



CONTAINERS • PORTABLE BUILDINGS • AMENITIES BLOCKS

info@perkinshire.com.au 0429 007 137

## TERMS & CONDITIONS HIRE / STORAGE

HIRE ☐

Business name:.....

Customer full name:.....Customer's DOB:.....

Customer address:.....

Customer contact number:.....Container Location

Customer postal address:.....

Customer Email:.....I.D. sighted and copy taken ☐

Customer's drivers license number/proof of ID:.....

Hire period from:.....Hire period to:.....

Storage period from:.....Storage period to:.....(and then extended automatically until 14 days' notice is given by either party).

Alternate Contact Person:.....Alternate Contact No:.....

Alternate Contact Address:.....

Alternate Contact Email:.....(Please advise immediately if any of the above details change)

Credit Card Number:.....Expiry Date:.....CCV:.....

Please read the following terms and conditions carefully prior to signing as by signing this Agreement you will be bound by them.

I/We accept/decline insurance of my goods

I/We agree to be bound by the terms and conditions of this Agreement

Policy Number .....

Customer Signature

Customer Signature

This Agreement shall come into force as and from the .....

- Perkins Hire are herein called 'The Owner'
- All payments are to be made in advance
- Goods are stored at your sole risk. We encourage you to take out insurance.
- The Owner is not liable for any loss of any goods stored in a Container.
- Hazardous, toxic, perishable, illegal or stolen items are prohibited to be stored.
- The Container will be accessible only during access hours determined by the Owner.
- A charge of \$25 per hour will apply should you require access to your Container.
- The Owner shall supply to the Customer a Container for the Hire Period in a clean condition and good repair.
- The Owner shall arrange for delivery of the Container to the Customer at the start of the Hire Period and collection of the Container from the Customer at the end of the Hire Period at the expense of the Customer.

Transport Fee \$..... Delivery

Transport Fee \$..... Pickup

Hire Charge \$.....Per week

Payment Details:.....(Chq, Cash, Credit, Other)

Cleaning Fee \$200.00 if comes back dirty

Late Payment Fee:\$15.00 for every late payment made

Owner Signature

Initial

## WHEREAS

The parties have agreed that the Owner will service the needs of the Customer in and about the storage and handling of its Goods and certain other property upon and subject to the terms and conditions hereinafter appearing.

### This Agreement witnesses

#### 1. Definitions and interpretation

1.1 For the purposes of this Agreement except where the context otherwise requires:

“Container Depot” means a Container Depot at 80 Central Bucca Road, Central Bucca NSW.

“Container” means a.....

“Customer” means the person or entity specified on page 2 of the Agreement.

“Depot” means the Owner’s property at 80 Central Bucca Road, Central Bucca NSW.

“Delivery Address” means the address specified in the Hire Schedule where the Container is to be delivered.

“Goods” means the property of the Customer to be stored however excluding flammable toxic and perishable items.

“Hire Charge” means the amount specified in the Hire Schedule payable to the Owner by the Customer for the hire of the Container.

“Hire Period” means the period specified in the Hire Schedule from the Commencement until the conclusion of the Hire Period. If an extension of the Hire Period is required by the Customer the Owner will issue and require the Customer to sign an amended Hire Schedule.

“Month” means calendar month.

“Owner” means Perkins Hire of 80 Central Bucca Road, Bucca NSW 2450 ACN: 606 864 822.

“Working day” means a day other than a Saturday, Sunday or public holiday in New South Wales.

2. The clause headings in this Agreement shall not affect the construction of this Agreement.

2.1 During the period of this Agreement and between the hours of 9.00 am to 4.00 pm each working day (excluding during industrial stoppages) the Depot will be open and available for the provisions of the services contemplated in this clause.

2.2 The Customer shall pay to the Owner the sum of \$25.00 per hour for any employee employed by the Owner while such employee is actually engaged in a.  
(a) any services carried out by the Owner under special arrangement or for any other services which the Owner may provide for the Customer.

2.3 The Goods and other property stored under this Agreement shall be fully insured by and at the cost and expense of the Customer against loss destruction and damage by fire, water, tempest, storm, accident, malicious damage, vandalism, act of God and other usual or normal risks or hazards in the storage and/or warehouse industry. The Owner is hereby exonerated to the maximum extent permitted by law from all liability on account of any loss destruction or damage covered by this subclause.

2.4 The Customer shall pay to the Owner an amount of \$10.00 per Container stored per day or part day as contribution towards the obligation of the Owner to insure under clause 3.3.

