1 If Qube is unable to deliver or provide the Goods or Hire Equipment due to events or circumstances outside of Qube's reasonable control, then Qube may defer the delivery or provision of the Goods or Hire Equipment (even if an order for such Goods or Hire Equipment has been accepted by Qube) by providing written notice to you. If Qube defers the delivery or provision of the Goods or Hire Equipment, then:
- (a) you may cancel that part of the relevant Agreement which is deferred without any liability to Qube, except where:
    - (i) the Goods have been specifically produced, imported or acquired by Qube to fulfil the Agreement; and
    - (ii) any delay or inability to deliver or provide the Goods is not attributable to an act or omission of Qube; or
  - (b) where you do not cancel that part of the relevant Agreement which is deferred, Qube will use all reasonable endeavors to reschedule the delivery or provision of the Goods or Hire Equipment promptly and to minimise the impact of any deferral on you.
- 18.2 No purported deferment of the delivery or cancellation of the Agreement or any part of it by you is binding on Qube once the order for Goods or Hire Equipment has been accepted unless Qube provides its prior written agreement and then only on terms that you will fully indemnify Qube against any loss suffered by it as a result of that cancellation or deferral. Qube will provide a reasonable estimate of costs for such deferment or cancellation upon your written request. The indemnity in this clause 18.2 does not apply in cases where the cancellation or deferral is reasonably attributable to an act or omission of Qube.

## **19. SHORTAGES AND EXCHANGES OF GOODS**

- 19.1 Subject to Clause 19.2 and 19.4, Qube will not be liable for any shortages, damage or non-compliance with the specifications in the Agreement unless you as soon as reasonably practicable after delivery of the Goods by Qube to the Customer (and in any case within 7 days, unless Qube agrees to a longer period) inspect the Goods and notify Qube in writing with full details and description of the shortage, damage or non-compliance. In those circumstances, the Customer must provide reasonable evidence and must promptly give Qube access to the Goods to inspect and assess them. This procedure is necessary to:

- (a) enable Qube to assess whether it is responsible for any damage or non-compliance (as the Goods can be lost or damaged due to a variety of events or circumstances after delivery by Qube including but not limited to conduct of third parties, the manner in which they are stored or handled, or other events unrelated to Qube); and
  - (b) allow Qube to mitigate the potential for any future damage or non-compliance or other operational issues.
- 19.2 When any shortages, claim for damaged Goods or non-compliance with the Agreement specifications is accepted by Qube, Qube may, at its option, replace the Goods, or refund the price of the Goods.
- 19.3 Subject to Clause 19.4, Qube will not under any circumstances accept Goods for return that:
- (a) have been specifically produced, imported or acquired to fulfil the Agreement;
  - (b) have been altered in any way;
  - (c) have been used; or
  - (d) are not in their original condition.
- 19.4 If you are a Consumer, nothing in this Clause 19 limits any remedy available for a failure of the consumer guarantees in the ACL.

## 20. FORCE MAJEURE

- 20.1 Qube or the Customer is not liable in any way howsoever arising under the Agreement (except in relation to the Customer's obligation to make payments under these Conditions or any Agreement) to the extent that it is prevented from acting by events beyond its reasonable control including, without limitation, industrial disputes, strikes, lockouts, accident, breakdown, import or export restrictions, pandemics or epidemics, acts of God, acts or threats of terrorism or war (each called a **Force Majeure Event**). If a Force Majeure Event occurs, then the obligations of Qube or the Customer (except for the Customer's obligation to pay) will be suspended (for the duration of the Force Majeure Event). If the Force Majeure Event continues for a period longer than 30 days from its initial occurrence, then either party may terminate the Agreement by written notice to the other party.

