

## PURE CABINS HIRE CONTRACT

### 1. Definitions

1.1 In this agreement:

**Business Day** means any day on which trading banks are open for business other than a Saturday, Sunday or a public holiday in Tauranga.

**Cabin** means all cabins and accessories (including but not limited to lighting, curtains, curtain rails, carpet and underlay, electrical equipment and fittings, keys, door mats, signage, or any other fittings and fixtures) supplied for hire to the Hirer by the Owner, at the Hirer's request from time to time, and includes any erection, dismantling and transport of the Cabin (**Services**), any parts, accessories and/or consumables supplied by the Owner to the Hirer.

**Charges** shall mean the cost payable for the hire of the Cabin and any Services provided.

Contract means these terms and conditions for the Cabin hire including any Services provided.

**Hirer** means the person(s) hiring the cabin.

**Minimum Lease Period** shall mean any minimum lease period set out in the order, invoices, quotation, or any other forms as provided by the Owner to the Hirer.

**Owner** means Pure Cabins Limited or any person acting on behalf of and with the authority of the Owner.

**Property** means the location nominated by the Hirer for delivery of the Cabin, which the Hirer must own or have authority to use for the Cabin.

### 2. Terms and conditions

2.1 The Hirer is deemed to have accepted the terms and conditions of this Contract upon the earlier of:

- (a) written acceptance by the Hirer;
- (b) acceptance by the Hirer of any quote provided for Cabin hire; and
- (c) accepting delivery of a Cabin.

2.2 These terms and conditions may only be amended with both parties consent in writing and shall prevail to the extent of any inconsistency with any other document between the Hirer and the Owner.

2.3 The Cabin may not be sublet by the Hirer. The Hirer may not assign or transfer its interest in this Contract, or part with possession of all, or any portion, of the Cabin and/or any associated accessories, without the prior written consent of the Owner, which may be withheld at its absolute discretion.

2.4 The Hirer acknowledges that "good working order" means, in respect to the Cabin, that

- (a) the Cabin is in good condition and good appearance throughout; and
- (b) the Cabin has been properly maintained, cleaned and cared-for in accordance with the Owner's recommendations and requirements.

2.5 The Owner will:

- (a) provide the Cabin in good working order; and
- (b) allow the Hirer exclusive use of the Cabin during the Hire period.

2.6 The Hirer agrees to provide photo ID containing proof of the Hirer's current address to the Owner prior to the Hirer taking possession of the Cabin to be hired.

2.7 The Hirer shall give the Owner not less than ten (10) Business Days prior written notice of any proposed change or control of ownership of the Hirer and/or any other change in the Hirer's details (including but not limited to, changes in the Hirer's name, address and contact phone number(s) or email address(es), change in trustees or change in use of the Cabin).

2.8 The Hirer must at all times ensure that the Owner has authority to, and shall be able to, access the Property and the Cabin to exercise its rights under this Contract.

2.9 It is the Hirer's responsibility to ensure compliance with council rules and regulations.

### 3. Charges and payment

3.1 The Owner reserves the right to vary the Charges quoted to the Hirer:

- (a) if a variation to the Cabin or any other accessories which are to be supplied is requested by the Hirer; or
- (b) where additional Services are required due to difficulties including, but not limited to, poor weather conditions, limitations to accessing the Property, availability of Cabins, and/or safety considerations, which become apparent following the provision of the initial quote;
- (c) in the event of increases in the cost of labour or materials, which are beyond the Owner's control.

- 3.2 Variations will be charged for on the basis of the Owner's then current rates. The Hirer shall be deemed to have accepted any variation submitted by the Owner within ten (10) Business Days of being notified in writing.
- 3.3 A non-refundable deposit is required to secure all orders with the balance being payable before delivery of the Cabin. The deposit forms part of the total payment due for the Cabin and is separate from the bond payment.
- 3.4 The deposit may be used to offset any applicable Charges by the Owner.
- 3.5 Time is of the essence for all Charges payable. Payments must be made on the date(s) specified by the Owner, and failing any date being specified, payment must be made by the date which is five (5) Business Days following the date of any invoice given to the Hirer by the Owner. Payment may also be made by way of instalments/progress payments if agreed in writing with the Owner prior to the due date for payment.
- 3.6 Payment may be made by electronic/on-line banking or by any other method agreed to between the Hirer and the Owner in writing.
- 3.7 The Hirer shall not be entitled to set off against, or deduct from, the Charges, any sums owed or claimed to be owed to the Hirer by the Owner nor to withhold payment of any invoice because part of that invoice is in dispute.
- 3.8 The Hirer acknowledges and agrees that the Hirer's obligations to the Owner for the supply of the Cabin on hire shall not cease until:
- (a) the Hirer has paid the Owner all amounts owing for the hire of the Cabin; and
  - (b) the Hirer has met all other obligations owing by the Hirer to the Owner in respect of all contracts between the Owner and the Hirer.
- 3.9 GST shall be payable in addition to the Charges except when expressly included in the Charges quoted.

