

# **Betta Storage Containers and Engineering - Hire Terms & Conditions**

## **1. HIRE CHARGES**

Hirer agrees to pay hire charges as set forth in this Agreement for all equipment described thereon from the day such equipment is delivered to Hirer up to and including the day such equipment is off-hired. The hire rate listed in this Agreement is firm for the period nominated.

## **2. DELIVERY**

Betta agrees to supply equipment of the type specified on an as available basis ex Betta's depot locations in Australia. Hirer acknowledges receipt of the equipment hired hereunder in good condition as evidenced conclusively by its execution of this Agreement. Any time quoted by Betta for delivery of equipment is an estimate only and Betta is not liable for late delivery, or non-delivery, for any reason. Betta shall not be liable to Hirer for any consequential loss or damage arising from such delay or non-delivery or non-supply. The equipment covered by this Agreement will be located at the Hirer's address listed in this Agreement for the duration of the hire. Written approval from Betta is required prior to any relocation of the equipment.

## **3. ACCOUNT CUSTOMERS**

Betta, must receive payment of the invoiced amount, including GST, without deduction, within 30 days of the date of Betta's invoice. If Hirer commits any act of insolvency, all money due and owing by Hirer to Betta, whether by way of credit or otherwise, will become due and payable immediately. Betta reserves the right to suspend, with or without notice, any deliveries of goods or services if any payment due by Hirer to Betta is overdue. Betta may also request credit card details from hirer and may upon signed agreement, process credit card payments for hire in advance. Hirer must pay all costs and expenses (including legal costs) that may be incurred by Betta in the attempted recovery of the overdue amount.

## **4. OPERATION, MAINTENANCE AND REPAIR**

Hirer shall at its sole cost and expense, maintain the equipment in good repair and safe operating condition. Betta's equipment is identified by appropriate lettering and numbering, which Hirer agrees not to change or obliterate, except that at the request of Betta, Hirer may change or supplement such marks, as Betta shall request. Hirer may, however, add other markings as may be required, provided that the equipment so marked when returned by Hirer to Betta, shall be free of all such markings. If Hirer fails to remove such markings, Betta may remove such markings for the account of Hirer. Hirer shall have no power to incur, and shall keep the equipment free from charges, liens or encumbrances. Hirer shall comply with all legislation, by-laws and regulations affecting the use of the equipment.

## **5. REDELIVERY AND OFF-HIRE**

Containers shall be returned to Betta's designated depot as listed in this Agreement. Equipment shall be off-hired on the date of physical redelivery into Betta's depot. **To confirm an off-hire, the Hirer must fax or email the attached Off-Hire Notification Form.** Hirer is liable to Betta for all damage to or loss or destruction of the equipment subsequent to delivery and prior to return to Betta except that caused by normal wear and deterioration. Normal wear and deterioration shall not include damage by forklifts or other handling equipment, or changes, which could have been prevented by normal maintenance and/or reasonable care in use. Hirer agrees to redeliver containers in clean condition and free of labels and graffiti. Upon redelivery of containers, damage repair or cleaning costs shall be to the account of Hirer. Hirer will pay such repair or cleaning costs, including GST, without deduction, within 30 days of the date of Betta's invoice. In the event of loss, theft, destruction of the equipment or damage thereto which Betta, in its sole discretion shall determine is not repairable, rental charges shall terminate upon receipt by Betta of written notice of such event, provided payment of the replacement value for the equipment as stated on the cover of this Agreement is made to Betta within thirty (30) days of such notice. If payment is not made within thirty (30) days, rental charges shall continue to accrue unabated until Betta receives such payment. Payments by Hirer shall not be applied to charges for the replacement value of equipment unless specified by Hirer. Should Hirer fail to return equipment upon termination of the Agreement Hirer agrees that all of its obligations (including, without limitations, the obligation to pay the hire charges) to Betta shall continue in effect until all equipment hired under this Agreement has been returned to Betta.

## **6. SUB-HIRE AND ASSIGNMENT**

Hirer shall not have the right to assign this Agreement or to sublet, rent or otherwise hire out or part with possession of the equipment, to any other party without prior written consent of Betta and such consent of Betta shall not operate to relieve Hirer of any of its obligations hereunder. Hirer may not direct interchange equipment to another party.

## **7. QUIET ENJOYMENT**

Hirer's obligations under this Agreement are absolute and shall not be affected by any circumstance or event beyond Hirer's control, of whatever nature. Provided Hirer complies with all of the terms and conditions of this Agreement, Hirer shall have quiet possession of the containers.

