

**BLUE CUBE PORTABLE COLD STORES LIMITED  
CONDITIONS OF HIRE – COLD STORE EQUIPMENT**

**DEFINITIONS AND INTERPRETATION**

In these Conditions, unless the context requires otherwise:-

"**Agreement**" means these Conditions together with the Hire Form;

"**Business Day**" means any day other than Saturday, Sunday or a statutory bank holiday in England;

"**Change of Control**" means if a person who has Control of any entity ceases to do so or if another person acquires Control of it;

"**Charges**" means the Hire Charges, the Other/Ancillary Charges and such other charges which the Parties agree shall be payable by the Hirer in respect of its hire of the Cold Store Equipment, as each of the foregoing may be adjusted in accordance with Condition 3.7;

"**Cold Store Equipment**" means the cold store, blast freezer, integral cabinet and/or other items of equipment all as described in the Hire Form together with any replacements, component parts, extensions, additions or accessories supplied by the Company to the Hirer in relation to any of the foregoing;

"**Collection Charges**" means the charges identified as such on the Hire Form and payable by the Hirer;

"**Commencement Date**" means the date identified as such on the Hire Form;

"**Company**" means Blue Cube Portable Cold Stores Limited, a company registered in Scotland with registered number SC292690 and having its registered office at 65 Craigton Road, Glasgow, G51 3EQ;

"**Conditions**" means these conditions of hire together with the attached Schedule and any reference to a "**Condition**" is a reference to the relevant condition of these Conditions;

"**Confidential Information**" means all information designated as such by either Party together with all other information which relates to the business, affairs, products, developments, trade secrets, know-how, personnel, customers and suppliers of either Party or information which may reasonably be regarded as the confidential information of that Party including, without limitation, details of the terms of the Agreement;

"**Control**" means the possession, direct or indirect, of the power to direct or cause the direction of the management or policies of a person, whether through the ownership of securities, by contract or otherwise and includes where a person owns 50% or more of the voting rights (whether by way of securities, partnership interest, under a shareholders agreement or otherwise) held in another person;

"**Daily Operational Checks**" means the daily checks and procedures to be performed by the Hirer in respect of the Cold Store Equipment, as set out in the Schedule;

"**Delivery Address**" means the premises at the address specified as such on the Hire Form;

"**Delivery Inspection Report**" means the delivery note in the form approved by the Company to be signed by or on behalf of the Company and the Hirer to record the condition of the Cold Store Equipment on delivery to the Hirer or, in the circumstances referred to in Condition 4.8, the Previous Supplier's Delivery Inspection Report;

"**Destroyed Equipment**" has the meaning given to it in Condition 8.7;

"**Equipment Insurance Value**" means the insurance value of the Cold Store Equipment, as set out on the Hire Form;

"**Equipment Materials**" has the meaning given to it in Condition 11.1;

"**Hire Charges**" means the charges for the Hire of Cold Store Equipment detailed in the Hire Form which are calculated for payment by dividing the weekly charge by 7, multiplying by 365 and dividing by 12

"**Hire Form**" means the form setting out the details of the hire of the Cold Store Equipment to which these Conditions are attached;

"**Hirer**" means the person hiring the Cold Store Equipment as identified in the Hire Form;

"**Hirer's Premises**" means the Delivery Address or such other premises at which the Parties agree in writing that the Hirer may use and operate the Cold Store Equipment;

"**Insolvency Event**" means, in respect of either Party, if that Party becomes unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986; or an order is made or a resolution passed for the winding up of that Party; or an order is made for the appointment of an administrator of that Party; or an administrator is appointed in respect of that Party or notice of intention to appoint such an administrator is given by that Party or its directors or any other person; or a receiver or manager or administrative receiver is appointed in respect of all or any of that Party's assets or undertaking; or circumstances arise which entitle a court to or a creditor to appoint a receiver or manager or administrative receiver in respect of that Party or which entitle a court to make winding up order in respect of that Party; or that Party proposes a voluntary arrangement or any composition, compromise or arrangement with its creditors; or a secured lender to that Party takes any steps to obtain possession of the property over which it has a security or otherwise to enforce a security; or that Party ceases or threatens to cease to carry on business; or any event analogous to any of the foregoing occurs in respect of that Party in any jurisdiction;

"**Intellectual Property Rights**" means any and all intellectual or industrial property rights (including, without limitation, all existing and future copyright, registered designs, design rights, patents, trade marks (registered or unregistered), rights in know-how, confidential information and any and all applications for any of the foregoing) existing anywhere in the world;

"**Minimum Period of Hire**" means the period of time identified as such on the Hire Form and commencing on the Commencement Date;

"**Other/Ancillary Charges**" means those charges payable by the Hirer which are listed under the heading "Other/Ancillary Charges" in the Hire Form;

"**Party**" means the Company or the Hirer as the case may be and "**Parties**" will be construed accordingly;

"**Period of Hire**" has the meaning given to it in Condition 2.2;

"**Previous Supplier**" means Blue Cube Rentals Limited;

"**Previous Supplier's Delivery Inspection Report**" means the delivery note signed by or on behalf of the Previous Supplier and the Hirer to record the condition of the Cold Store Equipment on its delivery;

"**Return Inspection Report**" means the return note in the form approved by the Company to be signed by or on behalf of the Company and the Hirer to record the condition of the Cold Store Equipment on its return by the Hirer to the Company;

"**Schedule**" means the schedule attached to and forming part of these Conditions;

"**Virus**" means any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices; and

"**Vulnerability**" means a weakness in the computational logic (for example, code) found in software and hardware components that when exploited, results in a negative impact to the confidentiality, integrity, or availability, and the term Vulnerabilities shall be construed accordingly.

