

## WHEELY CABINS

### TERMS AND CONDITIONS OF CABIN RENTAL AGREEMENT

#### 1. Term and Acknowledgements

1.1 This Agreement comes into force when signed by the Hirer and accepted by Wheely Cabins and continues until it is terminated in accordance with its terms.

1.2 The Hirer acknowledges:

- (a) It has inspected the Cabin and enters into this Agreement in reliance upon that inspection and upon the Hirer's own judgement as to the quality of the Cabin and the fitness of the Cabin for the Hirer's purposes;
- (b) That Wheely Cabins, and the manufacturer of the Cabin are separate, independent entities, and neither the manufacturer or any other person is the agent of Wheely Cabins and further acknowledges that no representation, guarantee or warranty by the manufacturer or other person is binding upon Wheely Cabins and that no breach by the manufacturer or any other person will excuse the Hirer's obligations to Wheely Cabins under this Agreement;
- (c) That Wheely Cabins has not provided the Hirer with any advice on the taxation or accounting treatment of this Agreement or of any payment to be made pursuant to this Agreement. (d) This Agreement is a commercial chattels lease and does not create any lease or tenancy subject to the Residential Tenancies Act 1986 or the Property Law Act 2007.
- (e) If the Cabin is being leased from Wheely Cabins wholly or mainly for use in the Hirer's business, the provisions of the Consumer Guarantees Act 1993 do not apply.
- (f) That Wheely Cabins reserve the right to carry out a credit check on any new customer.

#### 2. Ownership of Cabin

2.1 The Hirer agrees that the Cabin shall at all times remain the property of Wheely Cabins and title in the Cabin does not pass to the Hirer at any time. This agreement does not give the Hirer any option or right to purchase the Cabin.

#### 3. Bond

3.1 Upon execution of this Agreement by the Hirer and acceptance of this Agreement by Wheely Cabins, the Hirer shall pay Wheely Cabins:

- (a) The Bond specified on the first page of this Agreement;
  - (b) The delivery charge; and
  - (c) The Advance Rent.
- 3.2 The Bond is a performance bond against default by the Hirer of payment of any monthly rental payments or any loss of or damage caused to the Cabin. If the Hirer fails to make any monthly rental payments on the dates for such payments under this Agreement, or causes any loss or damage to the Cabin (in whole or in part), Wheely Cabins shall be entitled to apply the Bond against such default, loss or damage. The Hirer shall pay to Wheely Cabins any sums deducted from the Bond within ten (10) Business Days of a demand for the same. The Bond (or balance thereof) shall be refundable within five (5) Business Days of the end of the Term.

3.3 Upon signature of these Terms, the Hirer must provide current credit card details to Wheely Cabins which will be held by Wheely Cabins. The Hirer expressly acknowledges Wheely Cabins is

authorised to debit the Hirer's credit card for any amounts owing by the Hirer under these Terms and Conditions. The Hirer also acknowledges the Hirer is responsible to pay any credit card or bank fees which may arise from such charges. If during the term of these Terms and Conditions the Hirer changes their credit card or such credit card expires, the Hirer must immediately provide updated details to Wheely Cabins.

#### 4. Insurance

4.1 Wheely Cabins will obtain any insurance it requires for the Cabin during the Term but will not insure any contents. The Hirer shall be solely responsible for obtaining any insurance cover for any contents of the Cabin.

4.2 The Hirer will not do, or permit or suffer to be done anything which might, or could prejudice any insurance as aforesaid or permit any insurer to deny any claim.

#### 5. Delivery of Cabin

5.1 The Hirer shall ensure that the intended site for the Cabin is accessible by a vehicle suitable for delivery of the Cabin and clear of any obstacles that may hinder placement of the Cabin. In addition to the standard delivery and removal fees (payable to Wheely Cabins), the Hirer will pay (direct to the driver if required) any extra charges incurred as a result of delays or difficulties in getting the Cabin from kerb site to the position on site (including, but not limited to, additional costs if the Cabin needs to be lifted over a fence for example). If the intended site proves to be inaccessible or unsuitable (in the driver's sole opinion), the Hirer will pay Wheely Cabins for costs incurred, and this Agreement shall be at an end.

5.2 The Hirer authorises Wheely Cabins to deliver the Cabin from the kerb side, onto and as close as physically possible, as adjudged by the driver, to the intended site of the Cabin. The Hirer accepts responsibility for any damage that may occur to the land access, culverts, buildings, fences, driveways, or any other property that may occur in the vicinity of the intended site during the course of transportation and delivery of the Cabin.

