

General Terms and Conditions

1. Term

This Hire Agreement commences upon the Commencement Date and, subject to clause 5, clause 6 and clause 17, expires on the Expiry Date.

2. Hire Agreement

- a. Auswest shall grant a lease of, and the Customer shall lease, the Cool Room for the Hiring Fee during the Term on the terms and conditions set out in this Hire Agreement.
- b. Except for during transport and unless Auswest gives prior written permission the Cool Room must remain at the designated Site for the Term.

3. Deposit and Security

- a. The Deposit is payable by the Customer to Auswest upon confirmation of a booking.
- b. The Deposit is non-refundable and will be applied in full toward the Hiring Fee.
- c. In the event the Customer does not proceed with this Hire Agreement the Deposit is forfeited to Auswest.
- d. Auswest may require the Customer to provide a copy of their credit card and drivers licence as security. Such personal information will be held securely and destroyed within 6 months of payment of all Costs in full.

4. Costs and Invoicing

- a. The Customer shall pay the Costs to Auswest (being the Deposit, Hiring Fee any relevant Cleaning Fee and all other moneys payable under the Hire Agreement) as set out in the Hire Details, or as specified in the Invoice.
- b. The Deposit is payable at the time specified in clause 3.a.
- c. The Hiring Fee, Delivery Costs are due on collection or delivery of the Cool Room and may be debited from the Customer's credit card pursuant to clause 4.e.
- d. Any relevant Cleaning Fee or maintenance and service cost is payable upon provision of an Invoice.
- e. The Customer irrevocably authorises Auswest to debit the credit card of the Customer for the Costs or any part thereof at any time within the 28 days following the Expiry Date.

- f. Irrespective of clause 4.c and clause 4.e in the event the Term is for more than 3 months, Auswest is authorised to debit 1 month's Hiring Fee (in advance) from the Customer's credit card each month during the Term.
- g. If the Costs are not paid on the due date, due to the fault of the Customer, the Customer shall pay interest on demand at the rate of ten percent (10%) per annum calculated daily from the due date until the date of payment in full.
- h. Payment of all Invoices shall be made by the method specified in the relevant Invoice and may be debited pursuant to clause 4.e.
- i. The Customer shall not be entitled to set off or withhold payment of any Costs payable under this Hire Agreement.

5. Extension or Holding Over

- a. The Parties may extend the Term of this Hire Agreement by agreement in writing or verbally.
- b. In the event the Hire Agreement is extended, or the Customer retains possession of the Cool Room after the Term (whether with consent or not) then:
 - i. the Customer shall pay any relevant Costs invoiced to the Customer pursuant to this Hire Agreement as if the Term was extended for such period of holding over; and
 - ii. if the Cool Room has been previously booked by another party additional costs may apply or Auswest may require immediate collection or return of the Cool Room.

6. Early Termination

- a. The Customer acknowledges and agrees that in the event of early termination of this Hire Agreement due to the act or omission of Customer:
 - i. Auswest may immediately retake possession of the Cool Room; and
 - ii. the Deposit will be forfeited to Auswest.
- b. In the event that the Cool Room has already been delivered or collected and this Hire Agreement is terminated before the Expiry Date due to the act or omission

or Customer then Auswest, in its absolute discretion, may require the Customer to pay either:

- i. the usual recommended retail hiring price for the Cool Room for the period that the Customer has had possession of the same without any discount; or
- ii. the whole of the Costs that would have been payable pursuant to this Hire Agreement for the entire Term nominated in the Hire Details or the Invoice.

7. Delivery and Return

- a. The Delivery Costs are specified in Item 3 of the Hire Details or the Invoice as applicable and includes the cost of delivery and collection by Auswest.
 - b. In the event Auswest is arranging delivery, the Cool Room will be delivered to the Site on or before the Commencement Date.
 - c. In the event that Auswest is arranging collection, the Cool Room will be collected from the Site on or after the Expiry Date as notified by Auswest.
 - d. The Customer must arrange adequate access to the Site for delivery and collection by Auswest.
 - e. The Customer may elect to collect or return the Cool Room:
 - i. only at the times specified by Auswest; and
 - ii. provided that it has an appropriate towing vehicle.
 - f. Auswest is not required to deliver the Cool Room and the Customer may not collect the Cool Room until the Customer has signed this Hire Agreement and provided the Deposit.
 - g. The Customer must immediately inspect the Cool Room upon collection or receipt. In the event any error in delivery has occurred then the Customer must immediately notify Auswest.
- ### 8. Retention of Title
- a. Ownership and title of the Cool Room shall at all time remain with Auswest at all times.
 - b. Each Cool Room is registered by its VIN on the Personal Property Securities Register as established by the Personal Property Securities Act 2009 as amended.