In these Conditions, unless otherwise specified or the context requires otherwise:

- (a) words in the singular include the plural and vice versa;
- (b) words in one gender include all other genders;
- (c) words referring to the whole are treated as including any reference to any part of the whole;
- (d) references to the Agreement or any other document is a reference to the Agreement or that document as modified, amended, varied, supplemented, assigned, novated or replaced (in each case, other than in breach of the provisions of the Agreement) from time to time;
- (e) references to any statute or statutory provision (including any subordinate legislation) is a reference to it as it is in force from time to time and includes any statute, statutory provision or subordinate legislation which it amends or re-enacts and any subordinate legislation made from time to time under that statute or statutory provision;
- (f) references to a "person" includes any natural person, firm, company, corporation, body corporate, government, state or agency of a state, trust or foundation, or any unincorporated body, association or partnership (whether or not having separate legal personality) of two or more of the foregoing;
- (g) reference to any English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept, state of affairs or thing is deemed in respect of any jurisdiction other than England to include that which most approximates in that jurisdiction to the English legal term;
- (h) any phrase introduced by the words "including", "include", "in particular" or any cognate expression is to be construed as illustrative only and is not to be construed as limiting the generality of any preceding words;
- (i) the words "other" and "otherwise" are not to be construed *eiusdem generis* with any preceding words where a wider construction is possible; and
- (j) "writing" shall include email but not fax

The headings in these Conditions are inserted for convenience only and do not affect the interpretation or construction of the Agreement.

**SUPPLY OF COLD STORE EQUIPMENT**

The Company agrees to provide the Cold Store Equipment for hire and the Hirer agrees to take the Cold Store Equipment on hire in accordance with the terms of the Agreement.

The hire of the Cold Store Equipment will commence on the Commencement Date and shall continue, subject to earlier termination of the Agreement in accordance with its terms, until the Agreement is terminated either by the Hirer pursuant to Condition 12.2 or the Company pursuant to Condition 12.3 (the "**Period of Hire**").

No description, specification or illustration contained in any product pamphlet or other sales or marketing literature prepared by or on behalf of the Company or any other party shall form part of the Agreement.

The Hirer confirms that, in relation to the Agreement, it is not a "consumer" as defined in the Unfair Contract Terms Act 1977.

The Hirer confirms that, in relation to the Agreement:

- 2.5.1 it is not an "individual" as defined in the Consumer Credit Act 1974 (as amended); or
- 2.5.2 if it is an "individual" as defined in the Consumer Credit Act 1974 (as amended), it:
- 2.5.2.1 is entering into the Agreement wholly or predominantly for the purposes of a business carried on by it or intended to be carried on by it;
- 2.5.2.2 understands that it will not have the benefit of the protection and remedies that would be available to it under the Consumer Credit Act 1974 (as amended) if the Agreement were a regulated agreement under that Act; and
- 2.5.2.3 is aware that, if it is in any doubt as to the consequences of the Agreement not being regulated by the Consumer Credit Act 1974 (as amended), it should seek independent legal advice.

**PAYMENT OF CHARGES**

The Charges and all other charges quoted in connection with the Agreement are exclusive of and, in addition to the Charges and such other charges, the Hirer will pay Value Added Tax where applicable at the appropriate rate prevailing at the time payment is due.

The Hirer will pay the Charges, in cleared funds, in the amounts and on the dates specified in the Hire Form and such payment will be due without previous demand or invoice and will be made so as to be received by the Company in cleared funds before or on the due date for payment. Time for payment of the Charges is of the essence of the Agreement.

If the Hirer fails to pay any amount payable by it under the Agreement when due, the Company may charge the Hirer interest on the overdue amount immediately on demand from the due date up to the date of actual payment, after as well as before judgement, at the rate of three percent (3%) per annum above the base rate for the time being of the Bank of England.

All sums due by the Hirer under the Agreement are to be paid in full without any deduction or withholding other than as required by law. The Hirer will not be entitled to assert any credit, set-off or counterclaim against the Company in order to justify withholding payment of any such sums in whole or in part.

Any payments made by the Hirer to the Company may be held by the Company as payment in or towards satisfaction of any sums due and owing to the Company under the Agreement notwithstanding that the Hirer may have intended such payments to be held by the Company in some other way and the Company may also hold any payment made to it by the Hirer as payment in or towards satisfaction of any sums due by the Hirer to the Company other than under the Agreement.

The Hirer acknowledges and agrees that:

the Charges have been calculated on the assumption that the rates and bases of corporation tax, VAT and permitted capital allowances in force at the date of the Agreement will remain unchanged for the Period of Hire and that the Company will be entitled to obtain and retain capital allowances in respect of its capital