2.5 The Customer agrees that the liability of the Owner for the loss of or damage to Goods or other items being stored or handled by the Owner during the period of this Agreement after the same have been delivered to the Depot shall be nil. The Owner makes no warranty to the condition of the Container or the premises being sufficient to store the goods.

#### 3. Charges

3.1 Unless otherwise herein stated all charges payable hereunder are to be paid monthly in advance on the first day of the month.

3.2 All charges payable hereunder shall stand charged on the Goods and such other property as shall from time to time be in the possession of the Owner in the name of or owned by the Customer and the Goods and such other property shall be subject to a particular and general lien in favour of the Owner for money due by the Customer under this Agreement or otherwise.

3.3 Whilstever the Customer is in default in payment to the Owner of any charges or other monies payable under this Agreement:

- (a) The Customer shall not remove any of goods from the demised premises and shall not be entitled by itself or its agent to enter thereon for the purpose of removing any of the said goods.
- (b) The Owner may with or without the consent of the Customer seize all goods then in and on the Depot as shall be subject to the charge hereinbefore constituted and may hold the same to the exclusion of the Customer and any other person claiming under the Customer whether upon the Depot or at such other place or places as the Owner may in its absolute discretion determine, and the Owner may thereafter make a demand by notice in writing served upon the Customer for payment of the arrears of charges and other monies covenant to be paid by the Customer under this Agreement.
- (c) If the expiration of one (1) month after the date of service upon the Customer of such notice of demand for payment the Customer shall not have paid to the Owner the arrears of the charges and other monies due to the Owner then it shall be lawful for the Owner and any time thereafter without the requirement of further notice to prepare a full inventory of the property so held and to sell the same at auction.
- (d) The Owner shall be empowered to apply the proceeds of any such sale towards the liquidation of the costs of such sale and thereafter in satisfaction of all arrears of charges and other monies due by the Customer under this Agreement, and the surplus, if any, but without interest shall be paid to the Customer or such other person or persons then entitled to the same accordingly

#### 4. STORAGE TERMS

4.1 The Customer warrants to the Owner:

- (a) The accuracy and completeness of all information provided or to be provided to the Owner during the term of this Agreement.
- (b) That it will provide to the Owner adequate and accurate descriptions of the Goods being stored during the term of this Agreement.
- (c) That all Goods being stored during the term of this Agreement shall be packed adequately in order to protect them against damage from normal conditions arising in or about the storage, cartage and handling operations envisaged under this Agreement
- (d) That all Goods or other property placed storage during the term of this Agreement will be neither dangerous nor damaging and will be free of any deleterious or objectionable matter or odour.

4.2 The Customer expressly authorises the Owner to do any of the following things at such time or times and in such manner and to such extent as the Owner may in its sole discretion think fit:

- (a) To attend to any legal requirements concerning the Goods or other property including the making of declarations as to value.
- (b) To arrange with any subcontractor for the performance of any services required hereunder.
- (c) To transport, handle, store, remove, replace, record, release and otherwise deal with the Goods being stored by such means and at such times and places and by such routes as the Owner in its absolute discretion thinks fit in the circumstances.
- (d) To remove and sell or destroy all or any of the Goods being stored under this Agreement which in the opinion of the Owner are or have become deteriorated, objectionable or a source of danger or contamination or which the Owner has requested the Customer to take delivery of by written notice and the Customer has failed to do so within a reasonable time after the date of that notice.

4.3 If the Customer terminates this Agreement before the end of the Hire Period, the Customer will pay the Hire Charge to the Owner, plus all other:

- i. Amounts owing by the Customer, whether actually or contingently, become payable; and
- ii. The Customer must do all things necessary to ensure the return of the Container in its possession or control to the Owner within seven (7) days.

#### 5. NOTICES

5.1 Any notice required to be given hereunder by either party to the other shall be given in writing

**6. GOODS AND SERVICES TAX**

6.1 All prices quoted are exclusive of GST.

**7. GOVERNING LAW**

7.1 This Agreement and the contract under it shall be governed by the law for the time being applicable in New South Wales.

**8. BAILMENT**

The parties agree no relationship or obligation of bailment arises herein between either parties.