- c. The Customer must not create, or purport to create any security interest of any kind over the Cool Room or any other property of Auswest.

9. Safe Use of Cool Room

- a. The Customer must ensure that during the Term the Cool Room is stored safely and securely and is protected from theft, seizure or damage. The Customer must *immediately* report to Auswest any malfunction, damage to, or loss of, the Cool Room when such malfunction, damage or loss occurs.
- b. When operating or transporting the Cool Room the Customer must:
- follow all instructions (verbal or written), manuals, operational and safety instructions relating to operating the Cool Room;
 - not exceed the recommended or legal speed limit when towing the Cool Room;
 - follow all signage or instructions on the Cool Room;
 - not exceed the recommended load capacity of the Cool Room;
 - not remove any safety signs or instructions from the Cool Room;
 - only place the Cool Room in a suitable safe location;
 - not undertake any modification alteration or addition to the Cool Room, including parts and components;
 - take all necessary steps to prevent damage to the Cool Room or injury or damage to the person operating the Cool Room;
 - not use the Cool Room when damaged or unsafe;
 - not store any illegal, prohibited or dangerous substance in the Cool Room;
 - ensure no persons operating the Cool Room are under the influence of drugs or alcohol; and
 - only use the Cool Room for a lawful purpose and in accordance with all relevant laws and statutes.

10. Cleaning and Maintenance

- a. The Customer must at all times keep the Cool Room in a clean, well maintained condition and will fully clean the Cool Room prior to return or collection.
- b. In the event that the Cool Room has not been adequately cleaned by the Customer upon return then Auswest will undertake such cleaning and may charge the Cleaning Fee to the Customer.
- c. If the Term is for a period of over 12 months Auswest will annually arrange the scheduled maintenance and service of the Cool Room. The Customer shall pay for the cost of all relevant maintenance, service, repair and spare part costs upon receipt of an Invoice.
- d. Auswest may enter the Site where the Cool Room is located with 24 hours notice to undertake servicing, repair and maintenance in accordance with this clause.

11. Repairs and Replacements

- a. In the event there is any breakdown, failure or damage to the Cool Room the Customer must *immediately* notify Auswest.
- b. If such breakdown, failure or damage is caused due to a fault or defect in the product then Auswest may elect to either:
- provide a replacement Cool Room; or
 - provide a refund to the Customer for any Hiring Fee already paid in respect to leasing the Cool Room.
- c. If such breakdown, failure or damage is caused by the act, omission, or the misuse of the Cool Room by the Customer then:
- Auswest will repair and make good the Cool Room; and
 - the Customer shall be responsible for the entire cost of any repair and make good of any breakdown failure or damage; and
 - the Hiring Fee shall continue to be payable by the Customer until the Cool Room is fully repaired and made good.
- d. Auswest may enter the Site where the Cool Room is located at any time to inspect the Cool Room following at least 24 hours notice.

12. Assignment

The Customer may not resell, sub-lease, assign or transfer any of its rights hereunder, and any attempt to resell, sub-lease assign or transfer such rights shall result in immediate termination of this Hire Agreement, without liability to Auswest.

13. Insurance

- a. Auswest shall take out and maintain at all times:
- a public liability policy of insurance to provide indemnity in respect of both injury to persons and damage to property in the sum of \$20 million dollars in the usual terms with respect to the use of the Cool Room;
 - a policy of insurance for the full replacement value of the Cool Room under a re-instatement or like policy against loss or damage by fire, theft, malicious damage, impact by vehicles, road accidents and other risks as Auswest may consider prudent.
- b. The Customer shall be responsible for all policies of insurance required by law in respect to its employees and contractors workers' compensation (if required).
- c. In the event that Auswest makes a claim on its insurance arising from or related to in any way from the act or omission of the Customer, then:
- the Customer must reimburse Auswest for any excess fee; and
 - in the event the insurance proceeds are insufficient to cover the repair or replacement of the Cool Room, the Customer shall make up such deficiency out of its own moneys.