3.6.2	<p>expenditure on the Cold Store Equipment at the rate of twenty percent (20%) per annum on a reducing balance basis (the "<b>Assumptions</b>"); and</p> <p>if any of the Assumptions prove to be incorrect, the Hirer shall pay to the Company, if requested by the Company to do so, by way of increased Charges or an additional payment on demand if the Agreement has terminated (together with VAT if appropriate), such sums as are required to place the Company in the financial position which it would have been had the Assumptions been correct and fulfilled and Charges paid in full by the Hirer to the Company. The Company's certificate of the amount of the Charges or additional payment (as the case may be) will be final and binding on the Hirer and will remain payable notwithstanding termination or expiry of the Agreement for any reason.</p>	4.8 5 5.1	<p>Where the Cold Store Equipment is in the possession of the Hirer prior to the Commencement Date, delivery of the Cold Store Equipment will be deemed accepted at the Commencement Date and the foregoing provisions of this Condition 4 will not apply and the Previous Supplier's Delivery Inspection Report will constitute the Delivery Inspection Report for the purposes of the Agreement.</p> <p><b>RISK</b></p> <p>Subject to Condition 4.5 above, all loss of or damage to the Cold Store Equipment when in the possession of the Hirer is at the Hirer's risk and such risk will remain with the Hirer until possession of the Cold Store Equipment is returned to the Company in accordance with the terms of the Agreement.</p>
3.7	<p>The Hirer acknowledges and agrees that at each anniversary of the Commencement Date (an "<b>Anniversary Date</b>"), the Charges payable in connection with the hire of the Cold Storage Equipment in the calendar year following that Anniversary Date shall adjusted in that the price per unit, price per unit per week or other rate or charge used in determining the Hire Charges shall be the product of the Relevant Charge multiplied by the Inflation Factor.</p> <p>For the purposes of Conditions 3.7 and 3.8:</p> <p>(i) The "<b>Inflation Factor</b>" is AI/CDI (provided always that if that calculation would produce a figure less than 1, the Inflation Factor shall be deemed to be 1 for the purpose of the adjustment in Condition 3.7);</p> <p>(ii) "<b>AI</b>" is the latest available monthly Index before the Anniversary Date at which the adjustment is being made;</p> <p>(iii) "<b>CDI</b>" is the latest available monthly Index before the Commencement Date (where the adjustment is at the first Anniversary Date) and the latest available monthly Index before the previous Anniversary Date (where the adjustment is at the second or any subsequent Anniversary Date);</p> <p>(iv) "<b>The Index</b>" is the RPI All Items Index published by the Office for National Statistics or if withdrawn, any other replacement or similar index; and</p> <p>(v) "<b>The Relevant Charge</b>" is the price per unit, price per unit per week or other rate or charge (excluding VAT) that would have applied in the year prior to the Anniversary Date at which the adjustment is being made.</p>	6 6.1 6.1.1 6.1.2	<p><b>HIRER'S OBLIGATIONS</b></p> <p>The Hirer agrees that it will:</p> <p>keep the Cold Store Equipment at the Hirer's Premises and not remove the Cold Store Equipment from the Hirer's Premises without the prior written approval of the Company;</p> <p>use the Cold Store Equipment solely for its intended purpose, keep the Cold Store Equipment in a suitable environment and ensure that the Cold Store Equipment is used and operated in a skilled and proper manner by appropriately trained and competent staff in accordance with any instructions and recommendations (whether in writing or oral) issued to the Hirer by or on behalf of the Company and in accordance with any and all applicable laws or regulations from time to time in force;</p>
3.8	<p>As soon as reasonably practicable following written request, the Company will provide written notice to the Hirer of the adjustment of the Charges pursuant to Condition 3.7 (including details of the calculation of the Inflation Factor). Such notice by the Company is not a condition precedent to the adjustment of the Charges pursuant to Condition 3.7 and the Hirer shall not, and shall not be entitled to, contend otherwise.</p>	6.1.3 6.1.4 6.1.5 6.1.6	<p>not use or permit the Cold Store Equipment to be used other than in accordance with any applicable laws or regulations or any instructions of the manufacturer or for any purpose for which the Cold Store Equipment is not designed or reasonably suitable;</p> <p>ensure that any instructions or manuals supplied by the Company in relation to use or operation of the Cold Store Equipment are at all times fully understood and complied with by the Hirer and any person authorised by the Hirer to use or operate the Cold Store Equipment;</p> <p>take all steps as may be recommended by the Company or the manufacturer of the Cold Store Equipment or as may otherwise be necessary or required by law to ensure that the Cold Store Equipment will be safe and without risk to health and safety when properly used by the Hirer or any person authorised by the Hirer to use the Cold Store Equipment;</p> <p>obtain, effect and keep effective all permissions, licences, permits and consents which may from time to time be required in connection with the use, operation or storage of the Cold Store Equipment and comply with all applicable laws, regulations, codes and guidelines of governmental or other competent authorities in relation to the Cold Store Equipment and the use or storage of the Cold Store Equipment;</p>
4	<p><b>DELIVERY</b></p>	7	<p><b>TITLE TO COLD STORE EQUIPMENT</b></p>
4.1	<p>Subject to Condition 4.8, unless otherwise agreed by the Parties in writing, delivery of the Cold Store Equipment will take place at the Delivery Address. The Hirer will ensure that a duly authorised representative of the Hirer will be present at the delivery of the Cold Store Equipment. If required by the Company, the Hirer or its duly authorised representative will sign a receipt confirming delivery of the Cold Store Equipment.</p>	4.1 4.2	<p>Title to the Cold Store Equipment will remain vested in the Company and the Hirer shall have no right or interest in the Cold Store Equipment other than as hirer and</p>
4.2	<p>Subject to Condition 4.8, delivery of the Cold Store Equipment will not take place unless and until any and all Charges payable on signature of the Agreement by the Hirer (and any other sums payable on signature of the Agreement by the Hirer) have been paid in full. Any date or time given by the Company for delivery of the Cold Store Equipment will be an estimate only. Time for delivery will not be of the essence of the Agreement.</p>	6.1.7 6.1.8	<p>not make or cause or permit to be made any repair, alteration, amendment, modification or addition to the Cold Store Equipment without the prior written consent of the Company. Any such alteration, amendment, modification or addition made shall be deemed to be part of the Cold Store Equipment for the purposes of the Agreement;</p> <p>make available the Cold Store Equipment for inspection and maintenance and repair by the Company or its authorised representatives at the Hirer's Premises and grant access to the Hirer's Premises to the Company or its authorised representatives for that purpose at the times notified to the Hirer from time to time by the Company;</p>