#### 4 Refundable bond

A refundable bond is payable in relation to the Cabin hire and will be refunded if the Cabin is returned in good order, clean and with all accessories that were provided also returned in the same condition. If when the Cabin is returned it is not clean, is missing items, is stained or damaged in any way, the bond will be retained by the Owner to pay for the cleaning and repairs. Bond refunds will otherwise be processed within twenty-eight (28) days of the Return of the Cabin to the Owner.

#### 5. Delivery and return

- 5.1. Delivery of the Cabin including any Services (**Delivery**) is taken to occur at the time that the Owner (or the Owner's nominated carrier) delivers the Cabin and/or provides the Services to the Hirer's nominated address, even if the Hirer is not present at the address. In the event the Hirer (or its representative) is not present at the time of Delivery, the Owner's delivery docket shall be evidence of delivery. If the levelling and propping required to the Section exceeds an adjustment of 100mm and/or Pure Cabins determines that further adjustments or works to accommodate the Cabin (including but not limited to earthworks, additional levelling, or foundation work) is required, Pure Cabins will not be responsible for carrying out or covering the cost of those adjustments or work. Any necessary site preparation or adjustments exceeding the 100mm levelling will be the sole responsibility of the Hirer. The Hirer agrees to complete such adjustments or works prior to delivery of the Cabin.
- 5.2 Return of the Cabin (**Return**) will be completed when the Cabin has been collected by the Owner and transported to the Owner's premises. Prior to picking up the Cabin, the Cabin will be drug tested for any illegal substances while at the Hirer's Property. This test, will be available to view by the Hirer, prior to departure of the Cabin. At the Owner's premises the Cabin's condition will be checked. Any drug or illegal substance contamination as indicated by the initial drug test at the Hirer's Property, will be followed up by a more substantial illegal substance test at the Owner's premises and if showing a 'positive' result, that test will be forwarded by urgent courier to a testing laboratory for verification of the illegal substance, the levels of the substance, and the Cabin will be immediately sealed at the Owner's premises until the results are received from the laboratory. Once those results are received, then the appropriate cleaning and health and safety procedures will be carried out. All charges resulting from a drug test that indicates a positive result, including cleaning, repairs and any other treatment required, will be payable by the Hirer and will be charged via invoice to be paid immediately on receipt by the Hirer. The Hirer shall also be liable to the Owner for the lost hire revenue while the Cabin is unable to be used.
- 5.3 The Owner reserves the right to charge the Hirer for the full cost of Cabin hire (including but not limited to the cost of labour for Delivery and placement of the Cabin and the cost of any alterations to the Cabin undertaken for supply to the Hirer) for any cancellation or termination of this Contract, after acceptance of the Owner's

quote. Acceptance shall be deemed to take place when the Hirer accepts the Owner's quote where expressly or by way of confirming Delivery details.

5.4 The Owner shall provide (as the Hirer's agent) transport of the Cabin to and from the Property, and transport charges:

- (a) shall be in addition to, the hire Charges, and
- (b) are quoted on the basis of Delivery and Return of the Cabin; and
- (c) allow for a maximum of ninety (90) minutes loading or unloading time per visit to the Property during the Owner's normal business hours. Delivery and/or Return of the Cabin (including any waiting time) outside the Owner's normal business hours will incur additional charges.