14. Indemnity and Release

- a. The Customer is deemed to be satisfied as to the suitability, condition and fitness for purpose of the Cool Room.
- b. The Customer shall indemnify and keep indemnified Auswest against all claims, demands, writs, summonses, actions, suits, proceedings, judgments, orders, decrees, damages, costs, losses and expenses of any nature whatsoever which Auswest may suffer or incur in connection with loss of life, personal injury and/or damage of any kind arising from or out of:

- i. any occurrence relating to the use by the Customer of the Cool Room;
any act, neglect, default or omission (wholly or in part) by the Customer or any other person or persons using the Cool Room with the Customer's consent or approval expressed or implied; or
- ii. any breach of this Hire Agreement by the Customer. Limitation of Liability
- c. Auswest shall at no time be liable to the Customer for:
 - i. any direct or indirect inconvenience, loss or expense caused by the breakdown or damage to the Cool Room including, but not limited to, food spoilage, loss of profits or other consequential loss; or
 - ii. any loss, claim or expense caused by any factor beyond Auswest's reasonable control.
- d. All express or implied warranties, guarantees, representations or conditions are excluded from this Hire Agreement to the full extent permissible by law.
- e. Auswest's liability under this Hire Agreement is limited to either:
 - i. replacing the Cool Room; and
 - ii. reimbursement of the Hire Fees and/or Deposit.

15. Intellectual Property

The Customer acknowledges and agrees that all Intellectual Property shall at all times remain the property of Auswest and nothing in this Hire Agreement grants a right or licence over the Intellectual Property to the Customer.

16. Australian Consumer Law

In the event that the hiring of the Cool Room under this Hire Agreement falls under the ACL then:

- a. to the extent that the same are not enforceable, clause 14.a, clause 14.c and clause 14.d of these General Terms and Conditions shall not apply;
- b. any provision of this Hire Agreement deemed 'unfair' within the meaning of section 24 of the ACL shall be excluded to the extent of being unfair;
- c. all applicable 'statutory guarantees' as defined in the ACL shall be deemed included in this Hire Agreement; and

- d. the Customer is entitled to such remedies as may be applicable under the ACL.

17. Default

- a. The Customer shall be in default if it:
 - i. fails to pay any Costs under this Hire Agreement by the due date; or
 - ii. fails to perform any of its obligations under this Hire Agreement; or
 - iii. charges or creates any type of security interest over the Cool Room or other equipment belonging to Auswest; or
 - iv. suffers an Insolvency Event.
- b. In the event that the Customer is in default then Auswest may, in its absolute discretion, terminate this Hire Agreement, immediately retake possession of the Cool Room and the Customer shall be liable for:
 - i. all Costs referred to in clause 6;
 - ii. any interest calculated pursuant to clause 0; and
 - iii. all expenses and costs (including legal costs) incurred by Auswest in collection or recovery of the Costs or Cool Room from the Customer.
- c. If clause 17.b applies the Customer irrevocably authorises Auswest to enter into the Site (or any other premises where the Cool Room is held) in order to recover possession of the Cool Room.

18. Expert Determination

- a. The Parties agree that if a dispute arises between them in relation to this Hire Agreement that cannot be resolved within 14 days then the dispute must be referred to an Expert.
- b. The parties shall negotiate in good faith as to the prompt selection and appointment of a suitable Expert. If an Expert cannot be agreed within 14 days then either party may apply to the president or senior officer of an appropriate association, institute, society or board to appoint an Expert.
- c. The Expert will act as an expert and not as an arbitrator. The Expert's determination shall be conclusive and bind both parties save in the case of manifest error.
- d. The Expert may, but is not obliged to:
 - i. engage other consultants; and
 - ii. take into consideration written and oral material that the parties place

before him/her including relevant documents, information, arguments and submissions upon the matters in dispute.

- e. Each party must pay one half of the Expert's fees and expenses, irrespective of the result of the determination.
- f. Despite anything to the contrary in this document the authority of the relevant Courts of the State is not ousted by this dispute resolution provision.

19. GST

- a. GST is payable by the Customer on all Costs and other payments due to Auswest. Any amount referred to in this Hire Agreement is calculated exclusive of GST unless otherwise specified.
- b. If Auswest is liable by law for any GST on the Costs, the Customer must pay to Auswest that amount of the GST.
- c. Subject to the provision of an Invoice, the Customer must pay to Auswest an amount in respect of any GST that the Customer is required to pay under this Hire Agreement at the same time and in the same manner as the Customer is required to pay the relevant Costs.
- d. If Auswest refunds to the Customer any amount paid pursuant to the Hire Agreement, Auswest must also refund to the Customer the relevant GST.

20. General

- a. The Customer warrants and declares that it has full power and authority to enter into this Hire Agreement.
- b. This Hire Agreement may only be amended by agreement in writing between the Parties.
- c. If any term of this Hire Agreement becomes invalid or unenforceable it is severed and the remaining terms are valid and enforceable.
- d. This Hire Agreement comprises the whole of the agreement between the Parties.
- e. Nothing in this Hire Agreement creates any partnership or joint venture between the Parties.
- f. This Hire Agreement is governed by the laws of Western Australia and the parties submit irrevocably to the non-exclusive jurisdiction of the courts of the Western Australia.