**9. HIRE – TERMS OF PAYMENT**

- (a) Where the Owner is responsible for delivery of the Container, it will not be responsible for the delays in delivery or failure to deliver due to causes beyond its control
- (b) Hire is charged for the time the Container is out of the possession of the Owner at the Customer's request (inclusive of weekends and public holidays), not only the time during which the Container is used.
- (c) Payment in full for all hiring charges and any other amounts payable in accordance with these Conditions of Hire is required 14 days from the date of invoice. The Customer cannot make a claim for credit after 14 days from the date of the invoice.
- (d) The Owner reserves the right to revise its hire rates and related charges without notice.
- (e) Hire charges cover only the fee for hiring the Container to the Customer. If the Customer requires the Container to be delivered, the Customer shall pay in addition to the Owner all freight and other charges incurred in transporting the Container, including loading and unloading at site. Any other additional service, including the provision of an operator, shall be paid for by the Customer.
- (f) If the Customer defaults in payment of any money under this Agreement then interest at a rate of 10% per month will be applied to all amounts owing by the Customer until the outstanding amount is paid in full.
- (g) The Customer must pay all amounts specified on the Tax Invoice, including:
  - i. All costs incurred in cleaning the Container, including the removal of labels and graffiti and other markings, if the Container is not returned to the Owner in a clean state.
  - ii. The cost of transporting the Container to and from the Delivery Address.
  - iii. The cost of any delays in association with the transporting of the Container as a result of issues with access to the Delivery Address.
  - iv. The cost of repairing any damage to the Container, unless expressly agreed otherwise in this contract.
  - v. Stamp duties, GST, any other taxes or duties, and all tolls, fines, penalties, levies or charges payable in respect of this Agreement or arising from the Owner's supply or the Customer's use of the Container.
  - vi. All costs incurred by the Owner in recovering possession of the Container.
  - vii. A late payment fee of \$15 per week will be applied should payments not be paid by the due date.
  - viii. Any additional Hire Charges; and
  - ix. Any costs and expenses incurred by the Owner on enforcing this Agreement.

**10. HIRE - CUSTOMER'S HIRING OBLIGATIONS**

- (a) Prior to the use of the Container determine the condition and suitability of the Container hired for the purpose required.
- (b) Maintain the Container in good repair and condition, fair wear and tear excepted.
- (c) Use the Container in a proper manner and only for the purpose and within the capacity for which it was designed, acknowledging that the Owner can give no warranty as to the said capacity.
- (d) At its own expense clean and maintain the Container in good and substantial repair and condition.
- (e) Clean the Container thoroughly upon completion of the hire term. Should the Customer not clean the Container thoroughly upon completion of the hire term the Owner may at their absolute discretion clean the Container and charge a fee to be nominated by the Owner which will be debited against the security (Credit card) of the Customer. The amount to be charged will be at the Owner's absolute discretion or as noted herein on page 1.
- (f) Accept full responsibility for the safe-keeping and insuring of the Container, and except as specified hereafter, indemnify the Owner for all loss, theft of or damage, including malicious damage, to the Container however caused and without limiting the generality of the foregoing whether or not such loss theft or damage is attributable to any negligence, failure or omission of the Customer.
- (g) Accept full responsibility for, and indemnify the Owner against all claims in respect of any injury to persons, or loss or damage to property, arising out of the delivery, servicing, storage, possession or use of the Container during the hire period.
- (h) Not be entitled to claim any lien over the Container nor sell, transfer, mortgage, charge or encumber in any way the Container nor, without the Owner's prior written consent, part with possession of the Container nor assign the benefit of the hire agreement.
- (i) Not be entitled to remove the Container or allow it to be removed from the State or site if applicable from which it was hired without the Owner's written permission.
- (j) Not alter, make any addition to, deface or erase any identifying mark, plate or number on or in the Container or in any other manner interfere with the Container.
- (k) The Owner may, at its absolute discretion, require proof that the Customer has current insurance policies which insure the Container during the Hire period for its full replacement or reinstatement cost.
- (l) Pay to the Owner all hire and related charges and other costs as stipulated in accordance with this agreement.
- (m) The customer indemnifies and agrees to keep the Owner indemnified against any loss, cost, damage or expense incurred or which may be incurred by the Owner arising from the use of the Container under this Agreement.
- (n) Ensure that the Owner has unfettered access to the Delivery Address for delivery and collection of the Container.
- (o) The Customer warrants that only goods owned by the Customer will be stored in the Container unless otherwise agreed in writing with the Owner.
- (p) The Customer must not move or cause to be moved from the Delivery Address without first obtaining prior written consent from the Owner.
- (q) The Customer must immediately notify the Owner of any loss, theft, damage to the Container.
- (r) The Owner may inspect the Container from time to time and during the hire period and the Customer shall permit or procure admission for representatives of the Owner to the premises upon which the Container is situated for that purpose.
- (s) If the Customer becomes bankrupt, insolvent, ceases business or breaches any term of the Agreement the Owner will be entitled to:
  - a. Terminate the Agreement and/or;
  - b. Sue the Customer for recovery of all monies owing to the Owner and/or;
  - c. Repossess and remove the Container (and is authorized to enter any premises where the Container is located to do so) and/or;
  - d. Exercise any or all of its rights in accordance with the law.
  - e. The Owner may terminate this Agreement without penalty if it considers that it cannot supply the Container to the Customer.

