

CROSS REFRIGERATION (NI) LTD

GENERAL CONDITIONS OF HIRE

1. DEFINITIONS

In these Terms of Hire the following meanings shall apply :

“Despatch” means the transfer of possession of Equipment to you whether collected by you or delivered by us and despatched shall be interpreted accordingly.

“Dry Hire” means the hire of Equipment only where the installation and commissioning is completed by the hirer

“Equipment” means the hired items referred to in the contract and/or services to be supplied by Us.

“Hire Charges” means the charges payable for the Equipment whilst on hire to You.

“Hire Period” means the time from the date agreed for the start of the hire or Despatch (whichever is the earlier) until the Equipment is returned.

“Return” means the re-transfer of possession of the Equipment to us in a Satisfactory Condition whether delivered by you to us or collected by us and returned shall be interpreted accordingly.

“Satisfactory Condition” means clean undamaged and unaltered as determined in our sole discretion.

“ We” and “Us” means Cross Refrigeration (N.I.) Ltd. and “Our” shall be interpreted accordingly.

“Working Day” means any day on which we are open for business.

“You” means the person, their employees, agents, company, corporation, public authority or body seeking to hire Equipment from Us and “Your” shall be interpreted accordingly.

2. SAFETY AND INSTRUCTIONS

It is Your responsibility to make sure that all people who use the Equipment are properly instructed in its safe and correct use and they are in possession of the instructions supplied by Us. If in the unlikely event that Our Equipment is involved in an accident resulting in injury or death to persons, or damage to property, You shall notify Us immediately by telephone and confirm this notification in writing

3. THE CONTRACT

These conditions exclude any terms and conditions You may have put forward, prior to or after the date of this contract, except where We have agreed to any amendments or other conditions in writing. These conditions do not affect the statutory rights of a person dealing as a consumer as defined by the Unfair Contract Terms Act 1977 or any statutory amendment of that Act

a) All orders are accepted by Us only under these Terms which may not be altered except with Our written agreement. Any contrary or additional terms unless so agreed are excluded. Written quotations are open for 31 days.

b) Orders may be cancelled only with Our written agreement and You will indemnify Us against all losses damages costs and expenses We incur as a result of that cancellation.

4. MAXIMUM PERIOD OF HIRE (If you are not incorporated)

If You are an individual sole trader, or an unincorporated body of persons, the contract including any amendment or variation to it will end within 365 days from the start of the Hire Period. The Equipment must be returned to Us by the close of business the Working Day before the expiry of the 365 day period. If You fail to do this We will be entitled to charge for any financial loss this causes Us.

5. HIRE CHARGES & HIRE PERIOD

a) Hire Charges are payable during the Hire Period.

b) The Hire Charges as stated or quoted are exclusive of VAT and are subject to change on 28 days written notice both before or during the Hire Period. Any discounts deductions or rebates agreed are only available if the Hire Charges are paid by the due date.

c) Hire Charges stated or quoted are applicable to the quantity, specification, delivery dates, length of hire and information provided by You. If the order placed varies or delay is caused by Your instructions or lack of instructions We shall be entitled to adjust the Hire Charges. Additional charges will be made for the supply and fixing of accessories, extras or additions.

d) Hire Charges stated at weekly rates accrue daily (including the day of Despatch and Return, Bank and Public Holidays) each day or part day accruing at 1/7th of the weekly charge. No allowance is given if the Equipment is not used even if this is outside Your control.

e) Minimum Hire Periods apply as stated or quoted and no refund or credit is given if the hire terminates early for whatever reason.

f) If a minimum Hire Period discount is provided at the start of the contract for the agreed minimum Hire Period then should the hire continue past the minimum Hire Period the same discount applies for the entire length of that contract until terminated.

g) It is Your responsibility to off-hire the equipment when You have finished using it. We will continue to charge daily Hire Charges until You contact Us to obtain an Off-Hire confirmation number.

h) If You cancel the hire order within 24 hours before Despatch, We will be entitled to levy a fee equivalent to 1 weeks Hire Charges plus aborted delivery cost.