4.3	<p>Subject to Condition 4.8, the Hirer will, at its own expense and in good time before delivery, facilitate delivery of the Cold Store Equipment to the Delivery Address and suitably prepare the Delivery Address for that purpose and obtain and acquire any necessary services, cranes, facilities, footings, business works documentation, licences, authorisations, consents or approvals necessary to take delivery of and operate the Cold Store Equipment.</p>	6.1.9 6.1.10	<p>not sell or offer for sale, assign, pledge, sub-let or in any way charge or encumber the Cold Store Equipment or any interest in the Cold Store Equipment and keep the Cold Store Equipment in its own possession and control and prevent the creation of any charge or lien in respect of the Cold Store Equipment;</p> <p>ensure that the terms of any charge or encumbrance (whether specific or floating) of or in respect of the Hirer's assets or premises (including, without limitation, the Hirer's Premises) provide that no rights whether present, future or contingent are created or become exercisable in respect of the Cold Store Equipment. The Hirer undertakes to provide details of any such charges and encumbrances and, on request from the Company, to obtain a waiver in a form and substance satisfactory to the Company excluding the Cold Store Equipment from the effect of such a charge or encumbrance and protecting the Company's title to and interest in the Cold Store Equipment and acknowledges that the Company shall have the right to notify any person holding such a charge or encumbrance of the existence of the Agreement and such of its terms as the Company may consider appropriate;</p>
4.4	<p>Subject to Condition 4.8, if:</p>	6.1.11 6.1.12	<p>store and label the Cold Store Equipment (at no cost to the Company) separately from all other goods or equipment of the Hirer or any third party in such a way that the Cold Store Equipment remains readily identifiable as the property of the Company;</p> <p>not destroy, deface or obscure any identifying mark on or relating to the Cold Store Equipment and affix any form of marking to the Cold Store Equipment that the Company may require from time to time (including, without limitation, markings which identify the Cold Store Equipment as the property of the Company and that it is on hire to the Hirer);</p>
4.4.1	<p>in the Company's opinion, the Hirer does not provide the Company or its representatives with proper and safe access and facilities to effect delivery of the Cold Store Equipment at the Delivery Address; or</p>	6.1.13	<p>on request from the Company, deliver a written waiver from any third party owner of the Hirer's Premises in respect of any right and title to and interest in the Cold Storage Equipment and acknowledging the Company's right and title to and interest in the Cold Store Equipment in a form and substance satisfactory to the Company;</p>
4.4.2	<p>the Hirer fails to comply with the requirements of Condition 4.3; or</p>	6.1.14	<p>ensure that the Cold Store Equipment is capable of installation at and removal from the Hirer's Premises without causing any damage to the Hirer's Premises or Cold Store Equipment and will indemnify the Company in respect of any and all losses, liabilities, claims, damages, costs or expenses arising out of or in connection with the installation or removal of the Cold Store Equipment at the Hirer's Premises;</p>
4.4.3	<p>delivery of the Cold Store Equipment takes more than a reasonable time for a reason not attributable to the Company or its representatives, the Hirer will reimburse the Company in full for any additional costs incurred by the Company arising from any delay in delivery or non-delivery of the Cold Store Equipment as a result of the same.</p>	6.1.15	<p>deliver to the Company on request a written election pursuant to Section 177 of the Capital Allowances Act 2001 in a form and substance satisfactory to the Company, or such other election confirmation or waiver as may be required by the Company to ensure that for tax purposes the Cold Store Equipment is treated as belonging to the Company;</p>
4.5	<p>Subject to Condition 4.8, if the Company is unable to deliver the Cold Store Equipment for reasons beyond its control (including, without limitation, because of any failure by the Hirer to: (i) pay any Charges (or other sums payable to the Company) which are payable on signature of the Agreement by the Hirer; or (ii) comply with the requirements of Condition 4.3 or Condition 4.4):</p> <p>(a) the Company may store the Cold Store Equipment until such time as the Cold Store Equipment is delivered and the Hirer will be liable for all related costs and expenses (including, without limitation, costs related to the storage and insurance of the Cold Store Equipment); and</p> <p>(b) risk of loss of or damage to the Cold Store Equipment during such storage will pass to the Hirer.</p>	6.1.11 6.1.12 6.1.13	<p>procure all services required to permit the safe and uninterrupted operation of the Cold Store Equipment (including, without limitation, a non-interruptible electricity supply); and</p> <p>perform the Daily Operational Checks on a daily basis throughout the Period of Hire.</p>
4.6	<p>Subject to Condition 4.8, upon delivery, the Cold Store Equipment may be jointly inspected by authorised representatives of the Company and the Hirer (unless the Hirer chooses not to be represented when the inspection shall proceed in his absence and the Hirer shall be bound by its outcome) and the Delivery Inspection Report will be prepared. Any failure of the Cold Store Equipment to comply with the Cold Store Equipment Schedule or any other agreed description or specification of the Cold Store Equipment or any other damage to or deficiency in the Cold Store Equipment Schedule shall be noted on the Delivery Inspection Report.</p>	6.1.14 6.1.15	<p>perform the Daily Operational Checks on a daily basis throughout the Period of Hire.</p>
4.7	<p>Subject to Condition 4.8, the Hirer acknowledges and agrees that following delivery of the Cold Store Equipment, it shall confirm that it has been given sufficient opportunity to inspect the Cold Store Equipment and that the Cold Store Equipment is in good condition and corresponds with its description, is of satisfactory quality and is fit for the purpose for which it is intended at the time of delivery to the Hirer (with the exception of any items noted on the Delivery Inspection Report) and shall accept the Cold Store Equipment by signing the Delivery Inspection Report or, if no Delivery Inspection Report has been prepared or the Customer does not sign the Delivery Inspection Report, by putting the Cold Store Equipment into use. The person who attends the inspection on behalf of the Hirer shall be conclusively deemed to have authority to sign the Delivery Inspection Report on behalf of the Hirer.</p>	6.1.11 6.1.12 6.1.13 6.1.14 6.1.15 7 7.1	<p>perform the Daily Operational Checks on a daily basis throughout the Period of Hire.</p>