## 21. DEFAULT

- 21.1 A party commits a default under the Agreement if that party:
- (a) fails to perform any obligation under the Agreement (including an obligation of the Customer to pay the Purchase Price and/or Hire Charges) and that party does not remedy that failure within 10 business days of the date of notification of that failure by the other party; or
  - (b) ceases doing business, becomes a Chapter 5 Body Corporate, bankrupt or insolvent or makes an arrangement with its creditors, or any similar or equivalent event,
- (each a **Default**).
- 21.2 In the event of a Default by you, without limiting Qube's rights or remedies in any way, Qube may (but is not obliged to) immediately and without releasing you from any accrued obligations do one or more of the following:
- (a) provide written notice to you terminating any or all Agreements;
  - (b) provide written notice to you declaring the balance of the Purchase Price and/or Charges due and payable by you; and
  - (c) retake possession of the Unpaid Goods and/or Hire Equipment.
- 21.3 Despite any provision in these Conditions to the contrary, in the event that Qube terminates any Agreement:
- (a) you will no longer be entitled to possession of the Hire Equipment without Qube's written consent and you must immediately return the Hire Equipment to Qube (at your cost) in accordance with these Conditions; and
  - (b) you will no longer be entitled to possession of any Goods for which any payment remains outstanding to Qube (**Unpaid Goods**) and you must immediately return the Unpaid Goods to Qube (at your cost) in accordance with these Conditions.
- 21.4 In the event of a Default by Qube, without limiting your rights or remedies in any way, you may (but are not obliged to) immediately and without releasing Qube from any accrued obligations, provide written notice to Qube terminating the Agreement and in the event you terminate the Agreement:
- (a) in respect of the hire of any Hire Equipment under the Agreement:
    - (i) you will no longer be entitled to possession of the Hire Equipment without Qube's written consent and you must immediately return the Hire Equipment to Qube in accordance with these Conditions; and
    - (ii) where the Hire Equipment has been supplied to you on credit, you must pay the balance of the Charges due and payable by you until the Hire Equipment is returned to Qube in accordance with these Conditions; or
    - (iii) where you have pre-paid the Charges for the hire of Hire Equipment, Qube must promptly refund the Charges on a prorated basis for any unused portion of the Hire Term after the Hire Equipment is returned to Qube in accordance with these Conditions; and/or
  - (b) in respect of the purchase of Goods under the Agreement:
    - (i) where the Goods have been supplied to you on credit and subject to clause 19, you must either:
      - (A) pay the balance of the Purchase Price due and payable by you for such Unpaid Goods in accordance with these Conditions; or
      - (B) immediately return the Unpaid Goods to Qube (at your cost) in accordance with these Conditions in which case you will have no further liability to pay the Purchase Price in respect of such returned Unpaid Goods; or
    - (ii) where you have pre-paid the Purchase Price for the Goods and the Goods have not been delivered to you, Qube must promptly refund the Purchase Price and Qube will have no further obligation to provide the Goods.
- 21.5 After this Agreement is terminated for any reason, nothing in these Conditions gives you any express or implied right or entitlement to, and you must not attempt or purport to, sell, hire, lease, encumber, grant any right or interest (of any nature) in or over any Unpaid Goods or Hire Equipment.
- 21.6 If any Agreement is terminated for any reason and you fail to return the Unpaid Goods or Hire Equipment in accordance with these Conditions (as applicable), in addition to Qube's rights under the PPSA, you at your cost irrevocably authorise Qube and its nominees to enter upon any property where it reasonably suspects the Unpaid Goods or Hire Equipment are, and to use such reasonable force as may be necessary, for the purpose of removal of any Unpaid Goods or Hire Equipment, notwithstanding that they may have been attached to other goods not the property of Qube. For this purpose, you irrevocably license Qube to enter such premises and also

indemnify Qube from and against all costs, claims, demands or actions by any party arising from such action. Qube may remove any property of the Customer (or part of that property) attached to or contained within any Unpaid Goods or Hire Equipment. In relation to any such property removed from any Unpaid Goods or Hire Equipment, you acknowledge that Qube may:

- (a) leave such property at the location where the Unpaid Goods or Hire Equipment were located or otherwise store such property in such place and manner as Qube reasonably considers appropriate, at the risk and cost of the Customer;
- (b) after giving you written notice of Qube's intention to exercise its rights under this clause 21.6(b), if you do not remove such property within 7 days of such notice then:
  - (i) sell such property by public auction or private sale, acting reasonably, and apply the proceeds towards discharge of any amounts owing to Qube by the Customer; or
  - (ii) adopt a reasonable method of disposal of such property, at the cost of the Customer,

and without compensation being payable to the Customer, other than accounting to the Customer for any balance proceeds from sale of property in accordance with clause 21.6(b)(i) after any money owed to Qube (including recovery costs and the costs of sale). The Customer must indemnify Qube for all costs incurred by Qube in the exercise of these rights to the extent such costs are not recovered from the sale proceeds.