5.3 The Hirer accepts responsibility for any damage which may occur to any of Wheely Cabins's vehicles (or those of its subcontractors) while on the Hirer's property. The Hirer also agrees to be responsible for the cost of any transport and/or towage costs in the event of any delivery vehicle becoming stuck on the property the Cabin is to be delivered to.

5.4 Upon delivery, the Hirer must:

- (a) Provide a water supply with minimum pressure of 25psi, maximum pressure of 75psi;
- (b) Connect the water supply (using only black alkathene hose to connect the water supply and not a standard garden hose); (c) Not remove any pressure limiting valve(s);
- (d) If the cabin has a hot water cylinder, ensure that water is connected to the cabin and the hot water cylinder is full before the hot water cylinder is turned on at the main switch board, to prevent the element from burning out;
- (e) Provide a power supply with caravan connection; and
- (f) Provide waste water disposal.

#### 6. Payments

6.1 The Hirer shall pay rent in advance, and will pay Wheely Cabins all amounts required under this Agreement (including the

Rental Payments) when they are due without delay, deduction or setoff. 6.2 Unless other arrangements are required by Wheely Cabins from time to time, the Hirer will pay Wheely Cabins by automatic payment and will give Wheely Cabins an authority for direct debit

if Wheely Cabins requires.

6.3 If the Hirer fails to make payment of any Rental Payment or any other sums payable under this Agreement by the due date for payment then, without limiting Wheely Cabins's rights under clause 11, Wheely Cabins may in its discretion require the Hirer to pay, upon demand by Wheely Cabins, interest on the amount unpaid from the due date for payment until payment is made, calculated at the default rate of 12% per annum.

6.4 The Hirer shall promptly pay all taxes, fines, duties of any nature whatsoever levied in connection with this Agreement or in connection with the Cabin (other than any income tax levied solely on Wheely Cabins's income) at the rate and in the manner from time to time prescribed by law. Goods and Services Tax payable by Wheely Cabins in relation to any goods or services provided by Wheely Cabins in accordance with this Agreement shall be passed onto and be payable by the Hirer.

6.5 The Hirer must pay to Wheely Cabins, on demand, all costs and expenses incurred by Wheely Cabins as a result of any breach of this Agreement by the Hirer or in performing any obligations of the Hirer which the Hirer has not performed, or exercising or attempting to exercise Wheely Cabins's rights under this Agreement, including any legal costs or any other types of costs and/or expenses whatsoever incurred in:

(a) Collecting any amounts due but not paid to Wheely Cabins by the Hirer (including any collection agency or legal charges and costs);

(b) Repossessing the Cabin and entering and removing the Cabin from the land on which the Cabin is situated; and

(c) Making good any injury caused to any land or to the property of any person by any entry or removal;

#### **7. Restrictions on use of cabin and maintenance obligations 7.1**

The Hirer is responsible for keeping the Cabin in good working order and repair, and for protecting the Cabin from damage, except for ordinary wear and tear, and from any kind of loss while the Hirer has the Cabin in its possession.

7.2 The Hirer shall not alter or modify the Cabin during the term of this Agreement without the prior written consent of Wheely Cabins, and shall not do anything which will or may have the effect of voiding any manufacturer's warranty for the Cabin and any agreed alterations will belong to Wheely Cabins. The Hirer indemnifies Wheely Cabins against any losses or costs which Wheely Cabins may incur or suffer due to any act or damage done to the Cabin by the Hirer.

7.3 The Hirer shall ensure that:

(a) The Cabin is maintained and kept reasonably clean and tidy at all times;

(b) All reasonable care is taken in handling and care of the Cabin and that it is left securely locked when not in use;

(c) All necessary servicing including but not limited to supply and charging batteries, filling gas bottles at its expense. (d) Any power interface box supplied by Wheely Cabins is kept dry and is not left out in the rain;

(e) No animals (other than domestic cats) are allowed in the Cabin

at any time;

(f) There is no smoking in the Cabin;

(g) No holes are made in the Cabin walls (blu tack may be used to put pictures on the walls but use of tacks or pins is prohibited); (h) Only the correct chemicals are added to "porta potties" (these chemicals can be purchased from Wheely Cabins);

(i) Nothing other than toilet paper (such as tampons, sanitary pads, needles or any solid objects) are put in the toilet (as they may block the pump for the toilet). Any costs incurred through foreign objects in the toilet will be the responsibility of (and charged to) the Hirer; and

(j) Wheely Cabins is notified immediately if there are any problems with the Cabin;

7.4 The Hirer will allow Wheely Cabins (or its representative) to inspect the Cabin at all reasonable times and agrees Wheely Cabins will at a minimum inspect every 3-6 months (in Wheely Cabins's sole discretion) upon 2 Business Days' notice to the Hirer.