5.5 Any time specified by the Owner for Delivery is an estimate only and the Owner will not be liable for any loss or damage incurred by the Hirer as a result of Delivery being late. However, both parties agree that they shall make every endeavour to enable the Cabin to be supplied at the time and place as arranged between both parties. In the event that the Owner is unable to supply the Cabin as agreed solely due to any action or inaction of the Hirer then the Owner shall be entitled to charge a further delivery fee for re-supplying the Cabin at a later time and date.

5.6 The Owner shall not be responsible for delay or non-delivery of the Cabin resulting from an act beyond the reasonable control of the Owner, including but not limited to, industrial action, strikes, lockouts, epidemics, fire, war, government actions, pandemic, epidemic, commotion, riot, floods, or inclement weather.

5.7 The Hirer shall ensure that the Owner has clear and free access to the Property at all times to enable them to make Delivery and/or collect the Cabin. The Owner shall not be liable for any loss or damage to the Property (including, without limitation, damage to pathways, driveways, concreted, paved or grassed areas), unless due to the gross negligence of the Owner.

## **6. Use and maintenance of the Cabin**

6.1 *Hire period:* The hire period shall:

- (a) commence from the day of delivery of the Cabin to the Hirer's Property, and will continue until the Return of the Cabin and/or until the expiry of any Minimum Lease Period (whichever is the later). Additional charges will apply in the event that the Hirer requests an extension of the agreed hire period;
- (b) be based on a weekly (being five (5) Business Days) or monthly (calendar month) cycle.

6.2 *Hirer's obligations:*

- (a) The Hirer shall:
  - (i) satisfy itself on Delivery that the Cabin is suitable for its purpose;
  - (ii) not move the Cabin from the position it is placed by the Owner unless agreed in writing between the parties;
  - (iii) maintain the Cabin in good order and condition, and as is required by the Owner;
  - (iv) notify the Owner immediately upon discovering any issue and advising of the full circumstances of the relevant issue or any damage, loss, destruction or accident in connection with the Cabin;
  - (v) use the Cabin carefully and safely, strictly in accordance with the law (in full compliance with all health and safety regulations relating to their occupation and use of the Cabin), only for its intended use, and in accordance with any instruction supplied by the Owner or noted on the Cabin including without limitation, no pets, smoking, vaping, gas heaters or cookers inside the Cabin at any time;
  - (vi) ensure the security and safekeeping of the Cabin, and that all persons who enter the Cabin abide by all New Zealand laws and regulations;
  - (vii) keep the Cabin in its own possession and control and shall not be entitled to take a lien, or grant any encumbrance over the Cabin;
  - (viii) not alter or make any additions to the Cabin (including, but not without limitation, altering, make any additions to, defacing or erasing any identifying mark, plate or number on the Cabin) or in any other manner interfere with the Cabin. The Owner will photograph, in detail, the Cabin once erected as proof of the original condition and Cabin placement;
  - (ix) employ the Cabin solely for its own use and not permit the Cabin (or any part of it) to be used by any other party;
  - (x) not use or place any illegal, prohibited or dangerous substance in the Cabin;

- (xi) not affix the Cabin (or any part of it) in such a manner as to make it a legal fixture forming part of any freehold; and
- (xii) on termination of the hire, deliver up the Cabin, complete with all parts and accessories, clean and in good order, as delivered, fair wear and tear excepted, to enable the Owner's representative to collect the Cabin.
- (xiii) not allow any person or child to go under the cabin.
- (b) Immediately on request by the Owner the Hirer will pay:
  - (i) the then current listed sales price for the Cabin (or part of it) if it is, for whatever reason, destroyed, irrecoverable, or not returned to the Owner; and
  - (ii) any insurance excess payable in relation to a claim made by the Hirer in relation to any damage caused by, or to, the Cabin whilst the same is hired by the Hirer.

6.3 If the hire of the Cabin will or may exceed twelve (12) months this Contract shall also apply as a security agreement granting the Owner a security interest over the Cabins with the Hirer. The Hirer agrees that the Owner may register a security interest as a Purchase Money Security Interest (PMSI) for the purposes of the PPSA pursuant to clause 14.

6.4 No warranty is given by the Owner as to the quality or suitability of the Cabin for any purpose, and any implied warranty is expressly excluded. The Hirer shall indemnify and hold harmless the Owner in respect of all claims arising out of its use of the Cabin.