7.2	shall at no time do or permit to be done any act or omission which may prejudice or jeopardise the Company's right or title to or interest in the Cold Store Equipment. On the occurrence of any of the events set out in Condition 7.3 or on termination of the Agreement for any reason whatsoever:	8.7	The Hirer will remain liable to pay to the Company any and all sums that remain due and outstanding to the Company under the Agreement after the Company has received any insurance monies under any insurance policy maintained pursuant to this Condition 8. Until such sums have been paid in full, the obligations of the Hirer under the Agreement including the obligation to pay the outstanding Charges and the Equipment Insurance Value in respect of any Destroyed Equipment) will continue in full force and effect.
7.2.1	the Hirer's right of possession of the Cold Store Equipment will terminate with immediate effect and the Hirer will, at its expense, deliver up the Cold Store Equipment to the Company (or its nominated representatives) in good working order and condition (reasonable wear and tear excepted) and the Company (or its nominated representative) will be entitled to enter any premises of the Hirer (including, without limitation, the Hirer's Premises) for the purpose of removing the Cold Store Equipment and remove the Cold Store Equipment from such premises. The Hirer grants the Company and its authorised representatives an irrevocable licence to enter any premises where Cold Store Equipment is or may be stored or used, at any time and without notice, in order to inspect such Cold Store Equipment, or, to remove the Cold Store Equipment where the Hirer's right to possession has terminated;	8.8	Nothing in this Condition 8 shall oblige the Company to take any steps whatsoever to effect recovery from the insurers in respect of any breakdown or loss of or damage to the Cold Store Equipment.
7.2.2	without prejudice to any other right or remedy which may accrue to the Company, the Hirer will become immediately liable to pay to the Company an amount comprising the aggregate of:	8.9	It shall be the Hirer's responsibility to keep the items stored inside the Cold Store Equipment adequately insured at any time and from time to time against loss or damage resulting from theft, damage or destruction (of whatever cause) or failure of the Cold Store Equipment. The Hirer shall remain liable for at all times and shall not have any claim or entitlement against the Company for any loss or damage to any items stored inside the Cold Store Equipment howsoever caused nor for any associated loss of profit, loss of business or loss of goodwill, or other expenses incurred by the Hirer in connection therewith.
(a)	all arrears of the Charges and other sums due and unpaid under the Agreement together with interest (to be calculated in accordance with Condition 3.3 above); and	9	<b>WARRANTIES AND LIABILITY</b>
(b)	any costs and expenses incurred by the Company in collecting any payments due under the Agreement or otherwise in obtaining the due performance of the obligations of the Hirer under the Agreement; and	9.1	The Hirer warrants and represents that it has and will have full power, authority and right and has taken or will take all steps necessary to enter into and carry out its obligations under the Agreement.
7.2.3	the Hirer will be solely responsible for ensuring the safe-keeping of the Cold Store Equipment until it is returned to or repossessed by the Company.	9.2	Any advice or recommendation given by the Company or its employees or agents to the Hirer or its employees or agents as to the application, use or performance of the Cold Store Equipment which is not confirmed in writing by the Company in the Agreement is followed or acted upon entirely at the Hirer's own risk and the Company shall not be liable in anyway whatsoever for any such advice or recommendation which is not confirmed in writing.
7.3	The events referred to in Condition 7.2 are as follows:	9.3	The Hirer acknowledges and agrees that this is a hire agreement and that it has chosen the Cold Store Equipment using its own skill and judgement and except as expressly provided in the Agreement, the Company does not hire the Cold Store Equipment with or subject to any condition, term, undertaking or warranty, express or implied, statutory or otherwise that the Cold Store Equipment shall correspond with its description, or be of satisfactory quality or fit for any purpose and, subject to Condition 9.5, all such conditions, terms, undertakings and warranties are hereby excluded to the fullest extent permitted by law.
7.3.1	the Hirer fails to pay any sum due to the Company (whether in respect of the Cold Store Equipment or of any other equipment, goods or services supplied by the Company to the Hirer) within sixty (60) days after the due date for payment;	9.4	Subject to the provisions of Condition 9.5 and without prejudice to Condition 8.9:
7.3.2	an Insolvency Event in respect of the Hirer;	(a)	the Company will not be liable to the Hirer under or in connection with the Agreement for any indirect or consequential loss or damages, loss of profit, loss of business or loss of goodwill, whether caused by breach of contract, tort, negligence, breach of statutory duty, misrepresentation, restitution or arising in any other way whatsoever; and
7.3.3	the Hirer suffers or allows any diligence to be executed on its property.	(b)	the Company's total liability arising under or in connection with the Agreement whether caused by breach of contract, tort, negligence, breach of statutory duty, misrepresentation, restitution or arising in any other way whatsoever, will be limited to a sum equal to the Charges and the Company is released from all liability in excess of such a sum.
7.4	Where the Company recovers possession of Cold Store Equipment from the Hirer, such recovery of possession will be without prejudice to any other right or remedy that the Company may have under the Agreement or otherwise (including, without limitation, its right to recover damages for breach of the Agreement).	9.5	Nothing contained in the Agreement will be construed so as to exclude or limit the liability of the Company for:
8	<b>INSURANCE, LOSS AND DAMAGE</b>	(a)	death or personal injury caused by the negligence of the Company or its employees or agents;
8.1	Without prejudice to the liability of the Hirer to the Company, the Hirer will throughout the Period of Hire or (if longer) for so long as the Cold Store Equipment remains in the possession or under the control of the Hirer keep the Cold Store Equipment insured with a reputable insurer against all risks in an amount equal to the full Equipment Insurance Value and all liabilities of the Hirer and the Company to third parties for an amount approved by the Company and free from restrictions and insurance excess to the reasonable satisfaction of the Company. The Hirer will pay all premiums payable in respect of such insurance in full when they fall due and will, on request from the Company, provide evidence of such insurance to the satisfaction of the Company.	(b)	fraud or fraudulent misrepresentation; or
8.2	Without prejudice to the liability of the Hirer to the Company, if the Hirer fails to keep the Cold Store Equipment insured in accordance with Condition 8.1 to the satisfaction of the Company or to produce satisfactory evidence of such insurance, the Company will be entitled to insure the Cold Store Equipment at the expense of the Hirer and keep the Equipment so insured during the Period of Hire or (if longer) for so long as the Cold Store Equipment remains in the possession or under the control of the Hirer and the Hirer will pay to the Company on demand any sums paid by the Company in respect of such insurance with interest (to be calculated in accordance with Condition 3.3) to accrue from the date of such payment by the Company until the date of actual repayment by the Hirer.	(c)	any liability which by law cannot be excluded or limited by law.
8.3	The Hirer will not use the Cold Store Equipment or allow the Cold Store Equipment to be used for any purpose not permitted by the terms and conditions of any policy of insurance maintained in relation to the Cold Store Equipment nor do or allow to be done any act or omission which may cause such insurance may be invalidated.	10	<b>INDEMNITY</b>
8.4	In the event of any breakdown or loss of or damage to all or any part of the Cold Store Equipment, however caused, the Hirer must:	10.1	Without prejudice to any other provision in the Agreement, the Hirer shall be solely responsible for and shall indemnify the Company in respect of all actions, claims, proceedings, costs, loss and damage which the Company may sustain, suffer or incur as a result of or in connection with any breach of the Agreement, negligence or misuse or mishandling of the Cold Store Equipment by the Hirer or its officers, employees, agents or contractors.
(i)	give immediate notice to the Company by telephone and confirm such notice in writing within twenty-four (24) hours after such notification is given by telephone; and	11	<b>INTELLECTUAL PROPERTY RIGHTS</b>
(ii)	make any appropriate claim or claims under the insurance policy maintained by the Hirer in relation to the Cold Store Equipment in such manner as the Company will require and will not, in any manner, settle or compromise any such claim without the prior written consent of the Company.	11.1	All Intellectual Property Rights in any specifications, plans, drawings, process information, patterns or designs used by the Company or provided to the Hirer in respect of the Cold Store Equipment or in connection with the Agreement (other than those supplied by the Hirer to the Company) (the " <b>Equipment Materials</b> ") remain the property of the Company or its third party licensors and the Hirer will have no right or interest in the Cold Store Equipment other than the right to use the Cold Store Equipment on hire in accordance with the Agreement. Any information derived from such Equipment Materials or other information communicated to the Hirer in connection with the Agreement will be Confidential Information of the Company for the purposes of Condition 13.
8.5	Subject to Condition 8.7, the Company will be solely responsible for reinstating or repairing any Cold Store Equipment which has been damaged or become defective and the Hirer will continue to pay the Charges in respect of such Cold Store Equipment during the period of such reinstatement or repair. The Hirer must not take any steps to reinstate or repair any Cold Store Equipment or have any Cold Store Equipment reinstated or repaired on its behalf without the prior written consent of the Company. All insurance monies received in respect of any such damage shall be applied firstly, in or towards payment to the Company of any amounts due and outstanding from the Hirer to the Company under the Agreement and secondly, in or towards reimbursing the Hirer for the costs of any Charges paid during the period of reinstatement or repair.	11.2	The Hirer will notify the Company immediately if it becomes aware of any claim for or allegation of infringement of any Intellectual Property Rights of any third party arising from use of the Cold Store Equipment or the Equipment Materials. The Hirer will give full details to the Company of any such claim or allegation and will provide all assistance reasonably required by the Company in connection with any such claim.
8.6	If, during the Period of Hire, any Cold Store Equipment becomes lost, destroyed, stolen, or damaged beyond repair or confiscated (the " <b>Destroyed Equipment</b> "), the hire of such Destroyed Equipment under the Agreement will cease and the Equipment Insurance Value will become payable to the Company by the Hirer. In that event, the Company may apply any insurance proceeds received by it under any insurance policy maintained pursuant to this Condition 8 at its option:	11.3	To the extent that the Company provides access to any third-party software the Hirer shall be bound by and shall comply in full with any end user licence agreement of such third party and the Company shall have no liability to the Hirer in relation to the performance of such software.
8.6.1	towards replacement equipment of equivalent value, such replacement equipment to be deemed to be Cold Store Equipment for all purposes under the Agreement and the Hirer will be liable to pay the Charges in accordance with the Agreement as if such loss had not occurred;	11.4	To the extent that Company provides access to and/or use of any software of the Company ("Company Software"), the Hirer shall not:
8.6.2	towards payment to the Company of:	11.4.1	except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under this Agreement:
8.6.2.1	all payments of the Charges and all other monies then due or in arrears under the Agreement in respect of or attributable to such Destroyed Equipment together with interest (to be calculated in accordance with Condition 3.3); and	(a)	attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Company Software (as applicable) in any form or media or by any means; or
8.6.2.2	all other sums and amounts due under the Agreement in respect of such Destroyed Equipment.	(b)	attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Company Software; or