6. PURCHASE OF HIRE EQUIPMENT

If You subsequently purchase the Equipment no credit will be given for Hire Charges, including minimum Hire Charges, which have already accrued and further Hire Charges shall continue to accrue until You have paid to Us the agreed purchase price.

7. PAYMENT

a) The amount of any deposit, Hire Charges shall be as quoted to You or otherwise as shown in Our current price list from time to time. Where a deposit is required for the Equipment it must be paid in advance of You hiring the Equipment. We may also require an initial payment on account of the Hire Charges in advance of you hiring the Equipment.

b) We may submit an initial invoice for Hire Charges at the commencement of the Hire Period and then issue subsequent weekly/monthly invoices throughout the duration of the Hire Period. A final invoice will be submitted at the end of the Hire Period.

c) Where a credit account has been allocated to You, payment of Our invoices shall fall due 30 days after the date of the invoice. If You have not been allocated a credit account, We will require payment of the Hire Charges prior to the commencement of the Hire Period.

d) You shall pay the Hire Charges payable under the contract to Us at the time and in the manner agreed. Our prices are, unless otherwise stated, exclusive of any applicable VAT for which You shall additionally be liable.

e) Payment by You on time under the Contract is an essential condition of the Contract. Payment shall not be deemed to be made until We have received either cash or cleared funds in respect of the full amount outstanding and time shall be of the essence in respect of payment.

f) If You have any dispute relating to Our invoice, this must be raised in writing to Us within 14 days of the invoice date after such time You will be deemed to have accepted the invoice. If You fail to make any payment in full on the due date, We may charge You interest (both before and after judgment/decree) on the amount unpaid at the rate implied by law under the Late Payment of Commercial Debts (Interest) Act 1998 as amended (where applicable) or at the rate of 6% above the base rate from time to time of HSBC Bank Plc whichever is higher.

g) You shall pay all sums due to Us under this Contract without any set-off, deduction, counterclaim and/or any other withholding of monies.

h) We may set a reasonable credit limit for You. We reserve the right to terminate or suspend the contract for hire of the Equipment if allowing it to continue would result in You exceeding Your credit limit or if the credit limit is already exceeded.

8. RISK OWNERSHIP AND INSURANCE

a) Risk in the Equipment will pass immediately to You when they leave Our physical possession or control.

b) Risk in the Equipment will not pass back to Us from You until the Equipment is back in the our physical possession. This shall apply even if We have agreed to cease charging Hire Charges.

- c) Ownership of the Equipment remains at all times with Us. You have no right, title or interest in the Equipment except that they are hired to You.
- d) You must not deal with the ownership or any interest in the Equipment. This includes but is not limited to selling, assigning, mortgaging, pledging, charging, securing, hiring, withholding, exerting any right to withhold, disposing of and/or lending. However You may re-hire the Equipment to a third party with Our prior written consent.
- e) You accept full liability and shall fully indemnify Us against all third party claims and losses however arising in respect to damage to or loss or destruction of any property or in respect of the personal injury or death of anybody in any way caused by or relating to the Equipment or its use, except when the damage loss or destruction injury or death directly results from Our negligence or that of Our employees or agents.
- f) You shall throughout the Hire Period including notice period, at Your expense, fully insure with a reputable insurance office in the joint names of You and Us the Equipment for the full replacement value against loss or damage or destruction however arising and Our liability under clause 8e above. You shall produce the policy or policies under this condition for inspection on demand. The proceeds of any such insurance that relate directly to the Equipment shall be held by You in trust for Us and be paid to Us on demand. You must not compromise any claim in respect of the Equipment and/or any associated insurance without Our written consent.

9. DESPATCH OF EQUIPMENT

- a) Hire Charges do not include carriage.
- b) You will pay to Us any agreed charges for delivering and collecting Equipment. Despatch dates and/or times are given by Us in good faith but are estimates only. We shall not be liable for any damages whatsoever whether direct or indirect (including for the avoidance of doubt any liability to any third party) resulting from any delay by Us in Despatch and/or return of the Equipment or failure to deliver the Equipment in a reasonable time whether such delay or failure is caused by Our negligence or otherwise howsoever.
- c) You shall be responsible for off-loading and loading of the Equipment at Your site. When an operator providing the loading or off-loading services is provided by Us, such person shall be under the direction and control of You and shall for all purposes be regarded as Your servant or agent.
- d) You will pay for any further time or attendance including any attempt by Us to carry out Your pre-arranged instructions for delivery or collection which is unsuccessful due to Your acts or omissions.