## 7. Inspection of Cabin

The Hirer grants the Owner the right at all times, upon the Owner giving to the Hirer reasonable notice and without unduly interfering with the Hirer's business or operations, to:

- (a) enter on any Property where the Cabin or any part of it may be located;
- (b) inspect the state of repair or condition of the Cabin;
- (c) carry out any such tests on the Cabin as may be reasonably necessary including but not limited to, drug testing, health and safety tests or inspections;
- (d) observe the use of the Cabin by the Hirer; and
- (e) do any act, matter or thing which may be required at law or otherwise to protect the Owner's rights or interests in the Cabin.

## 8. Title

8.1 The Cabin is and will at all times remain the absolute property of the Owner, however the Hirer:

- (a) accepts full responsibility for the safekeeping of the Cabin and indemnifies the Owner for all loss, theft, or damage to the Cabin however caused and without limiting the generality of the foregoing whether or not such loss, theft, or damage is attributable to any negligence, failure, or omission of the Hirer; and
- (b) shall keep the Owner indemnified against all liability in respect of all actions, proceedings, claims, damages, costs and expenses in respect of any injury to persons, damage to property, or otherwise arising out of the use of the Cabin during the hire period and whether or not arising from the negligence, failure or omission of the Hirer or any other persons.

8.2 The Hirer will not use the Cabin nor permit it to be used in such a manner as would permit an insurer to decline any claim.

8.3 The Owner or the Owner's agent may (as the invitee of the Hirer) enter upon and into land and Property owned, occupied or used by the Hirer, or any Property where the Cabin is situated and take possession of the Cabin.

## 9. Insurance

9.1 The Hirer hires the Cabin at the Hirer's own risk and indemnifies the Owner against any and all loss in respect of, or damage to, the Cabin, including any consequential loss.

9.2 The Owner will maintain the current insurance policies in respect of the Cabin to its full insurable value.

9.3 In the event that the Cabin provided by the Owner is the subject of an insurance claim made by the Owner, as a result of any action or inaction of the Hirer, then the Hirer accepts full liability for the value of the Cabin (or part of it) that is lost, stolen or damaged in any way during the entire hire term, irrespective of whether the insurance claim is successful.

## 10. Defects

- 10.1 The Hirer shall inspect the Cabin on Delivery and shall notify the Owner of any alleged defect within twenty-four (24) hours following Delivery of the hired Cabin. The Hirer shall afford the Owner an opportunity to inspect the Cabin within a reasonable time following such notification if the Hirer believes the Cabin is defective in any way. If the Hirer shall fail to comply with these provisions the Cabin shall be presumed to be free from any defect or damage. For a defective Cabin, which the Owner has agreed in writing that the Hirer is entitled to reject, the Owner's liability is limited to either (at the Owner's discretion) replacing the Cabin or repairing the Cabin.
- 10.2 The Cabin will not be accepted for return other than in accordance with 10.1 above.

**11. Default and consequences of default**

- 11.1 Interest on overdue invoices shall accrue daily from the date the payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and such interest shall compound monthly at such rate) after as well as before any judgment.
- 11.2 If the Hirer owes the Owner any money the Hirer shall indemnify the Owner from and against all costs and disbursements incurred by the Owner in recovering the debt (including but not limited to legal costs on a solicitor and own client basis).
- 11.3 Unless otherwise agreed to between the parties, any monies received from the Hirer shall be applied firstly in reduction of any outstanding Charges and interest, and secondly on account of any Charges for the hire of the Cabin.
- 11.4 Without prejudice to the Owner's other remedies at law the Owner shall be entitled to collect any Cabin on hire to the Hirer, cancel all or any part of any order of the Hirer which remains unfulfilled and all amounts owing to the Owner shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to the Owner becomes overdue, or in the Owner's opinion the Hirer will be unable to make a payment when it falls due;
  - (b) the Hirer has exceeded any applicable credit limit provided by the Owner;
  - (c) the Hirer becomes insolvent or bankrupt, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors;
  - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Hirer or any asset of the Hirer; or
  - (e) the Hirer otherwise breaches any term of this Contract.
- The Owner will not be liable for any loss or damage the Hirer suffers because the Owner has exercised its rights under this clause.
- 11.5 The Owner shall be entitled to cancel the Contract if the Owner:
- (a) reasonably believes that a third party may attempt to take possession of the Cabin;
  - (b) considers the Cabin is otherwise at risk.