**11. TERMINATION OF HIRE**

Without prejudice to any other remedies available to the Owner and notwithstanding any period of hire specified, the Owner may terminate this hire agreement:

- (a) At any time by giving to the Customer 24 hours of its intention to so terminate, such termination to be effective as of the expiry of 24 hours or as agreed under the hire contract.
- (b) At any time at its sole discretion prior to delivery of the Container to the Customer if it receives a credit assessment of the Customer that is considered unsatisfactory.
- (c) Without notice, if the Customer shall commit any breach of the hire agreement, or do or permit to be done any act or thing whereby the Owner's rights in or to the Container may be prejudiced, or have a winding up petition presented against it or be wound up, or go into voluntary liquidation or commit an act of bankruptcy or if a receiver of its assets or any of them is appointed or if it makes an assignment or compromise for the benefit of its creditors or if its business is placed under official management or if it ceases to carry on business.
- (d) Upon termination of this hire agreement the Owner shall be entitled to take possession of the Container and for this purpose the Customer irrevocably appoints the Owner as its agent and authorises the Owner to enter on any land or premises owned by or under the control of the Customer upon which the Container is then situated and agrees to indemnify the Owner in respect of any claims, damages and expenses arising out of any action taken under this condition.
- (e) If the Customer terminates this Agreement before the end of the Hire Period, the Customer will pay the Hire Charge to the Owner, plus all other:
  - iii. Amounts owing by the Customer, whether actually or contingently, become payable; and
  - iv. The Customer must do all things necessary to ensure the return of the Container in its possession or control to the Owner within seven (7) days.

## **12. HIRE - THE CONTAINER DAMAGE OR LOSS**

The Customer is responsible for theft, loss and damage to Container whilst on hire (the costs of replacement or repairs to which will be charged to the Customer at a rate of \$500.00 per panel) resulting from:

- (a) damage due to misuse, abuse or any components thereof;
- (b) malicious damage;
- (c) wrongful conversion of the Container or any components thereof;
- (d) loss or damage in contravention of the conditions of this hire agreement;
- (e) loss or damage from use in violation of any laws;
- (f) theft, loss or damage to any goods stored inside the Container
- (g) damage caused by exposure to any corrosive substance eg. caustic, cyanide, salt water, acid, etc.;
- (h) (l) theft of the Container unless reasonably locked and secured;
- (i) (m) loss or damage during transport, except where transported by the Owner;
- (j) loss or damage caused by the negligence of the Customer.

## **13. HIRE -EXCLUSION OF LIABILITY**

- (a) The Owner and the Customer agree that in the event of the Customer suffering any loss, damage or claim howsoever arising as a result of hiring the Container, including without limitation in respect of delay or inconvenience arising out of any, failure, or defect in the Container, the liability of the Owner is limited to the repair or replacement of the Container and is not to include economic or consequential damages of any nature whatsoever.
- (b) The Owner gives no warranties and makes no representations whatsoever relating to the Container's condition, quality, suitability or fitness for any ordinary or special use of the Container.
- (c) Nothing in this Agreement excludes, restricts or modifies any rights the Customer may have under the Australian Consumer Law or any other law which operates to protect the hirers of goods in various circumstances.
- (d) To the full extent permitted by law the Owner excludes all implied terms and conditions and warranties including, without limitation, terms, conditions and warranties implied by Commonwealth or State legislation.

