

# TERMS & CONDITIONS

## BOXFISH 360 RENTAL

### 1 Definitions and Interpretation

1.1 In these Terms and Conditions:

- (1) Agreement means the contract between Boxfish and Hirer in relation to the hire of Equipment, which is governed by these Terms and Conditions and quotation provided by Boxfish (if any).
- (2) Boxfish means Boxfish Research Limited (“Boxfish”), a company incorporated in New Zealand, company number , whether acting itself or through one or more of its agents.
- (3) Business Hours are 9:00am to 5:00pm on week days other than public holidays.
- (4) Cycle Billing Period means the period between the expiry of the Initial Period and the return or collection of the Equipment, during which the Hirer will be billed on a periodic basis for the hire of the Equipment. The Cycle Billing Period will commence automatically following the expiration of the Initial Period, and will continue indefinitely until the Equipment is returned or collected in accordance with this Agreement.
- (5) Delivery of the Equipment is deemed to have occurred when it is collected by Hirer or transported to a location at the request of Hirer and Delivered has a corresponding meaning.
- (6) Equipment means the goods hired by Hirer from Boxfish in accordance with this Agreement.
- (7) GST means goods and services tax as that term is defined in the Goods and Services Tax Act 1985.
- (8) Hirer means the person, company or other legal entity hiring the Equipment from Boxfish. Where the context permits, it includes Hirer’s employees and contractors.
- (9) Initial Period means the fixed initial hire period agreed between Boxfish and Hirer together with any agreed extension to this period.
- (10) Rates means the rates notified by Boxfish to Hirer from time to time.
- (11) Rental Period means: (a) the Initial Period; and (b) the Cycle Billing Period.
- (12) Use means use, installation, removal, storage, maintenance or transport by or on behalf of Hirer.

1.2 Every provision of this Agreement is independent of the others. Any provision which is prohibited or unenforceable in any jurisdiction will be deemed removed to the extent of the

prohibition or unenforceability without invalidating the remaining provisions. Unless stated to the contrary, the rights under this Agreement are in addition to any rights that may be conferred by general law.

1.3 This Agreement will be governed by the laws of New Zealand and Boxfish and Hirer submits to the non-exclusive jurisdiction of the courts of that place.

1.4 These Terms and Conditions supersede all previously issued Terms and Conditions. Boxfish is not bound by any terms and conditions contained in any document issued by the Hirer whether issued before or after this Agreement.

1.5 Nothing in these Terms and Conditions restrict or modify any remedy available by law (including the Fair Trading Act 1986 and the Consumer Guarantees Act 1993) where that law precludes any restriction or modification being made.

## **2. Rates and Rental Period**

2.1 During the Rental Period Hirer must pay Boxfish a hire fee calculated in accordance with the Rates.

2.2 The hire fee must be paid in the manner and in accordance with the payment terms specified on any invoice issued by Boxfish or otherwise notified to Hirer from time to time. Boxfish may require payment of some or all of the hire fee prior to Delivery. Hirer must notify Boxfish within seven (7) days of any errors with the invoice.

2.3 Not receiving an invoice will in no way relieve Hirer of its responsibility for the payment of amounts due. Failure to pay amounts due within seven (7) days of a debt becoming due for payment or such term otherwise agreed to in writing by Boxfish will be considered a breach of this Agreement. Hirer must pay Boxfish on demand on a full indemnity basis, all costs incurred in recovering any amount owed to Boxfish by Hirer.

2.4 Hirer is not permitted to claim a reduction in hire fees for Equipment returned before the end of the Initial Period, and except as provided for in clause 8.1, Boxfish will not refund any hire fees prepaid by Hirer for any period outside of the Rental Period.

2.5 Hirer may not deduct or withhold from any part of the hire fee payable by it any amount which is owing or is claimed to be owing, and whether as retention money or otherwise, to Hirer by Boxfish or any other person.

2.6 The hire fees, and all other consideration payable under this Agreement, do not include GST. If a supply made under this Agreement, or as a result of any breach of a term of this Agreement, is subject to GST:

- (1) the recipient must pay the supplier an amount equal to the GST payable by the supplier, at the same time as the consideration for that supply is given; and
- (2) the supplier agrees to give the recipient a tax invoice for that additional amount upon payment.