## **8. DEFAULT, REMEDIES UPON DEFAULT**

Should Hirer default (i) in the payment of any sum due hereunder within fourteen (30) days of the date Hirer is invoiced by Betta, (ii) in the performance of its other obligations under this Agreement, or (iii) cease doing business as a going concern, become insolvent, commit an act of bankruptcy or become the subject of any proceeding under any

bankruptcy act, or its counterpart under the law of any territory outside of the jurisdiction of Australia, then Betta may without notice and without releasing Hirer of its obligations hereunder, terminate this Agreement, declare the balance of the rental to be due and payable, and retake possession of the equipment free of any claims of Hirer, and for this purpose Hirer hereby irrevocably authorises Betta to enter upon any property occupied by Hirer for the purpose of removal of containers hired to Hirer. Betta may, in its sole discretion, waive a default by Hirer, but any such waiver or waivers shall not be construed to modify the terms of the Agreement between Betta and Hirer. In the event of such termination by Betta, Hirer shall no longer be in possession of the equipment with Betta's consent and Hirer shall return the equipment to Betta's designated depot as listed in this Agreement. Hirer shall continue to pay rental charges for equipment until the equipment is (i) returned in as good condition as received, normal wear and deterioration excepted, (ii) repaired and fit for subsequent rental, or (iii) settlement is made. Without limiting Hirer's indemnity obligations under Section 9 of these Hire Terms & Conditions, should Betta retake possession of all or any part of the equipment, Hirer authorises Betta to take possession of any property in, on or attached to such equipment which is not the property of Betta, and without liability for its care or safekeeping, to place such property in storage at the risk and expense of Hirer. With regard to any equipment not returned to Betta within thirty (30) days of termination, Hirer will then owe Betta an amount equal to the full replacement value as provided for in the Agreement, without regard to depreciation, for any equipment which has not been redelivered. Termination shall not relieve Hirer of any liabilities or obligations incurred prior to such return, repair or settlement. If Hirer shall neglect or omit to do anything in relation to the equipment whereby Betta's interest therein may be adversely affected, then Betta may remedy such neglect or omission and all monies expended in so doing shall forthwith be payable by Hirer to Betta. Repayment shall carry interest at the rate of ten (10%) percent per annum accruing on a daily basis until full repayment is received by Betta.

## **9. INDEMNITY**

Hirer shall indemnify and hold Betta harmless from all liability, damage, cost or expense (including, without limitation, expenses in defending any claim or suit such as attorney's fees, court costs and other expenses) arising out of any (i) failure of Hirer to comply with its obligations under this Agreement; (ii) any claim whether private or governmental for personal injury or death, and for loss of or damage to person, property, cargo or vessels arising out of or incident to the ownership, selection, possession, leasing, operation, control, use, storage, loading, unloading, moving, maintenance, delivery or return of the equipment; (iii) any forfeiture, seizure, or impounding of, or claim of charge, lien or encumbrance on the equipment. Each party undertakes promptly to give notice to the other of claims against it or action against it with respect thereto and Hirer agrees not to settle any action without the consent of Betta.

## **10. LIMITATION OF LIABILITY**

To the extent permitted by law, Betta and its servants and agents are not liable for any loss or damage (including without limitation loss or damage caused by the negligence of Betta, or its servants or agents, and incidental and consequential loss or damage) arising from or in connection with the supply of goods or services.

To the extent permitted by law, the liability of Betta or its servants or agents (including liability for negligence) is limited to the replacement or re-supply of equivalent goods or the cost of such replacement or re-supply (whichever is the lesser); or the re-supply or the cost of the re-supply of services (whichever is the lesser).

The equipment is hired as is. No condition or warranty whatsoever of any kind has been given by Betta, and all conditions and warranties whether expressed or implied, whether in relation to the fitness of the equipment for any particular purpose or country, or whether in relation to merchantability or as to description, state, quality or condition of the equipment at delivery or at any other time are hereby waived, excluded and extinguished. Betta is not liable for any loss or damage Hirer may suffer if Betta cannot do what it has promised because of events beyond its reasonable control.

## **11. ENTIRE AGREEMENT**

Hirer agrees that Betta will only hire equipment, itemised in a Quotation or otherwise, pursuant to this Agreement, and any additional term included in the Quotation. An agreement between the parties may not be varied without the prior written consent of Betta.

## **12. WAIVER**

The failure, delay, relaxation or indulgence on the part of Betta in exercising any power or right conferred upon Betta by this Agreement does not operate as a waiver of that power or right, nor does any single exercise of any power or right preclude any other or further exercise of it or the exercise of any other power or right under this Agreement.

## **13. GOVERNING LAW**

The laws applying in New South Wales, Australia, govern this Agreement. The parties agree to submit to the non-exclusive jurisdiction of the courts exercising jurisdiction there.

## **14. SEVERANCE**

This Agreement is qualified by any provision of a law which applies and which cannot be excluded. If any provision of this Agreement is deemed to be unlawful or unenforceable, such provision shall be severed from this Agreement and all other provisions hereof shall remain in force.