#### **8. Restrictions on Dealing with the Cabin**

8.1 The Hirer will not without the prior written consent of Wheely Cabins (which shall be at Wheely Cabins's sole discretion): (a) Move, relocate, sell, transfer or assign or sublease, licence, hire or part with possession of the Cabin;

(b) Assign the Hirer's rights under this Agreement; or (c) Mortgage, charge, pledge or grant any security interest over the Cabin to anyone other than Wheely Cabins;

(d) affix or attempt to affix the Cabin to any land other than by temporary connections of power, gas, water, or telephone services which can readily be severed with no damage to the Cabins.

#### **9. Hirer to Notify Change of Details**

9.1 The Hirer will notify Wheely Cabins in writing at once of any change of the Hirer's name, address or contact details.

#### **10. Termination**

10.1 Unless terminated earlier in accordance with clauses 10.2 or 10.3 below, this Agreement shall continue in effect after the end of the Minimum Rental Term and until terminated by either party upon at least 3 weeks prior written notice.

10.2 Either party may terminate this Agreement upon at least 3 weeks prior written notice, provided that such termination does not take effect before the Minimum Rental Term expiry date. If the Hirer wishes to terminate this Agreement with effect before the end of the Minimum Rental Term period, Wheely Cabins may require the Hirer to pay an early-termination fee of up to 2 months rental.

10.3 Wheely Cabins may immediately terminate this Agreement and repossess the Cabin, if any of the following events occur: (a) If, after this Agreement is signed, the Hirer refuses to obtain or take delivery of the Cabin or fails to do so within a reasonable time (in the sole opinion of Wheely Cabins) after delivery is available;

(b) Any amount payable to Wheely Cabins under this Agreement is not paid within 2 weeks of its due date;

(c) Wheely Cabins discovers that the Hirer made any material false statement in relation to the making of this Agreement; (d) The Hirer commits a material breach of this Agreement and such breach cannot be remedied, or in the event that such breach is

capable of remedy, the Hirer fails to remedy the breach upon receiving notice from Wheely Cabins specifying the breach and requiring the breach to be remedied within seven business days of such notice;

(e) The Hirer does or permits any act or thing likely to prejudice or put in jeopardy Wheely Cabins's rights or interest in the Cabin; (f) Any execution or a warrant to seize is issued against, or a lien is claimed in respect of, the Cabin or the Cabin is otherwise at risk;

(g) Any Court judgment against the Hirer remains unsatisfied for more than 7 days;

(h) The Hirer is a company and there is a transfer of any of the shares in the Hirer which effectively alters the control of the Hirer, unless Wheely Cabins consents to the transfer in writing; (i) The Hirer becomes insolvent or in the opinion of Wheely Cabins is unable to pay or does not pay its debts as they become due and payable;

(j) A receiver is appointed in respect of any assets of the Hirer;

or (k) An application is made for the liquidation of the Hirer, or the Hirer passes a resolution to go into liquidation.

10.4 If Wheely Cabins terminates this Agreement and repossesses the Cabin in accordance with clause 10.2:

(a) Wheely Cabins may, if the Cabin is attached to any other item or to any premises, disconnect and/or remove the Cabin (using reasonable care) without being liable to the Hirer or to any third party for any resulting damage or loss;

(b) Wheely Cabins shall not be responsible for any loss or damage to any items or belongings which may be in the Cabin at the time of repossession;

(c) The Hirer shall pay all sums owing under this Agreement even if they are not yet due.

10.5 Termination of this Agreement for any reason shall not affect any rights or liabilities that have accrued prior to termination.

10.6 Upon collection of the Cabin for any reason, the Hirer shall return any keys to the Cabin. Wheely Cabins may charge a fee of \$15 for any keys not returned. If the Cabin is considered to require additional cleaning upon return, the Hirer shall be required to pay Wheely Cabins an additional cleaning fee (of at least \$150) to cover the anticipated cleaning costs.