2.7 Hirer agrees to pay Boxfish a service charge on all past due balances at the rate of 1.5% per month or part thereof from the due date for payment until the payment is made.

### **3. Delivery, Pick up, Installation and Removal**

3.1 Hirer may pick up the Equipment or retain Boxfish to deliver the Equipment.

3.2 If Hirer retains Boxfish to deliver, pick up, install, or remove the Equipment, Boxfish will do so as the agent of Hirer. All Rates assume collection and return of Equipment by Hirer from and to Boxfish's depot. Delivery, installation, dismantling and pickup charges are extra and will be quoted upon request.

3.3 If Boxfish is delayed or prevented from delivering or removing the Equipment to or from any location for any reason beyond its reasonable control, it may charge Hirer additional delivery charges. The additional delivery charges will be based on the duration of delay or the time spent by Boxfish in unsuccessfully attempting to deliver or remove the Equipment, and will be calculated for every period of 15 minutes (or part) using the effective hourly rental rate (based on 6 hours per day).

3.4 If Hirer elects to return the Equipment rather than retaining Boxfish to collect the Equipment, the Equipment must be returned during Business Hours, and to either the Boxfish location from which Hirer initially collected the Equipment, or such other location as nominated by Boxfish.

3.5 Boxfish will issue Hirer with an "off hire" number (which Hirer should retain) once the Equipment has been returned or Boxfish is retained to collect the Equipment. The off hire number confirms the expiration of the Rental Period.

3.6 Hirer is liable for all costs, expenses, damages or loss (including consequential loss) which may arise as a direct or indirect result of the delivery, pick up, installation or removal of the Equipment by Boxfish as agent for Hirer, and whether caused by Hirer, Boxfish, or any other person.

### **4. Receipt of Equipment**

4.1 On Delivery of the Equipment, Hirer must satisfy itself that:

(1) it has received the Equipment in good condition in the quantity ordered;

(2) it, and any employee or contractor using the Equipment, has been fully instructed in the use of the Equipment and understands its proper use and means of installation and removal; and

(3) the Equipment is suitable and fit for the purpose for which Hirer intends to use it, and must notify Boxfish within 24 hours if it is not so satisfied. Failing such notification, Hirer will be deemed to have accepted the Equipment in the condition in which it was provided and as suitable and fit for the purpose for which Hirer intends to use the Equipment.

4.2 Hirer acknowledges that it is responsible for properly securing the Equipment for the purpose of transportation so as to ensure its safe transport to and from the location where the Equipment will be used by Hirer.

### **5. Use of the Equipment**

5.1 Hirer must ensure that the Equipment is Used strictly in accordance with Boxfish's

instructions and any procedures recommended by Boxfish from time to time.

5.2 Hirer must at all times keep the Equipment in good condition and must not, without Boxfish's prior written consent alter or make additions to the Equipment, or deface, remove or conceal any Boxfish logo, identifying mark or number, or indication of Boxfish's ownership of the Equipment.

5.3 Hirer must at all times ensure that the Equipment is Used in a safe manner, and must not deliberately damage, abuse or mistreat Equipment or allow Equipment to be deliberately damaged, abused, or mistreated.

5.4 If any damage, loss, theft or destruction of the Equipment occurs, whether Hirer was responsible or not, Hirer must, immediately notify Boxfish and provide full details of the damage, loss theft or destruction.

5.5 Hirer must ensure that Use of the Equipment is at all times strictly in accordance with:

(1) all applicable laws, and

(2) any relevant industry usage, custom and standards for goods similar to the Equipment.

5.6 Hirer must obtain and maintain, at its own expense, any insurance, permit or license that may be required under any law or by any statutory or other authority for the Use of the Equipment.

## **6. Damaged and Missing Equipment**

6.1 If Equipment is returned or collected in a condition which in the reasonable opinion of Boxfish renders it unusable for hire, or if Equipment is stolen or missing, Hirer must pay Boxfish on demand the cost of replacement or repair of the Equipment. In no circumstances will title to the Equipment or any part of it pass to Hirer.

6.2 Other than for the cost of replacing or repairing the Equipment, which will be dealt with under clause 6.1, Hirer will be liable for all costs, expenses, damages and loss (including consequential loss), incurred by Boxfish arising out of the Equipment not being returned or collected, including where the Equipment has been stolen or is missing.