11.4.2	introduce, or permit the introduction of, any Virus or Vulnerability into the Company's network and information systems.		modify any such Confidential Information, or authorise or permit any third party to do the same, other than for the sole purpose of the performance of its obligations or exercise of its rights under the Agreement.
11.5	The Hirer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Company Software and, in the event of any such unauthorised access or use, promptly notify the Company.	13.3	Each Party undertakes to disclose the other Party's Confidential Information only to those of its officers, employees, agents and contractors to whom, and to the extent to which, such disclosure is necessary for the purposes contemplated under the Agreement, and to procure that such officers, employees, agents and contractors comply with the provisions of this Condition 13.
12	<b>TERM AND TERMINATION</b>		
12.1	The Agreement will come into force on the Commencement Date and will continue in full force and effect for the Period of Hire, unless terminated earlier in accordance with its terms.	13.4	Upon the earlier of a written request from the other Party or termination or expiry of the Agreement, each Party will cease to use and return to the other Party (or at the request of the other Party, destroy) any and all Confidential Information of the other Party then in its possession or control and will not retain any copies of the same.
12.2	The Hirer may terminate the Agreement with effect from the expiry of the Minimum Period of Hire or any time after the expiry of the Minimum Period of Hire on giving the Company written notice of not less than the notice period stipulated in the Hire Form.	13.5	Each Party will give notice to the other Party of any unauthorised disclosure, misuse, theft or other loss of Confidential Information of the other Party, whether inadvertent or otherwise, such notice to be given immediately upon such Party becoming aware of the same.
12.3	Without prejudice to any other right or remedy which may be available to the Company (whether under the Agreement or otherwise), the Company may terminate the Agreement with effect from the expiry of the Minimum Period of Hire or any time after the expiry of the Minimum Period of Hire on giving the Hirer written notice of not less than the notice period stipulated in the Hire Form.	13.6	The terms of and obligations imposed by this Condition 13 shall survive the variation, renewal or Termination of the Agreement but shall not apply to any Confidential Information which:
12.4	Without prejudice to any other right or remedy which may be available to the Company (whether under the Agreement or otherwise), the Company may terminate the Agreement with immediate effect at any time:	13.6.1	at the time of receipt by the recipient Party is in the public domain, or subsequently comes into the public domain through no fault of the recipient Party, its officers, employees, agents or contractors;
12.4.1	if the Hirer fails to pay any Charges or other sums due to the Company under the Agreement in full within sixty (60) days after the due date for payment;	13.6.2	is lawfully received by the recipient Party from a third party on an unrestricted basis;
12.4.2	if the Hirer commits a material breach of the Agreement; or	13.6.3	is already known to the recipient Party before its receipt under the Agreement; or
12.4.3	if an Insolvency Event occurs in respect of the Hirer; or	13.6.4	is independently developed by the recipient Party or its employees, agents or contractors.
12.4.4	the Hirer encumbers or in any way charges the Cold Store Equipment; or	13.7	The recipient Party may disclose Confidential Information of the other Party to the extent required by any law or order of a court of competent jurisdiction, recognised stock exchange or other recognised regulatory body of competent jurisdiction, provided that, to the extent it is legally permitted to do so, prior to such disclosure the recipient Party shall consult with the other Party as to the proposed form, nature, content and purpose of such disclosure and take into account the other Party's reasonable requests.
12.4.5	there is an adverse change in the financial position, standing or profitability of the Hirer which the Company considers to be material; or	13.8	The Hirer agrees that the Company may make such enquiries and searches and obtain such references ("enquiries") as it sees fit from any person including any credit reference agency who may keep a record of such enquiries and the Company may disclose the results of such enquiries and any other information relevant to the Agreement or its conduct or given by the Hirer in relation to the entry into the Agreement to any such agency and/or insurer and/or funder. The result of such enquiries and such other information may be used to make credit decisions relating to the Hirer or to prevent fraud or trace debtors. The Hirer hereby consents to disclosure by the Company of information relating to the Hirer to any proposed or actual assignee, transferee or chargee of the Agreement or any rights of the Company under the Agreement.
12.4.6	there is a Change of Control of the Hirer; or		
12.4.7	the Cold Store Equipment, in the reasonable opinion of the Company, no longer has any further useful working life or, for any reason, has become hazardous to health and safety of persons or property and is not, in the opinion of the Company, capable of being repaired and/or made safe; or	14	<b>FORCE MAJEURE</b>
12.4.8	the Cold Store Equipment is, in the opinion of the Company, Destroyed Equipment.	14.1	If performance of the Agreement by the Company is delayed by any circumstances or conditions beyond the control of the Company including (but without prejudice to the generality of the foregoing) any war, industrial dispute, strike, lockout, riot, malicious damage, fire, storm, flood, Act of God, accident, failure of production equipment, any statute, rule, byelaw, order, regulation or requisition made or issued by any government department, local or other duly constituted authority, then the Company will have the right to suspend further performance of the Agreement until such time as such circumstances or conditions are no longer present.
12.5	Upon termination of the Agreement for any reason:	14.2	If performance of the Agreement by the Company is delayed by any circumstances or conditions referred to in Condition 14.1 for a period of fourteen (14) days or more, then the Company will have the right to be discharged from further performance of and any and all liability under the Agreement.
12.5.1	the Hirer will comply with its obligations under Condition 7.2;	15	<b>NOTICES</b>
