

## Equipment Rental Terms and Conditions

### 1. TERMS

1.1 These terms apply to the rental of the Equipment and the provision of the Services by us to you under this Agreement.

### 2. EARLY TERMINATION

2.1 You may at any time notify us in writing that you want to terminate this Agreement before the End Date and request that we remove the Equipment from the Location.

2.2 If you terminate this Agreement under clause 2.1 you must pay to us the Total Term Fee less any fees you have paid to us up to the date you terminate this Agreement.

### 3. OWNERSHIP

3.1 We are the owners of the Equipment and you only have the right to use the Equipment in accordance with the Terms of this Agreement.

3.2 You must protect our ownership of the Equipment and you agree:

(a) not to attempt to sell, hire, dispose of, encumber or deal in any way with the Equipment in a manner which is contrary to our ownership;

(b) to operate the Equipment in accordance with any operating manual and our directions;

(c) to keep the Equipment in clean and in good order and repair.

3.3 Risk in the Equipment will pass to you on delivery to you and you will be responsible for the Equipment and will at all times maintain comprehensive insurance to cover risk of damage to or loss of the Equipment.

### 4. LOCATION

4.1 You must not move the goods from the Location at which the Equipment is installed, or move the installation point within that Location without our written consent.

4.2 If you wish to move and reinstall the Equipment at the Location you must contact us and we will arrange for the Equipment to be moved and reinstalled. We will charge you a reinstallation fee which we will advise you of when you contact us.

### 5. DELIVERY AND INSTALLATION

5.1 We will deliver to you and arrange for the installation and commissioning of the Equipment at the installation location set out on the Schedule to this Agreement.

5.2 You must make all necessary arrangements so we can deliver and install the Equipment for you at the installation location.

5.3 We will not be liable to you for any delay in delivery or installation of the Equipment at the installation location where you have not made all necessary arrangements which are required to deliver and install the Equipment or the delay or failure is due to circumstances beyond our control.

### 6. SERVICE OF EQUIPMENT

6.1 The Equipment will be serviced by us or our nominated service agent and you agree to provide access during normal business hours to allow routine service to be undertaken. The routine service costs are included in the Payments which includes filter replacement. Additional services costs may apply where you have not operated the Equipment in accordance with this Agreement.

6.2 You agree that no other party will be permitted to service or maintain the Equipment or replace any filter in the Equipment.

6.3 Co2 replacement cannisters are not covered under this rental agreement and will be charged/invoiced at the rate at the time of replacement.

### 7. INVOICING, PAYMENT AND DEFAULT

7.1 You must pay to us over the Term the Total Payment Amount in accordance with this Agreement.

7.2 Unless otherwise stipulated in the Billing Details you must pay to us quarterly in advance the Rental Payments the first which is due on the installation of the Equipment at the Location.

7.3 All subsequent payments will be due on the day of each third month thereafter.

7.4 We will provide to you a tax invoice for the relevant payment.

7.5 If:

(a) you default in any payment due to us or we conclude that you are likely to, including where you are unable, or state that you are unable, to pay your debts as and when they fall due or where a receiver, receiver and manager, controller, trustee or other insolvency administrator is appointed, or a scheme of arrangement is proposed or approved in respect of you or a mortgagee enters into possession of any of your assets or any similar situation occurs; or

(b) you are otherwise in breach of this Agreement,

then:

(c) we may, at our option:

(i) reclaim the Equipment in your possession or under your control and may enter premises where we believe that Equipment is stored, and recover from you all costs of doing so; and/or

(ii) by notice to you, with immediate effect, terminate this Agreement; and

(d) all monies owing and outstanding by you to us become immediately due and payable (without the requirement for notice from us).

We will not be liable to you for any losses you incur as the result of our exercising any of our rights under this clause.

7.6 If we believe that we have rights under clause 7.5, you must promptly and reasonably respond to any enquiry from us to clarify this.

7.7 Without in any way limiting our right to require payment in full on the due date, we may charge interest on overdue accounts at the rate that is 2.0% per annum above the rate charged by the Commonwealth Bank of Australia from time to time on overdrafts of less than \$100,000.00. Interest will accrue daily and compound monthly from the due date until payment has been received by us in cleared funds. Payments by you will be applied first to interest accrued and then to the overdue amount.

7.8 Any collection charges, legal expenses (calculated on a full indemnity basis) and commissions or any other expenses incurred by us in attempting to recover from you any payment due to us is payable by you to us on demand by us.

7.9 If you owe us money for any reason and we owe you money in connection with this Agreement, we may set off the amount you owe us against the amount that we owe you and pay you the resulting net amount.