## **22. ACKNOWLEDGEMENT AND EXCLUSION OF LIABILITY AND INDEMNITY**

22.1 Except as these Conditions specifically state, or as contained in any express warranty provided in relation to the Goods or the Hire Equipment, the Agreement does not include by implication any other term, condition or warranty in respect of the quality, merchantability, acceptability, fitness for purpose, condition, description, assembly, manufacture, design or performance of the Goods or Hire Equipment, or any contractual remedy for their failure. If you are a Consumer nothing in these Conditions restricts, limits or modifies your rights or remedies against Qube for failure of a statutory guarantee under the ACL.

22.2 If the Customer is a Consumer, then Qube's supply (which may be a supply of goods or of goods and services) comes with guarantees that cannot be excluded under the ACL. For major failures with the goods, the Customer is entitled to a replacement or refund. The Customer is also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure. For major failures with goods and services, the Customer is entitled:

- (a) to cancel the Customer's service contract with Qube; and
- (b) to a refund for the unused portion, or to compensation for its reduced value.

The Customer is also entitled to choose a refund or replacement for major failures with goods. If a failure with the goods or a service does not amount to a major failure, the Customer is entitled to have the failure rectified in a reasonable time. If this is not done, the Customer is entitled to a refund for the goods and to cancel the contract for the service and obtain a refund of any unused portion. The Customer is also entitled to be compensated for any other reasonably foreseeable loss or damage.

22.3 To the extent permitted by the ACL and by law generally, if Qube is liable for a breach of a guarantee imposed by the ACL then Qube and the Customer note that none of the goods (or goods and services) are of a kind ordinarily acquired for personal, domestic or household use or consumption, and Qube's liability for a breach of any such guarantee (or condition or warranty, express or implied) will be limited, at its option, to any one or more of the following:

- (a) in the case of goods:
  - (i) the replacement of the goods or the supply of equivalent goods;
  - (ii) the repair of the goods;
  - (iii) the payment of the cost of replacing the goods or acquiring equivalent goods;
  - (iv) the payment of the cost of having the goods repaired;
- (b) in the case of services:
  - (i) the supply of the services again;
  - (ii) the payment of the cost of having the services supplied again.

22.4 To the extent permitted by the ACL and by law generally, Qube's liability for any loss or damage arising out of these Conditions, including liability for breach of any Agreement, in negligence or in tort or for any other common law or statutory action, shall:

- (a) be limited to the extent the loss or damage was caused directly by Qube; and
- (b) in any one case be limited to (at Qube's option) either replacing or repairing relevant goods or reimbursing the Customer for the repair or replacement of relevant goods and (at Qube's option) either re-supplying services or reimbursing the Customer for paying someone else to supply the services.

22.5 To the extent permitted by law, every exemption, exclusion, or limitation in these Conditions or any Agreement applicable to Qube or to which Qube is entitled shall also be available and shall extend to protect:

- (a) all officers, employees, agents or subcontractors of Qube; and
- (b) all persons who are or might be vicariously liable for the acts or omissions of any such person, and for the purposes of these Conditions and any Agreement, Qube is acting as an agent on behalf of and for the benefit of all such persons and each of them shall to this extent be deemed to be parties.

22.6 You indemnify Qube for any loss, damage, cost or expense incurred by Qube, to the maximum extent permitted by law, for any loss or damage to the Hire Equipment to the extent caused or contributed to by you. This indemnity does not apply to the extent that any such loss or damage is reasonably attributable to an act or omission of Qube.

22.7 To the extent permitted by law, neither party is liable to the other party for any action, claim, suit, allegation, demand, loss, liability, damage or cost of whatsoever nature arising out of these Conditions or any Agreement for any Consequential Loss, including liability for breach of these Conditions or any Agreement, in negligence or in tort or for any other common law or statutory action, provided that nothing in this clause 22.7 relieves the Customer from its obligation to pay to Qube the Purchase Price and/or any Charges payable under these Conditions or any Agreement.