## **14. HIRE - REMOVAL OF CONTAINER**

The Customer grants to the Owner unfettered access to the Delivery Address including but not limited to:

- (a) Remove the Container where this Agreement permits the Owner to do so.
- (b) Remove the Container where such actions are necessary to safeguard and secure the Container;
- (c) Remove the Container where the landlord of a property requests the Container to be removed from its property.
- (d) If the Customer is unable to be contacted for a period of 30 days the Owner shall remove the Container.
- (e) Upon the expiration of the Hire Period or earlier termination the Customer acknowledges and agrees to return the Container to the Owner free from any goods, failing which the Customer irrevocably appoints the Owner as its agent to remove the goods at the Customer's expense.
- (f) The owner agrees and acknowledges that the Owner is not responsible for any damage occasioned to any goods that have been removed pursuant to the clause above.
- (g) The Customer acknowledges and agrees that that the Owner is under no obligation to ensure the safe storage of the goods where they are removed in circumstances referred to above and that the Owner is entitled to leave the goods at the Delivery Address or any other premises occupied by the Customer or sell the goods and apply the proceeds of the sale of the goods to the payment of any outstanding Hire Charges.

## **15. HIRE - SECURITY INTEREST**

- (a) In this clause 'PPSA' means the *Personal Properties Securities Act 2009*, 'PPSR' means the *Personal Property Securities Register* established under the PPSA and 'Security Interest', 'Proceeds', 'Financing Statement', 'Financing Change Statement', 'Accounts and Accessions' and 'Purchase Money Security Interest' have the meanings given to them in the PSA.
- (b) The Customer acknowledges that this Agreement constitutes a Security Agreement for the purposes of the PPS Act and any Container supplied to the Customer by the Owner will constitute Purchase Money Security Interest (PMSI).
- (c) This Agreement creates a Security Interest in:
  - i. The Container previously supplied by the Owner to the Customer; and
  - ii. All future Container supplied by the Owner to the Customer.
- (d) Title in the Container remains with the Owner at all times and the Owner reserves the right to call for or recover the Container at the Owner's option. The Customer is obliged to deliver the Container to the Owner if the Owner so directs.
- (e) By acknowledging the above the Customer grants a Security Interest in the Container to the Owner by retention of title pursuant to this clause 12.
- (f) The Customer agrees and acknowledges that:
  - i. The Container we supply secures the payment of the hire fee of that Container and of any other Container or service we supply;
  - ii. The Customer's name, CAN or ABN or other details required on the PPSR will not change without first notifying the Owner.
  - iii. The Customer waives its rights to receive a verification statement in respect of any Financing Statement or Financing Change Statement in respect of the Security Interest created pursuant to these Terms.
  - iv. The Customer must pay costs to discharge or amend any Financing Statement or Financing Change Statement that the Owner incurs on the Customer's behalf.
- (g) To the extent permitted by law, the Customer agrees that sections 130, 142, 143 of the PPSA will not apply.

(h) To the extent permitted by law, the Customer waives any rights they may have under, and hereby contract out of sections 95,123,192(2), 132, 134(2) and 135 of the PPSA.

**16. HIRE - RISK**

The Customer agrees and acknowledges that the Container is at their risk during the Hire Period. If the Container is lost or stolen or damaged beyond repair the Customer must pay the cost of replacing it with an equivalent new Container and delivering it to the depot from which the Container was hired. The Customer acknowledges that the replacement cost of a Container at the time of signing this Agreement is from \$4,000 for a standard 20GP to \$30,000 for a refrigerated container.

The customer agrees and acknowledges that they are liable for any personal injury death or property loss or damage arising in any way from the use of the Container during the Hire Period. The Customer indemnifies the Owner against any claims for actions resulting from injury death loss or damage even if we were negligent or in breach of this Agreement.

The Customer can insure the Container against theft loss or damage during the Hire Period for its replacement value and the Owner will supply to the Customer the value of the Container on request. Public risk insurance may also be taken out by the Customer for not less than \$10,000,000. If the Customer were to take any insurance out, it must:

- a. Be in the Customer and the Owner's joint names;
- b. Provide for all notices to be given to the Owners;
- c. Provide for a waiver of subrogation rights against us; and
- d. Include a cross liabilities clause insuring the Owner against liability to you.

Evidence of these insurances must be provided to the Owner upon request.

The Owner is not liable to pay any excess on any claim even if the Owner is negligent or in breach of this Agreement.

The Owner is not liable for any loss or damage which in any way relates to a failure of the Container to operate or perform as expected, or to delay in delivery or failure to redeliver after maintenance or repairs, including any such loss or damage resulting from our negligence.

The Customer agrees to indemnify the Owner in respect of any third party claims or costs arising out of any action taken by us as a result of endeavoring to retake possession of the Container where:

- a. The Owner has issues with access;
- b. Or the Customer has defaulted and the Owner's interests are jeopardized; or
- c. Council or the landlord of the land upon which the Container is located requires the Container to be removed from the property.