10. INSPECTION

- a) At the time of Despatch You shall inspect the Equipment and unless You advise Us by telephone immediately and written notice is received by Us within 3 Working Days of Despatch of any claim for short delivery or failure to conform with the contract apparent on inspection the Equipment will be deemed to have been Despatched in accordance with the delivery documents.
- b) Our liability for short delivery or failure of the Equipment to conform to the contract which is apparent on inspection is limited to supplying the Equipment as ordered. We shall not be liable for any damages whatsoever for short delivery or failure of the Equipment to conform to the contract which is apparent on inspection howsoever

caused. You remain liable to pay the full Hire Charges for Equipment Despatched or available for Despatch in accordance with the contract.

11. RETURN OF EQUIPMENT

- a) Hire Charges continue and the Equipment remains Your responsibility until the Equipment is Returned to Us.
- b) We require a minimum of 1 (2 in the week before Easter and Christmas Bank Holidays) Working Days notice of return of Equipment and You will be provided with an off hire number but Hire Charges continue until the Equipment is returned.
- c) If the Equipment is to be collected by Us and is in a Satisfactory Condition when We attend to collect it Hire Charges will cease on expiry of the notice given by you under Clause 11 b.
- d) We will count the Equipment on its return to verify quantity and issue a hire return ticket. You may attend this count. Unless We receive written notice of any dispute within 3 Working Days of Your receipt of the hire return ticket the Equipment will be deemed returned to Us in the quantities shown. The count is not an inspection of the condition of the Equipment. Equipment remains Your responsibility until actual collection occurs.
- e) Equipment such as boilers and chillers must be returned in the same manner in which they were delivered; under no circumstances can any form of Equipment including hose and fittings be stored inside the units.

12. HIRER'S RESPONSIBILITIES

- a) During the Hire Period You will not without Our written consent remove the Equipment from the site to which it was delivered or sublet or part with possession of any of the Equipment.
- b) During the Hire Period You will not repair alter or modify the Equipment or interfere with Our identification marks on the Equipment or any of Our signage attached to the Equipment
- c) During the Hire Period you are responsible for operating the Equipment in strict accordance with the operating instructions. Any damage arising from failing to adhere to operating instructions will be Your sole responsibility.

13. DAMAGE WAIVER

- a) All hire contracts are subject to a damage waiver of 7.5% of the total weekly Hire Charges shown on the contract.
- b) If You have paid the repairable damage waiver or have agreed in Our order form to pay the repairable damage waiver and provided that it is not otherwise in breach of this agreement, You will not be liable to Us for repairable damage up to a value of £3000, but will continue to be liable for and to indemnify Us in respect of all irreparable damage and lost Equipment as set out in clause 14 and 15 below.
- c) The damage waiver only covers damage and cleaning of the Equipment and does not include Equipment that is lost or stolen, or damaged beyond economic repair due to Your negligence.
- d) All Equipment hired by You must be covered on Your insurance against damage and theft as per clause 8f.

14. REPAIR AND MAINTENANCE

- a) Allowance will be made in relation to the Hire Charges for any non-use of the Equipment due to breakdown caused by the development of an inherent fault and/or fair wear and tear on condition that You inform Us as soon as practicable of the breakdown.
- b) A callout charge of a minimum of £50 (fifty pounds) will be levied in the event of any request for repair resulting from operator error or failure to adhere to operating instructions by You.
- c) You shall be responsible for all expenses, loss (including loss of rental) and/or damage suffered by Us arising from any breakdown of the Equipment due to Your negligence, misdirection and/or misuse of the Equipment.
- d) We will at Our own cost carry out all routine maintenance and repairs to the Equipment during the Hire Period and all repairs which are required due to fair wear and tear and/or an inherent fault in the Equipment. You will be responsible for the cost of all repairs necessary to Equipment during the Hire Period which arise otherwise than as a result of fair wear and tear, an inherent fault and/or Our negligence while carrying out routine maintenance and/or repairs. You will at all times allow Our engineer or representative access to site to inspect maintain or repair the Equipment.
- e) You must not repair or attempt to repair the Equipment unless authorised to do so in writing by Us.