## **7. Damage Waiver**

7.1 When a damage waiver charge (at Boxfish's then current rate) is paid by the Hirer, Boxfish will not make a claim against the Hirer for any accidental damage to the Equipment during the period covered by the charge. This damage waiver is conditional upon the Hirer paying a \$1000 excess per claim event, and only applies when the Hirer has Used the Equipment in accordance with this Agreement.

## **8. Boxfish's Rights**

8.1 Boxfish may terminate this Agreement and recover the Equipment at any time on 7 days written notice to Hirer. If Boxfish exercises this termination right, Boxfish will refund Hirer for any hire fees received by Boxfish which relate to Equipment hired outside the Rental Period, less a deduction for reasonable expenses incurred by Boxfish in connection with the

recovery and/or transport of the Equipment.

8.2 Boxfish may enter any premises where the Equipment or any part of it is, or believed to be located for the purpose of:

- (1) inspecting or testing the Equipment,
- (2) protecting Boxfish's rights or interest in the Equipment,
- (3) ensuring compliance with any law, including any law relating to health and safety, or
- (4) exercising its right to take possession or control of the Equipment.

8.3 If Hirer in any way fails to perform or breaches any provision of this Agreement, becomes insolvent or in Boxfish's reasonable opinion is likely to become insolvent, Boxfish may at its discretion do all or any of the following:

- (1) terminate this Agreement upon 7 days' written notice;
- (2) retake possession of the Equipment, holding Hirer fully liable for all hire fees; and
- (3) require Hirer to pay liquidated damages equal to 2 weeks' hire fees (which the parties agree to be a reasonable estimate of the costs incurred by Boxfish in order to retake possession of the Equipment).

8.4 Boxfish shall be entitled to set off against any payment due from it to Hirer hereunder any amount due and payable by Hirer to Boxfish on any account.

8.5 Nothing in this clause 8 limits any rights Boxfish may have at any time:

- (1) in respect of the Equipment;
- (2) against Hirer; or
- (3) against any other person.

## **9. Warranties and guarantees**

9.1 Where the Equipment is supplied for the purposes of a business in terms of sections 2 and 43 of the Consumer Guarantees Act 1993, this Agreement is not subject to the guarantees contained in that Act.

9.2 Subject to clause 1.5 and to the maximum extent permitted by law:

- (1) Boxfish excludes all conditions, warranties, guarantees or representations (expressed or implied) in relation to this Agreement or its subject matter, including all warranties and guarantees as to the quality, suitability or fitness of the Equipment for any particular purpose;
- (2) Boxfish is not responsible to Hirer or to any other person for any loss (including consequential loss), damage, or injury, caused by, resulting from or in any way connected with, the Use of the Equipment, howsoever caused, including due to Boxfish's negligence, breach of contract, breach of any law, in equity, or under any indemnity, and
- (3) Boxfish will not be responsible for failure or delay in Delivery, pick up, installation or removal and will have no liability to Hirer or any other person for any loss (including any consequential loss) arising out of such failure or delay.

## **10. Liability and Indemnity**

10.1 Hirer is liable for all costs, expenses, damages or loss (including consequential loss) whether caused by Hirer or any other third party, arising directly or indirectly out of the Use of the Equipment.

10.2 To the maximum extent permitted by law, the maximum amount recoverable by Hirer from Boxfish under or in connection with this Agreement is limited to the hire fees paid by Hirer to Boxfish under this Agreement.

10.3 Hirer agrees to indemnify and keep indemnified Boxfish and Boxfish's employees, agents and contractors from all costs, expenses, damages, suits, actions, claims and demands which they may suffer or incur arising either directly or indirectly out of the Use of the Equipment.

10.4 Hirer must not do or allow to be done any act matter or thing which may invalidate or prejudice any:

- (1) insurance policy effected by Boxfish,
- (2) Boxfish defence or prosecution of any claim, or
- (3) right Boxfish may have against any person.

## **11. Title and Security**

11.1 Title to the Equipment remains with Boxfish at all times, but subject to clause 11.2. Hirer must not grant or allow to subsist any security interest or encumbrance over the Equipment, or allow Boxfish's interest and/or title (or if Boxfish is not the owner, the title of the owner) to be adversely affected in any way.