12.5.2	if the Company is unable to recover possession of the Cold Store Equipment for any reason (including, but not limited to, where the Cold Store Equipment is Destroyed Equipment) an amount equal to the Equipment Insurance Value.	15	Any notice to be given under, or in connection with the matters contemplated by, the Agreement must be in writing and signed by or on behalf of the Party giving it and will be served by delivering it personally or sending it by email and then by pre-paid recorded delivery or registered post to the registered office or principal place of business of the other Party (marked for the attention of the Managing Director in the case of the Hirer and the Operation Department Director in the case of the Company), (or as otherwise notified in writing by the relevant Party to the other Party). A notice will (in the absence of obvious error) be considered received two Business Days from the date of posting.
12.5.3	the Hirer will:	16	<b>ENTIRE AGREEMENT</b>
12.5.3.1	promptly disconnect all services from the Cold Store Equipment;	16.1	The Agreement and the documents referred to in it constitute the entire agreement between the Parties and supersede any prior drafts, agreements, undertakings, understandings, representations, warranties and arrangements of any nature between the Parties, whether or not in writing, in relation to the subject matter of the Agreement.
12.5.3.2	promptly ensure that all products are removed from the Cold Store Equipment;	17	<b>ASSIGNMENT AND SUB-CONTRACTING</b>
12.5.3.3	promptly inform the Company of any changes to the Hirer's Premises that have occurred during the Period of Hire prior to the delivery up of the Cold Store Equipment;	17.1	The Company may at any time (without notice or consent) assign, transfer, sub-contract or otherwise delegate (in whole or in part) or charge or deal in any other manner with the Agreement or any of its rights or obligations under it.
12.5.3.4	promptly provide or procure access to the Hirer's Premises for the Company and/or its authorised representatives together with all plant and equipment to be used in relation to the removal and collection of the Cold Store Equipment;	17.2	The Hirer may not at any time assign, transfer or otherwise delegate the Agreement or any of its rights or obligations under the Agreement without the prior written consent of the Company.
12.5.3.5	on request by the Company, conduct with an authorised representative of the Company a joint inspection of the Cold Store Equipment within seven (7) days after its removal from the Hirer's Premises at such premises as may be notified to the Hirer by the Company and complete the Return Inspection Report (unless the Hirer chooses not to be represented when the inspection shall proceed in his absence and the Hirer shall be bound by its outcome of the inspection and the content of the Return Inspection Report);	18	<b>GENERAL</b>
12.5.3.6	pay the full cost of any repairs to the Cold Store Equipment which are identified as being required in the Return Inspection Report and carried out by or on behalf of the Company; and	18.1	The rights and remedies provided under the Agreement are in addition to, and not exclusive of, any rights or remedies provided by law and may be enforced separately or concurrently with any other right or remedy.
12.5.3.7	ensure that the Cold Store Equipment is thoroughly cleaned internally and externally and properly sanitised.	18.2	No amendment or variation of the Agreement or any of the documents referred to in it will be effective unless it is in writing and signed by or on behalf of each of the Parties.
12.6	If the Agreement terminates prior to the end of the Minimum Period of Hire (other than as a result of the Company's default) then, without prejudice to any other rights of the Company, the Hirer will promptly pay to the Company the aggregate of the following sums:	18.3	No failure or delay by a Party to exercise any right or remedy provided under the Agreement is to constitute a waiver of that (or any other) right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy is to preclude or restrict the further exercise of that (or any other) right or remedy.
12.6.1.1	any arrears of Charges and other sums due to be paid by the Hirer to the Company under the Agreement and which remain outstanding for payment at the date of termination; and	18.4	Nothing in the Agreement is intended to or is to operate to create a partnership or joint venture of any kind between the Parties, or to authorise either Party to act as agent for the other. Neither Party has authority to act in the name or on behalf of or otherwise to bind the other Party in any way.
12.6.1.2	a sum equal to the Charges that would have become payable by the Hirer if the Agreement had continued until the end of the Minimum Period of Hire.		
12.7	Notwithstanding termination of the Agreement, the obligations of the Hirer under the Agreement shall continue until the Company recovers possession of the Cold Store Equipment and, without prejudice to the generality of the foregoing, the obligations of the Hirer under Condition 12.6 and 12.6 shall continue until payment in full to the Company of all sums due to the Company under the Agreement. The provisions of Condition 12.6 and this Condition 12.7 shall not constitute a renewal or extension of the Period of Hire and the Hirer will deliver up the Cold Store Equipment to the Company on request.		
12.8	Termination or expiry of the Agreement shall be without prejudice to the provisions of any provisions which are expressly or are implied to continue after such termination or expiry, including, without limitation, Conditions 1, 3, 5, 7, 8, 9, 10, 12.5, 12.6, 12.7, 12.8, 12.9, 13, 15, 16, 17 and 18		
12.9	Save where expressed to the contrary the termination or expiry of the Agreement shall be without prejudice to any rights accrued in favour of either Party in respect of any breach committed prior to the termination or expiry of the Agreement including (without limitation) any breach giving rise to termination of the Agreement.		
13	<b>CONFIDENTIALITY</b>		
13.1	Each Party acknowledges that, whether by virtue of and in the course of the Agreement or otherwise, it may receive or otherwise become aware of Confidential Information of the other Party.		
13.2	Each Party undertakes, during the term of the Agreement and for a period of five (5) years after termination or expiry, to maintain and procure the maintenance of the confidentiality of the other Party's Confidential Information at all times and to keep and procure the keeping of all such Confidential Information secure and protected against theft, damage, loss or unauthorised access, and not, directly or indirectly, to use or authorise or permit the use of or disclose, exploit, copy or		