15. NON-RETURNED, LOST STOLEN OR DAMAGED EQUIPMENT

- a) You have full responsibility for the care and safekeeping and return in good order of the Equipment.
- b) You will pay to Us the current published list price of any Equipment which is lost or stolen or damaged beyond economic repair. You are advised to insure the Equipment on this basis as per Clause 8f above. You must not compromise any insurance claim without Our written consent.
- c) If the Equipment is not returned in a Satisfactory Condition, and You have not paid the damage waiver (Clause 9), You will pay Us the cost of cleaning repairing and/or. If the Equipment is lost, stolen or in Our sole opinion is damaged beyond repair, You shall pay us Our current published list price of the Equipment. We shall give you 7 Working Days written notice before starting any repairs to allow for Your inspection. The decision to undertake repairs is at Our sole discretion. This is without prejudice to Our other rights.
- d) You shall pay to Us 70% of the Hire Charges, from the date of the off-hire, or damage or loss notification, until You or Your insurers have paid for the full replacement cost or the cost of repairing the Equipment to the full hireable condition.

16. LIABILITIES

- a) All warranties, representations, terms, conditions and duties implied by law relating to fitness, quality and/or adequacy are excluded to the fullest extent permitted by law.
- b) Any defective Equipment must be returned to Us for inspection if requested by Us before We will have any liability for defective Equipment.

c) We shall have no liability to You if, without just cause, any Hire Charges have not been paid in full by the due date for payment.

d) We shall have no Liability for additional damage, loss, liability, claims, costs or expenses caused or contributed to by Your continued use of defective Equipment after a defect has become apparent or suspected or should reasonably have become apparent.

e) You shall give Us a reasonable opportunity to remedy any matter for which We are liable before You incur any costs and/or expenses in remedying the matter itself. If You do not do so We shall have no liability to You.

f) We shall have no Liability to You to the extent that You are covered by any policy of insurance arranged as a result of the contract and You shall ensure that Your insurers waive any and all rights of subrogation they may have against Us.

g) We shall have no liability to You for any

g.i) consequential losses (including loss of profits and/or damage to goodwill)

g.ii) economic and/or other similar losses

g.iii) special damages and indirect losses

g.iv) business interruption, loss of business, contracts and/or opportunity.

h) Our total liability to You under and/or arising in relation to any hire shall not exceed 3 times the amount of the Hire Charges under hire or the sum of £1,000/€1250 whichever is the higher. To the extent that any liability would be met by any insurance then the Our liability shall be extended to the extent that such liability is met by such insurance.

i) Each of the limitations and/or exclusions in these terms and conditions shall be deemed to be repeated and apply as a separate provision for each of

i.i) Liability for breach of contract

i.ii) Liability in tort/delict (including negligence)

i.iii) Liability for breach of statutory and/or common law duty; except clause h) above which shall apply once only in respect of all the said types of liability.

j) Nothing in these terms and conditions shall exclude or limit the Our liability for death or personal injury due to Our negligence nor exclude or limit any other type of liability which it is not permitted to exclude or limit as a matter of law.

17. NON-PAYMENT/INSOLVENCY

a) For the purposes of this clause the following definitions shall apply:

a.i) Insolvent means You ceasing to pay your debts in the ordinary course of business or being unable to pay Your debts as they become due or You ceasing or threatening to cease to carry on Your business.

a.ii) Associated Company means Your subsidiary or holding company as defined in section 256 of the Companies Act 2006 or a subsidiary of such holding company, or any company over which Your directors or shareholders have control as defined in section 191 of the Income Tax Act 2007.

b) If You fail to pay any invoice or any sum due to Us under any contract on the due date or Your credit limit is exceeded or You or Your Associated Company becomes Insolvent or there is a material change in Your or Your Associated Company's constitution or You commit a material breach of this contract and fail to remedy that breach after being requested to do so, all sums outstanding between You and Us under this and any other contract shall become immediately due and payable.