**12. Cancellation**

Subject to the Minimum Lease Period, in the event that the Hirer wishes to cancel this Contract then the Hirer agrees to provide a minimum of one (1) months' notice of termination of hire in writing. The Hirer shall remain liable for all hire Charges due up to the time of cancellation and/or until all hire Charges are fully paid which would complete and fulfil the hire term of the Contract.

**13. Personal information**

- 13.1 By ordering a Cabin for hire and/or by providing your personal information to the Owner, you authorise the Owner or the Owner's agent to access, collect, retain, use and disclose your personal information in accordance with the Privacy Act 1993 and these terms. The Owner will use your personal information to:
- (a) facilitate your hire arrangements and deliver the Services including conducting checks to assess the Hirer's creditworthiness; and
  - (b) carry out its business including by marketing products and services to the Hirer.
- 13.2 To provide certain Services the Owner may appoint third parties to carry out some processing or checking on its behalf, such as credit checks or debt collection. In those circumstances The Owner will share the Hirer's personal information with those parties.

13.3 The Hirer shall have the right to request from the Owner for a copy of the information about the Hirer retained by the Owner and the right to request the Owner to correct any incorrect information about the Hirer held by the Owner.

#### **14. Personal Property Securities Act 1999 (PPSA)**

14.1 The Hirer acknowledges and agrees that:

- (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
- (b) a security interest is taken in all the Cabin(s) supplied by the Owner to the Hirer at any time.

14.2 The Hirer undertakes to sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Owner may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register.

14.3 The Owner and the Hirer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.

14.4 The Hirer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129 and 131 of the PPSA.

14.5 Unless otherwise agreed to in writing by the Owner, the Hirer waives its right to receive a verification statement in accordance with section 148 of the PPSA.

#### **15 Limitation of liability**

15.1 The Owner shall be under no liability whatsoever to the Hirer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Hirer arising out of a breach by the Owner of these terms and conditions.

15.2 In any situation where the Owner is found to be liable to the Hirer, the Owner's maximum liability shall be limited to damages which under no circumstances shall exceed the Charges paid by the Hirer.

#### **16. Dispute resolution**

16.1 A party to this Contract that wishes to invoke these dispute resolution provisions must give written notice to the other party specifying the nature of the dispute. If notice of a dispute is provided, the parties must in good faith promptly endeavour to resolve the dispute by negotiation, before pursuing any other form of dispute resolution.

16.2 If the dispute is not resolved by negotiation within 10 Business Days of the notice of dispute being provided, then either party may refer the dispute to the Courts.

#### **17. Guarantee**

17.1 In consideration of the Owner entering into this Contract at the Hirer's request, the Guarantor:

- (a) guarantees the due and punctual payment of all moneys payable and the performance of all obligations of the Hirer under this Contract; and
- (b) indemnifies the Owner against any liability, loss, cost or damage the Owner might suffer by reason of any breach by the Hirer of any of the Hirer's obligations under this Contract.

17.2 As between the Guarantor and the Owner, the Guarantor will be deemed to be a principal debtor and not merely a surety.

17.3 The guarantee in this Contract continues until all of the obligations of the Hirer to the Owner (whether under this Contract or otherwise) have been fully discharged.

17.4 When the Guarantor consists of two or more persons, the obligations and agreements in this guarantee shall bind them jointly and severally.

#### **18. General**

18.1 The failure by either party to enforce any provision of this Contract shall not be treated as a waiver of that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

18.2 This Contract shall be governed by the laws of New Zealand.

18.3 This Contract is subject to the provisions of the Consumer Guarantees Act 1993 in all cases except where the Hirer is contracting within the terms of trade/business (which cases are specifically excluded).

18.4 The Owner may assign all or any part of its rights and/or obligations under this Contract without the Hirer's consent.

- 18.5 The Owner may elect to subcontract out any part of the Services. The Hirer agrees and understands that they have no authority to give any instruction to any of the Owner's sub-contractors without the authority of the Owner.
- 18.6 The Hirer agrees that the Owner may amend these terms and conditions by notifying the Hirer in writing. These changes shall be deemed to take effect from the date on which the changes are notified to the Hirer.

Initials \_\_\_\_\_