11.3 Hirer must not make any representation or do anything that may tend to induce any person to believe the Equipment is not the property of Boxfish (or, as applicable, any supplier of the Equipment to Boxfish). If possession of the Equipment is taken by or given to any third party for any reason, Hirer authorises Boxfish to take any action it deems necessary to protect its rights in the Equipment, at the cost of Hirer.

11.4 If Boxfish determines that this Agreement (or a transaction in connection with it) is or contains, or might constitute, a security interest for the purposes of the Personal Property Securities Act 1999 ("PPSA"), Hirer agrees at its own cost and upon request to do anything (such as obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which Boxfish considers necessary for the purposes of:

- (1) ensuring that the security interest is enforceable, perfected and otherwise effective;
  - (2) enabling Boxfish to apply for any registration, or give any notification, in connection with the security interest so that the security interest has the priority required by Boxfish; and
  - (3) enabling Boxfish to exercise rights in connection with the security interest,
- and to the extent Part 9 of the PPSA applies, the Hirer waives the right to receive notice under section 120 of the PPSA and to object under section 121 of the PPSA.

11.5 The Hirer waives the right to receive a copy of the verification statement under section 148 of the PPSA confirming registration of a financing statement or a financing change statement relating to Boxfish's interest in the Equipment.

## **12. Location and Use of Equipment**

12.1 Hirer must expressly inform Boxfish of the location of the Equipment during the Rental Period.

12.2 Hirer must not:

- (1) part with possession of the Equipment;
- (2) allow any other person to use the Equipment; or
- (3) permit removal of the Equipment from the location at which Hirer represented it would be located;

without the prior written consent of Boxfish.

12.3 Hirer must store the Equipment in a safe place, and do all other things necessary to ensure the continued safety and preservation of the Equipment.

## **14. Collection, Storage and Use of Information**

14.1 Hirer authorises Boxfish to collect, store, use and disclose information about Hirer for the purposes related to the provision of hire services (including whether to allow credit on Hirer's account), reporting information to any credit agency, marketing Boxfish's goods and services, and enforcing any rights under this Agreement.

14.2 Hirer expressly consents to receiving commercial electronic messages from Boxfish and its agents for the purposes of the Unsolicited Electronic Messages Act 2007. Hirer may withdraw its consent at any time by notifying Boxfish in writing.

14.3 Where personal information is collected, stored or used by Boxfish, it will be dealt with in accordance with the Privacy Act 1993. In particular, any individual may access personal information held about him or her (subject to the permissible limitations contained in the Privacy Act 1993), and may request correction of that personal information. Further information about the handling of personal information including requests for access to personal information may be obtained from Boxfish's Privacy Officer.

14.4 Boxfish will comply with the Privacy Act 1993 and the Information Privacy Principles. A copy of Boxfish's privacy statement can be obtained by visiting [www.boxfish.nz/privacy](http://www.boxfish.nz/privacy).

## **15. Hirer's Warranties**

15.1 Any person signing any document on behalf of Hirer in respect of the hire of the Equipment warrants that they:

- (1) have Hirer's authority to contract with Boxfish on Hirer's behalf; and
- (2) have been authorised by Hirer to bind Hirer to hire the Equipment under this Agreement, and agrees to indemnify Boxfish against all losses, costs and claims incurred by Boxfish if this is not the case.

15.2 If there is any variation to the legal structure or management of Hirer, including (but not limited to) change in directors, senior management or trustee, or change in partnership or conversion to or from a company or to or from a trust, Hirer must notify Boxfish in writing within 7 days providing details of that change.

15.3 Hirer may not assign, or grant a security interest over, in whole or in part this Agreement or any benefit under this Agreement without Boxfish's prior written consent.

## **16. Changes to Terms and Conditions**

16.1 Boxfish may amend these Terms and Conditions at any time by publishing the amendments on its website [www.boxfish.nz](http://www.boxfish.nz) or otherwise notifying Hirer in writing. Such amended Terms and Conditions will govern each subsequent hire of equipment by Boxfish to Hirer.

## **17. General**

17.1 Any failure of Boxfish to insist upon strict performance by Hirer of the conditions and terms of this Agreement will not be construed as a waiver of Boxfish's right to demand strict compliance.

17.2 Boxfish may exercise its rights under this Agreement personally or through its agents.