We shall be entitled to do any one or more of the following (without prejudice to any other right or remedy We may have)

(i) charge interest on the monies outstanding at the rate of 6 per cent above HSBC Plc's base rate, published daily and in force from the due date until the date of payment after as well as before judgement

(ii) withdraw Your right to quiet possession of the Equipment and any implied licence and authority You may have to use the Equipment

(iii) cancel or suspend any further Despatches to You under any contract without liability on Our part

(iv) terminate this or any other contract with You without liability on Our part.

(v) recover all or any of the Equipment and for that purpose We may with such transport as is necessary enter upon any premises occupied by You or to which You have access and where the Equipment may be or is believed to be situated.

d) You shall reimburse Us costs including legal costs on an indemnity basis which We incur in enforcing Our rights under this contract including but not limited to recovery of any sums due.

18. COUNTERCLAIMS AND SET OFF

Under no circumstances shall monies owed by Us to You under this or any other contract be set-off against monies properly owed to Us under this contract.

19. STATUTORY COMPLIANCE

You warrant and represent to Us that you will obtain every necessary licence or permit required, and/or comply with any legal requirement for or relating to the use or installation of the Equipment.

20. FORCE MAJEURE

We will not be liable for any failure in the performance of any of Our obligations under the contract caused by factors outside Our control.

21. DISPUTES

a) Should any dispute arise under the contract at any time then either party shall have the right to refer that dispute or difference for adjudication in accordance with the following conditions. Nothing in this clause shall be construed to deprive either party of its rights to commence proceedings in court.

b) If any such dispute or difference shall arise then one party may serve upon the other a notice in writing which states the nature of the dispute, the remedy sought and a request to refer the dispute to adjudication.

c) The notice under b above shall also be served on the adjudicator either on his identity being agreed or him being appointed as the case may be.

d) The parties shall within 4 days of the notice being served agree on a suitable Adjudicator. In the event of failure by the parties to agree on an Adjudicator, either party may apply to the Academy of Construction Adjudicators whose written notification of an appointment shall be served and binding on both parties.

22. DRY HIRE

We will Dry Hire products if You are a trade customer or client with relevant skills required to install the Equipment. Terms and Conditions applicable to Dry Hire contracts are as follows:

a) You take full responsibility for the safe handling, installation and commissioning of the Equipment on Dry Hire.

b) If You are responsible for transportation of the Equipment on Dry Hire, the Equipment must be transported safely using appropriate lifting and transportation methods. Special requirements will be needed for larger Equipment; mobile boilers i.e. those built on two wheeled road axles must be transported using either appropriately sized towing vehicle or by using a suitable vehicle transporter. Lifting gear must be used for all Equipment in such a way that no damage is caused to the Equipment. Failure to comply with recommended methods that create or cause damage to Equipment will be charged to You. Charges will be based on inspection and full cost of Equipment repair.

c) You must provide proof that the Equipment is to be installed and commissioned by fully trained and proficient operators prior to installation.

d) Installation of Equipment containing 3kg or more of refrigerant gas must be performed by an engineer with certification to current F gas regulations.

e) In the case of natural gas installations proof of up to date and current gas safe certification must be provided. A commissioning sheet and flue analysis report must also be provided for Our records.

f) If We are called to attend a site in order to repair or to complete failed commissioning of Equipment taken on a Dry Hire basis, You agree to pay Us for all costs (at the current prevailing published rates) associated with the call out. In the event that the Equipment is found to be faulty, and where the fault has not been created by incorrect installation or commissioning We will repair or replace the Equipment at Our own cost.

g) On completion of the Dry Hire all Equipment must be returned in line with the agreed time scales. Equipment will be inspected, any damage will be invoiced to You in line with standard terms and conditions.