## 11. Protection of Wheely Cabins's Interests

11.1 If at any time Wheely Cabins has sufficient cause to terminate this Agreement pursuant to clause 10 above, then the Hirer irrevocably grants Wheely Cabins the right and licence to enter upon the land where the Cabin is located for the purpose of removing the Cabin, without notice and without liability whatsoever to the Hirer, or to any person or entity claiming through the Hirer for the resulting damage or loss.

11.2 The Hirer warrants to Wheely Cabins that the Hirer has obtained and holds all rights and consents required from any owner of the land where the Cabin is to be located in order to ensure that Wheely Cabins shall be authorised to place (and in accordance with this Agreement, to remove) the Cabin without further consent from, or compensation to, the owner of that land, and that the owner shall not seek to prevent Wheely Cabins exercising its rights under this Agreement. The Hirer indemnifies Wheely Cabins against any claim against Wheely Cabins by any owner of the relevant land in relation to any removal of the Cabin by Wheely Cabins at any time and for any cause.

11.3 If the land to which the Cabin is to be placed upon is or

becomes subject to a mortgage or charge (regardless of who to), the Hirer shall, without any request from Wheely Cabins, obtain the written acknowledgement of the mortgagee or chargeholder (as the case may be) that:

(a) The Cabin is not a fixture for the purposes of the mortgage or charge;

(b) The mortgagee or chargeholder will not make any claim in relation to the Cabin; and

(c) The mortgagee or chargeholder will permit Wheely Cabins (whether or not there has been any default under the mortgage or charge) to enter upon the land and remove the Cabin. 11.4 In the event of default by the Hirer the Hirer irrevocably appoints Wheely Cabins and every director of Wheely Cabins, jointly and severally as the attorney of the Hirer to do on behalf of the Hirer anything that the Hirer ought to do under this Agreement.

## 12. Consents

12.1 The Hirer is solely responsible for obtaining any building consents, resource consents or any/all other regulatory or legislatively required approvals/consents for the Cabin to be used as intended by the Hirer, at the Hirer's own cost and responsibility.

## 13. Entire Agreement and Variations

13.1 This Agreement together with Wheely Cabins's standard terms and conditions of supply (a copy of which has been given to the Hirer and which is incorporated to the Agreement) contains the entire Agreement between the Hirer and Wheely Cabins in relation to the Cabin and cannot be altered, amended, modified or otherwise changed except in writing signed by both parties.

## 14. Offsets by Wheely Cabins

14.1 If the Hirer does not make any payment when due, Wheely Cabins can debit the amount to any other account of the Hirer with Wheely Cabins, or deduct it from any amount Wheely Cabins owes the Hirer.

## 15. Collection, Use and Disclosure of Information

15.1 The Hirer and each Guarantor authorise Wheely Cabins to collect such information from third parties, including credit reference agencies, as may be required either in connection with their application for finance, or in connection with their relationship with Wheely Cabins.

15.2 The Hirer and each Guarantor acknowledge that: (a) Any default by them under this Agreement may be disclosed to credit reference agencies by Wheely Cabins; and (b) Under the Privacy Act 1993, the Hirer and each Guarantor has the right of access to and correction of their personal information held by Wheely Cabins.

16. Exclusion of Implied Terms and Limitation of Liability 16.1 All expressed and implied terms, conditions and warranties that otherwise might apply to this Agreement are excluded to the extent permitted by law but not otherwise.

16.2 Wheely Cabins's liability for a breach of any condition or warranty implied by any legislation is, to the extent permitted by law, limited to: (a) in the case of the Cabin (i) the replacement of it, or (ii) the repair of it; or (iii) the payment of the cost of having it repaired; and (b) in the case of services: (i) the supply of the services again; or (ii) the payment of the cost of having the

services supplied again; whichever is determined by Wheely Cabins to be appropriate in the circumstances.

## 17. Indemnity

17.1 The Hirer indemnifies Wheely Cabins:

(a) Against any loss of (including lawful confiscation), damage to or destruction of the Cabin, irrespective of how the loss, damage or destruction is caused;

(b) Against, and must pay to Wheely Cabins on demand, any goods and services tax payable on or in connection with this Agreement and/or any rental or other money paid or payable under this

Agreement;

(c) Against any loss, liability or damage Wheely Cabins suffers because of a breach or repudiation of this Agreement by the Hirer.