### 8. OUR WARRANTIES AND LIMITATION OF OUR LIABILITY

8.1 Notwithstanding any provision to the contrary in this Agreement, the terms do not exclude or limit the application of any statute (including the CCA or equivalent or similar legislation) where to do so would:

(a) contravene that legislation; or

(b) cause any part of clause 8 to be void.

8.2 To the extent to which the consumer guarantees under the CCA do not apply, we:

(a) make no representations or warranties concerning fitness for purpose or quality of the Equipment or Services, and you must assure yourself of these matters having regard to your circumstances;

(b) expressly negate and exclude all conditions and warranties which might otherwise be implied by law; and

(c) are not and will not be liable for any claim by you for breach of representation or warranty unless notice is given in writing to us within five days of delivery and installation of the Equipment or provision of the Services.

8.3 To the extent that the Equipment or Services are not of a kind ordinarily acquired for personal, domestic or household use, our liability to you (if any) arising from the consumer guarantees in the CCA is limited (at our election) to:

(a) replacing or repairing the Equipment, supplying equivalent equipment; or

(b) resupplying the Services or to the cost of doing so.

8.4 To the extent permitted at Law in no circumstance will we be liable to you or any other person for any loss or damage to person or property, or for consequential, special, punitive, incidental, indirect or economic loss or damage or loss of profits, revenue, savings or opportunity arising out of us providing the Equipment and/or Services in connection with this Agreement on any account whatsoever, and whether by way of damages or indemnity or in respect of breach of contract, tort (including negligence) or defect in manufacture/processing, design or information.

8.5 You must indemnify us for costs, damages or claims against us which we incur arising from any breach by you of the terms of this agreement.

### 9. END OF THE TERM AND HOLDING OVER

9.1 If you wish this Agreement to end on the expiry of the Term described on the Schedule to this Agreement you must notify us 3 months before the End Date. If you do not provide that notice then the Term of this Agreement will automatically renew for a further period of 12 months so the new End Date will be on the anniversary of the initial End Date. If you wish this Agreement to end on the new End Date you must notify us at least 30 days before the new End Date. If you do not provide that notice then the Term of this Agreement will continue until either party provides to the other party 30 days notice to terminate this Agreement.

9.2 Where the Term of this Agreement is extended by the operation of clause 9.1 the Monthly Fee will be increased by the greater of 5% or the CPI current at the time for the nearest Capital City to the Location.

## 10. TERMINATION

10.1 If you during the Term of this Agreement:

- (a) fail to make a payment within 14 days of the applicable due date; or
- (b) breach any term of this Agreement and fail to rectify the breach within 14 days of notice being provided to you by us; or
- (c) commit or suffer an act of bankruptcy or being a company you without our written consent go into liquidation, administration or receivership;

then in any such case we can treat this Agreement as fundamentally breached and with or without notice terminate this Agreement whereupon you will immediately return the Equipment to us and failing such return we may repossess the Equipment, and you will immediately pay to us the Total Term Fee less any payments received by us up to the date of termination.

## 11. GENERAL

11.1 You authorise us to complete any blank spaces appearing in the schedule and in particular to insert the Commencement Date and the serial numbers and other identification data of the Equipment.

11.2 This Agreement, and any dispute which arises under, out of or in connection with this Agreement, its negotiation or subject matter are governed by the law of New South Wales and you and us both irrevocably and unconditionally submit to the non-exclusive jurisdiction of the New South Wales courts. We agree that we must both seek to resolve any differences by direct negotiation for not less than 10 days before either of us resort to legal action.

11.3 Any personal information collected by you or us in connection with this Agreement must only be used or disclosed for the purposes of ensuring performance of this Agreement and any future like agreements or arrangements. This may include disclosure within your or our organisations and to other parties involved in performing this Agreement or future like agreements or arrangements. You and we agree to comply with relevant privacy laws in respect of any personal information collected in connection with this Agreement, any orders and any future like agreements or arrangements.

11.4 In this Agreement, another grammatical form of a defined word or expression has a corresponding meaning.

11.5 Headings are inserted for ease of reference only and do not affect the interpretation of this Agreement.

11.6 If part or all of any provision of this Agreement or its application to any person or circumstance is illegal or unenforceable, the provision will be interpreted as may be necessary to ensure it is not illegal or unenforceable. If any provision or part of it cannot be interpreted in that way, the provision or part of it will be severed from this Agreement and the remaining provisions continue in full force and effect.