21. Definitions

- a. **ALC** means the Australian Consumer Law as contained in the *Competition and Consumer Act 2010* as amended;
- b. **Auswest Coolroom Hire** means Antonio Manfredini and Sandra Manfredini as Trustees for the Manfredini Family Trust trading as Auswest ABN 84 608 496 740 of Unit 2/1 Cressall Road, Balcatta, Western Australia;
- c. **Cleaning Fee** means that fee charged to the Customer pursuant to clause 10.b being either a Minor Cleaning Fee or Major Cleaning Fee as specified in Item 5 of the Hire Details;
- d. **Commencement Date** means the Date specified in Item 4 of the Hire Details;
- e. **Cool Room** means the cool room or other plant and equipment hired by the Customer as specified in Item 2 of the Hire Details or the Invoice;
- f. **Costs** means those all costs payable under this Hire Agreement including the Deposit, Hiring Fee, Cleaning Fee, relevant repair and maintenance costs and any other moneys specified in the Hire Details;
- g. **Customer** means the Customer specified in Item 1 of the Hire Details or the Invoice and includes is employees, contractors, agents, servants, workmen, customers and invitees as the contact may require;
- h. **Delivery Costs** means the costs charged by Auswest to the Customer for the delivery and collection of the Cool Room as specified in Item 3 of the Hire Details or the Invoice;
- i. **Deposit** means the security deposit paid by the Customer to Auswest pursuant to clause 3 in the amount specified in Item 3 of the Hire Details or the Invoice;
- j. **Expert** means an expert in their relevant field of expertise having at least 5 years current and continuous experience or a person duly appointed by the president or senior officer of an appropriate association, institute, society or board;
- k. **General Terms and Conditions** means these general terms and conditions that form part of the Hire Agreement;
- l. **GST** means a goods and services tax, consumption tax, value added tax, retail turnover tax or a tax of a similar nature;

- m. **Hire Agreement** means this agreement to hire the Cool Room or other equipment and includes the Hire Details, the General Terms and Conditions and the Invoice;
- n. **Hiring Fee** means the fee payable for the hiring of the Cool Room as set out in Item 3 of the Hire Details;
- o. **Hire Details** means the Hire Details provided to the Customer as part of the Hire Agreement;
- p. **Insolvency Event** means:
 - i. where the party is a natural person, the party commits an act of bankruptcy; or
 - ii. where the party is a body corporate, the party:
 - A. cannot pay its debts as and when they fall due;
 - B. passes a resolution for administration, winding up or liquidation (other than for the purposes of re-organisation or reconstruction); or
 - C. a receiver, manager, liquidator or administrator is appointed to any of its property or assets.
- q. **Intellectual Property** means all industrial and intellectual property rights whether capable of protection by statute, at common law or in equity, including all copyright rights in relation to inventions, trade secrets and know-how, rights in relation to designs, rights in relation to registered and unregistered trade-marks, domain names, manuals, publications and all other similar proprietary rights relating to the Cool Room, such systems, drawings, improvements, trade secrets, technical data, know-how, copyright and similar industrial or intellectual property rights as are held or owned by Auswest;
- r. **Invoice** means a tax invoice in the format required by law issued by Auswest to the Customer for the payment of the Costs or any other moneys due and owing under this Hire Agreement;
- s. **Parties** means the parties to this Hire Agreement being the Customer and Auswest and includes that party's successors and permitted assigns;
- t. **Site** means the Site to which the Cool Room shall be delivered to or collected from for the use of the Customer; and

- u. **Term** means the period of this Hire Agreement commencing on the Commencement Date and terminating on the Expiry Date, subject to any agreed extension or period of holding over.

22. Interpretation

In this Hire Agreement unless the contrary intention appears:

- a. headings, underlining and numbering are for convenience only and do not affect the interpretation of the General Terms and Conditions;
- b. words importing the singular include the plural and vice versa;
- c. words importing a gender include every gender;
- d. an expression referring to a natural person includes a company, partnership, joint venture, association, corporation or other body corporate;
- e. a reference to any thing includes a part of that thing;
- f. a reference to "dollars" or "\$" means Australian currency AUS;
- g. a covenant or agreement by more than one person binds, and is enforceable against, those persons jointly and each of them severally; and
- h. in the interpretation of the Hire Agreement, no rules of construction apply to the disadvantage of any party because that party was responsible for the drafting of this or any part of this Hire Agreement.