22.8 You acknowledge, to the extent applicable, that:

- (a) you have inspected the Hire Equipment prior to taking possession or delivery to you;
- (b) you accept the Hire Equipment in its current state;



- (c) you have not relied on any service involving skill and judgement, or on any advice, recommendation, information or assistance provided by Qube in relation to:
    - (i) Goods or their use or application; and
    - (ii) the condition, suitability and specifications of the Hire Equipment; and
  - (d) subject to your specific requirements provided in writing to Qube in accordance with clause 1.7, you have not made known, either expressly or by implication, to Qube any purpose for which you require the Goods or the Hire Equipment and you have the sole responsibility of satisfying yourself that the Goods and Hire Equipment are suitable for your purposes;
  - (e) Qube has not given any warranty or made any representations to you as to the Goods or the Hire Equipment or their use other than representations and warranties expressly made in writing;
  - (f) your obligations under the Agreement will continue despite any defect or breakdown of the Hire Equipment or any other matter concerning the Hire Equipment (except where the defect or breakdown is the result of negligence, an act or an omission of Qube - then the extent of your obligation to pay Qube will be reduced proportionate to the extent to which Qube's negligence, act or omission contributed to the defect or breakdown); and
  - (g) except as disclosed in writing to Qube, neither the entry into an Agreement or performance of these Conditions will conflict with or result in any breach of, or require any consent or approval under, any mortgage, agreement or other undertaking or instrument to which you are a party or which is binding on you or any of your assets.
- 22.9 Nothing in these Conditions is to be interpreted as excluding, restricting or modifying or having the effect of excluding, restricting or modifying the application of any State or Federal legislation applicable to the sale of Goods or supply of Hire Equipment which cannot be excluded, restricted or modified.

### **23. GENERAL**

- 23.1 A notice must be in writing and handed personally or sent by email or prepaid mail to the address of the addressee shown in the quotation or Hire Schedule. It is your responsibility to ensure that you notify Qube in writing of any change in your contact details. Failure to provide this information may result in delays or difficulties in communicating with you, which may result in adverse consequences for you. Notices sent by pre-paid post are deemed to be received upon posting. Notices sent by email are deemed received when the email leaves an information system under the control of the sender provided that the sender does not receive a notice from an automated message system indicating that the transmission has been delayed or has failed.
- 23.2 These Conditions are binding upon you and Qube, your and Qube's successors and assigns and are governed by the laws of New South Wales from time to time. The parties agree to the non-exclusive jurisdiction of the courts of New South Wales, the Federal Court of Australia, and of courts entitled to hear appeals from those Courts.
- 23.3 If you take possession of or retain any Goods and/or Hire Equipment after the provision of these Conditions, these Conditions are valid and binding on you whether or not you have signed them.
- 23.4 If there is any inconsistency between these Conditions and the terms of any other document or quote provided to you, these Conditions will prevail to the extent of the inconsistency.
- 23.5 You acknowledge that the person signing any quotation, Invoice, Agreement or other document on your behalf has the authority to bind you. In the event that, due to any alleged deficiency in such authority, you are not liable then the person signing will be personally liable under the Agreement.
- 23.6 No failure to exercise nor delay in exercising any right, power or remedy by either party operates as a waiver.
- 23.7 If a clause is unenforceable it must be read down to be enforceable or, if it cannot be read down, the term must be severed from these Conditions, without affecting the enforceability of the remaining terms.
- 23.8 Each party's rights under these Conditions are in addition to, and do not exclude, any right at common law, equity or any other agreement between you and Qube.
- 23.9 Qube may amend these Conditions at any time by providing 30 days' written notice to you of the proposed changes. Any variations or amendments will apply to orders placed after the date specified in the notice.
- 23.10 You are responsible for the payment of all taxes and levies, duties or charges which arise under or in connection with any Agreement (including any stamp duty).
- 23.11 You agree to:
  - (a) execute and deliver any instruments; and
  - (b) do such other things,as Qube may at any time reasonably request in connection with the enforcement of its rights under these Conditions and any Agreement.
- 23.12 Each party must comply with the Australian Privacy Principles established by the *Privacy Act 1988* (Cth) in connection with any personal information supplied by the other party in connection with these Conditions or any Agreement.