## 18. Guarantors

18.1 Each Guarantor:

(a) Guarantees (jointly and severally if more than one) repayment to Wheely Cabins of all amounts payable by the Hirer pursuant to this Agreement, and the performance of all of the Hirer's obligations under this Agreement.

(b) Acknowledges that Wheely Cabins has entered into this Agreement with the Hirer at the request of the Guarantor, that Wheely Cabins might not have done so without the Guarantor's guarantee, and that Wheely Cabins doing so is a benefit to the Guarantor.

(c) Agrees that if the Hirer does not pay any amount, or perform any obligation, under this Agreement, the Guarantor will do so on demand.

(d) Agrees that if for any reason any amounts payable by the Hirer under this Agreement or any collateral securities are not recoverable by Wheely Cabins, whether as a matter of law or as a matter of fact, the Guarantor will indemnify Wheely Cabins against any resulting loss, and will pay the amount of any such loss to Wheely Cabins as a principal debtor and on demand. (e) Agrees that their obligations as a Guarantor are absolute and unconditional, and will not be released or in any way affected by: (i) This Agreement being unenforceable or otherwise defective; or (ii) Any variation or release of this Agreement, or any other Guarantor; or (iii) Any concessions by Wheely Cabins to the Hirer or to any other Guarantor; or (iv) The insolvency, bankruptcy or liquidation (as appropriate) of the Hirer or any other Guarantor; or (v) Any other act, omission, or rule of law which would, were it not for this clause, release a guarantor or indemnifier, and irrevocably waives any rule of law to a different effect.

(f) Acknowledges that the Guarantor is not a "Debtor" to the extent permissible by law, waives any notices or rights of a Debtor to the extent inconsistent with these terms.

(g) Acknowledges that the Guarantor has either had independent legal advice prior to executing these terms or, if that has not occurred, that is solely the Guarantor's own choice freely made, and as a result the Guarantor irrevocably waives any rights which the lack of that independent advice might otherwise have given the Guarantor.

## 19. Miscellaneous Provisions

19.1 Definitions: In this Agreement:

(a) References to "Wheely Cabins" shall include Wheely Cabins Limited, its nominees or assigns;

(b) References to "Hirer" shall include the Hirer and its permitted

assigns, and in the case of a company, its successors and permitted assigns;

(c) When two or more persons are Hirers all covenants, agreements and conditions under this Agreement shall bind them jointly and each of them severally; and

(d) References to "Cabin" shall refer to the Cabin described on the front page of this Agreement.

(e) References to "Business Day" mean a day (other than a Saturday, Sunday or public holiday) when banks in Auckland are open for business.

(f) References to "Rental Payments" refer to the monthly rental payments specified on the front page of this Agreement which the Hirer agrees to pay to Wheely Cabins for the hire of the Cabin.

19.2 GST: If the rate of GST alters then the amount of each payment under this Agreement shall be varied so that the net amount recovered by Wheely Cabins will be the same as it would have been had the GST rate not altered.

19.3 Assignment: Wheely Cabins may at law or in equity assign its rights, title and interest in the Cabin and in or under this Agreement and any of them at any time.

19.4 Headings: The headings in this Agreement merely give an indication of the content of the clauses or terms to which they are related, and are included only for the purpose of assisting the reading of the document. Headings do not affect the meaning of the terms or clauses of this Agreement themselves. 19.5 Notices: Notices to the Hirer under this Agreement may be sent by Wheely Cabins to the Hirer's address as shown in this Agreement.

19.6 Waiver: A Delay in exercising, or failure to exercise, any right or remedy in connection with this Agreement shall not operate as a waiver of that right or remedy. The waiver of a right to require compliance with any provision of this Agreement in any instance shall not operate as a waiver of any further exercise or enforcement of that right and the waiver of any breach shall not operate as a waiver of any subsequent breach. No waiver in connection with this Agreement shall, in any event, be effective unless it is in writing.

19.7 Variation: No variation of this Agreement shall be effective unless it is in writing and is signed by or on behalf of each of the parties.

19.8 Severance: If a provision of this Agreement is held to be illegal, invalid or unenforceable, in whole or in part, the parties intend that the offending provision shall be severed and the legality, validity and enforceability of the remainder of this Agreement shall not be affected.

19.9 Entire Agreement: This Agreement contains all of the terms and arrangements made between the Hirer and Wheely Cabins in respect of the Cabin.