- 18.5 If any provision of the Agreement is or becomes illegal, invalid or unenforceable in any jurisdiction, that does not affect: (i) the legality, validity or enforceability in that jurisdiction of any other provision of the Agreement; or (ii) the legality, validity or enforceability in any other jurisdiction of that or any other provision of the Agreement.
- 18.6 Each Party confirms that it is entering into the Agreement for its own benefit and not for the benefit of any other person and a person who is not a Party has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce, or to enjoy the benefit of, any term of the Agreement but this does not affect any right or remedy of a third party which exists or is available apart from that Act.
- 18.7 Any supplier, dealer, agent, broker or other person involved in negotiating or dealing in any way with the Cold Store Equipment or the Agreement does not have any authority to act in the name or on behalf of or otherwise to bind the Company in any way and therefore any representation or communication by such person will not be binding on the Company and the Company excludes all liability arising in any way in relation to any representation or communication made by or on behalf of any such person.
- 18.8 The Agreement is governed by and construed in accordance with the law of England and each Party submits to the non-exclusive jurisdiction of the English Courts as regards any claim, dispute or matter arising out of or in connection with the Agreement or its implementation or effect.

#### **Schedule Daily Operational Checks**

The Hirer will perform the following daily procedures in respect of the Cold Store Equipment:

- check the temperature set-point is correctly set for its operation;
- periodically check the running temperature is within 2°C of the set-point (such checks are recommended every 4-6 hours);
- check there are no obstructions to the condenser;
- check there are no obstructions to the air flow caused by stacking of product above the load line mark or otherwise;
- check there is no excessive build up of ice on the evaporator coil (frosting is acceptable);
- keep the doors closed whenever possible;
- not close the doors without checking that no-one will be trapped inside;
- in the event of a temperature problem, close the doors and follow the breakdown procedure listed below the control panel on the Cold Store Equipment;
- check for damage to the insulation and components and immediately inform the Company if any such damage is found; and
- check that any and all instructions or manuals supplied by the Company in relation to the use or operation of the Cold Store Equipment are being complied with by the Hirer and any person authorised by the Hirer to use or operate the Cold Store Equipment.