11.7 Any notice given by us under, or failure by us to insist on strict compliance with, any agreement between you and us (including an accepted order from you) or any delay by us in exercising our rights under any such agreement is not a variation or waiver of any provision of that agreement or of any right available to us.

11.8 A rule of construction does not apply to the disadvantage of us because we prepared this Agreement.

11.9 We may, without notice to You, sell or assign, either absolutely or by way of security, our rights or interests in this Agreement. You may not assign or novate any or all of your rights or obligations under this Agreement to a third party or purport to do so without our prior written consent (which may be given or withheld in our complete discretion).

11.10 All notices under this Agreement must be in writing and delivered by you or us to the other at the address in Australia that the other specifies from time to time.

11.11 Any variation to, or amendment or replacement of, this Agreement as they apply to you must be authorised in writing by us through a duly authorised signatory on our behalf.

11.12 If you are a company or trust, we can terminate this Agreement immediately by notice in writing to you if we form the view that you have undergone a change of control or other change of circumstance whereby we conclude that we would be dealing with a different party or are subject to different commercial considerations if we were to continue dealing with you. We can also terminate this Agreement immediately by notice in writing to you if you sell or transfer all or a material part of your business, assets or undertaking (or agree to do so) without our prior written consent

11.13 No delay or failure to exercise any of our rights or remedies will be a waiver of any of our rights or remedies.

## 12. PPS LAW ASSURANCES

12.1 You acknowledge that this Agreement constitutes a security agreement which creates a Security Interest in favour of us and in all Equipment supplied by us to you. After the Equipment is supplied to you by us to secure the

payments from time to time for the use of the Equipment, including future advances. You agree to grant to us a Purchase Money Security Interest.

12.2 You agree to do anything (such as obtaining consents, completing, signing and producing documents and supplying information) which we consider necessary for the purposes of:

- (a) ensuring that the Security Interest is enforceable, perfected and otherwise effective;
- (b) enabling us to apply for any registration, or give any notification, in connection with the Security Interest so that it has the priority required us; and
- (c) enabling us to exercise any power in connection with the Security Interest.

12.3 Without limiting any other provision of this Agreement, you agree to waive your right to receive any verification statement (or notice of any verification statement) in respect of any financing statement or financing change statement relating to any security interest created under this Agreement.

## 13. DEFINITIONS

13.1 In this document:

**we, our, us or Owner** means Zip Heaters (Aust) Pty Ltd ABN 46 000 578 727 and its officers, employees, agents, contractors and advisers;

**you or your** means the Customer;

**Commencement Date** means the first day of the month following the installation of the Equipment;

**Customer** means the customer set out on the Schedule to this Agreement;

**CCA** means the Competition and Consumer Act 2010 (Cth);

**Start Date** means the first day of the Term of Agreement;

**GST**, supply, tax invoice and taxable supply have the same meaning as in A New Tax System (Goods and Services) Act 1999 (Cth) and Sales Tax means any tax or levy of a sales, value added or goods and service nature applicable to the sale and/or supply of any product or service from time to time under the law applicable to this Agreement and includes stamp duty on this Agreement or any transaction contemplated by them;

**law** means, other than in clauses 8 or 12, any law, by-law, legislation, rule, standard, regulation, registration, code or relevant good industry practice applicable to Equipment and/or Services;

**PPS Law** means the Personal Property Securities Act 2009 (Cth) and any regulation made at any time under that act, including the Personal Property Securities Regulations 2010 (Cth) (each as amended from time to time);

**End Date** means the end date listed on the Schedule to this Agreement

**Equipment** means the equipment listed on the Schedule to this Agreement;

**Related Body Corporate** has the meaning given in section 9 of the Corporations Act 2001 (Cth); and

**Services** means any services supplied or deemed to be supplied by us incidental to the Equipment provided under this Agreement.

**Term** means the term of contract listed on the Schedule to this Agreement.

**Total Term Fee** means the total term fee listed on the Schedule to this Agreement.

## 14. SPECIAL TERMS FOR VESTAL EQUIPMENT

14.1 If the Equipment relating to this Agreement includes Vestal branded equipment the following special terms will apply;

- (a) on termination of this Agreement for any reason you must return all Vestal bottles which may have been supplied free of charge to you during the Term of this Agreement. You agree to pay to us the value of any Vestal branded bottles you fail to return which will be the price of the bottles current at the time of termination;

- (b) The supply of Food Grade CO2 or other beverage gas for sparkling water and other beverage production and dispensing is entirely your responsibility. Instructions on how to exchange gas cylinders will be provided upon installation and also in writing. It is entirely your responsibility to ensure that any legislative requirements regarding the storage and use of beverage gas cylinders on premise are met.