**17. HIRE - MISCELLANEOUS**

(a) The person signing the document for and on behalf of the Customer hereby covenants with the Owner that he or she has the authority of the Customer to make this agreement on the Customer's behalf and is empowered by the Customer to bind the Customer to this Agreement and hereby indemnifies the Owner against all losses and costs incurred by the Owner arising out of the person so signing this agreement not in fact having such power and/or authority.

(b) Termination of the hire period shall not affect any of the conditions that are expressed or implied to operate or have effect after termination.

(c) Time is to be of the essence of all obligations of the Customer in these conditions.

(d) If any of the Conditions of Hire are found to be void, voidable or unenforceable the validity and enforceability of the remaining provisions shall not in any way be affected or impaired.

(e) This Agreement is governed by the laws of the State of New South Wales.

**18. HIRE TO PURCHASE**

Provided there is no event of default, the Customer may at any time during the term or at the expiration of the term elect to purchase the Container by paying the Owner the residual and the balance of total rent then outstanding together with all other money then due and payable to the Owner under this Agreement.

**19. PURCHASE - PAYMENT**

Unless stated otherwise the Price is exclusive of GST. The Buyer must pay the Price, plus the requisite GST, in relation to each order to the Seller prior to delivery of the goods.

**20. PURCHASE - PASSING OF TITLE**

The Goods pass to the Buyer free of encumbrances and all other adverse interests upon payment in full by the Buyer being received by the Seller in relation to the goods. Until title to the Goods passes to the Buyer, the goods remain the Seller's.

**21. PURCHASE - PASSING OF RISK**

Risk in the goods passes to the Buyer upon delivery of the goods to the Buyer or collection of that order by the Buyer's agent or courier as the case may be.

**22. PURCHASE - AMENDMENT**

This agreement is not to be amended except in writing signed by each of the parties.

**23. PURCHASE - PERSONAL PROPERTY SECURITIES ACT 2009 (PPSA)**

This agreement is a security agreement under clause 15.

**24. PURCHASE - INDEMNITY**

(a) Seller undertakes no responsibility for the quality of the Goods or that the Goods will be fit for any particular purpose for which the Buyer may be buying the Goods, except as otherwise provided in this Agreement, and Seller disclaims all other warranties and conditions, express or implied.

(b) Seller (including its subsidiaries, affiliates, officers, directors, employees, agents or subcontractors, all of which are referred to herein collectively as the 'Seller Affiliates') shall not be liable under any circumstances to the Buyer or any other party for any special, consequential, incidental, or exemplary damages arising out of or in any way connected with the Goods or otherwise, including but not limited to damages for lost profits, loss of the goods or any associated equipment, cost of capital, cost of substitute or replacement equipment, facilities or services, down time, Buyers time, lost data, injury to property or any damages or sums paid by the Buyer to third parties, even if seller or any of the seller affiliates has been advised of the possibility of such damages. The foregoing limitation of liability shall apply whether any claim is based upon principles of contract, warranty, negligence, or other tort, breach of any statutory duty, principles of indemnity or contribution, the failure of any limited or exclusive remedy to achieve its essential purpose, or otherwise.

(c) In no event shall the Seller or any Seller Affiliates be liable to the Buyer or any other party for loss, damage, injury of any kind or nature arising out of or in connection with these terms and conditions in excess of the net purchase price of the Goods actually delivered to and paid for by the Buyer hereunder.

(d) The Seller disclaims any warranties of non-infringement with respect to the Goods and none of Seller or any Seller Affiliate shall have any duty to defend, indemnify, or hold harmless the Buyer from and against any or all damages or costs incurred by the Buyer arising from the infringement of patents or trademarks or violation of copyrights by any of the Goods.

**25. PURCHASE - FORCE MAJEURE**

The Seller shall not be held responsible for any failure of performance to make timely delivery of all or any part of the Goods in the event such as failure was due, in whole or in part, to federal, provincial or municipal action, statute, ordinance or regulation, strike or other labor trouble, fire or other damage to or destruction of, in whole or in part, the Goods or the manufacturing facility for the Goods, the lack of inability to obtain raw materials, labor, fuel, electrical power, water or supplies, or any other cause, act of God, contingency or circumstances not subject to the reasonable control of the Seller, which causes delays or hinders the manufacture or delivery of Goods. The Seller shall determine in good faith the extent to which it can reasonably control a cause, contingency, or circumstance that affects the performance of its obligations.