



UNITED CRATE CO-OPERATIVE LTD

TERMS & CONDITIONS OF HIRE

SEPTEMBER 2006 (2)

1. Definitions

- 1.1 "Agreement" means the Hire Agreement between Unicrate and the Hirer, these Terms and Conditions and where applicable the Credit Account Application.
- 1.2 "Charges" include Hire Charges, compensation, taxes, duties, legal costs on an indemnity basis, expenses, commissions, interest and any other money which the Hirer (whether alone or not) is or at any time may become actually or contingently liable to pay to or for the account of Unicrate (whether alone or not) in connection with the Agreement.
- 1.3 "Claim" includes any claim, costs, demand, proceeding, appeal, right or action of every nature whatsoever, howsoever, whensoever and wheresoever arising whether in contract, tort, equity or under any other principle of law or statute of Western Australia or any other jurisdiction that all.
- 1.4 "Crates" means plastic crates, bulk bins and any other goods, hired by Unicrate to the Hirer from time to time.
- 1.5 "Hire Charge" means the hire charge charged by Unicrate to the Hirer in Unicrate's invoices to the Hirer.
- 1.6 "Hirer" means the Hirer referred to in the Hire Agreement or any person who comes into possession of Crates hired by Unicrate.
- 1.7 "Hire Period" means the period from the time and date on which the Hirer takes delivery of Crates for hire and the return of the Crates to Unicrate or its authorised agent.
- 1.8 "Produce" means fresh fruit and fresh vegetables.
- 1.9 "Unicrate" means United Crate Co-operative Limited.

2. Interpretation

In this Agreement

- 2.1 the singular includes the plural and vice versa;
- 2.2 "it" includes he, she or they as the case may be;
- 2.3 a particular person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- 2.4 an agreement, representation, warranty in favour of two or more persons is for the benefit of them jointly and each of them individually;
- 2.5 an agreement, representation or warranty on the part of two or more persons binds them jointly and each of them individually;
- 2.6 the terms contained herein are in addition to and, in the case of a conflict, supersede any terms previously agreed upon by Unicrate and the Hirer;
- 2.7 the words "include", "including", "for example" or "such as" are not used as, nor are they to be interpreted as words of limitation and when introducing an example do not limit the meaning of the words to which the example relates to that example or examples of a similar kind;
- 2.8 headings used in this Agreement are for convenience only and shall not affect its construction, interpretation or meaning and do not form part of this Agreement.

3. Hire of Crates

- 3.1 Unicrate hires the Crates to the Hirer on the terms of this Agreement. The Agreement constitutes the entire Agreement between the parties.
- 3.2 Unicrate may amend or replace the Agreement (including the Hire Charges) by written notice. Any and all subsequent rental of the Crates will be on the amended or replaced terms.
- 3.3 The Hirer must pay Unicrate the Hire Charges for the Hire Period.
- 3.4 The Hirer must not part with possession of any Crate unless:
 - 3.4.1 it is returned to Unicrate; or
 - 3.4.2 it is transferred to another Hirer with Unicrate's prior approval.
- 3.5 The maximum period of hire for any Crate is 14 days and any crate hired must be returned by the Hirer to Unicrate within 14 days of the date of commencement of hire.
- 3.6 A hire charge will be charged to the Hirer for any crate not returned within 14 days at such rate as shall be determined from time to time and notified by Unicrate. The Hire Charges accrue in units of 14 days and will accrue in full even if the Crates are in possession of the Hirer for only part of that period.

4. Crate Deposits

- 4.1 "Crate Deposit" means a sum of money payable to Unicrates or its agent by the Hirer to secure the return of the Crates in good condition which sum will be determined by Unicrates from time to time in its absolute discretion and notified to Hirers on its website or posted at its business premises..



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- 4.2 It is a condition of the hire of a Crate from Unicrates that the Hirer pay the Crate Deposit.
- 4.3 Unicrates may deduct from the Crate Deposit any overdue or unpaid Hire charge payable by the Hirer.
- 4.4 The Hirer agrees that Unicrates may deduct from the Crate Deposit the cost of repair or replacement of a damaged, destroyed or lost Crate.
- 4.5 The Crate Deposit will be refunded to the Hirer upon the return of the Crate to the premises of Unicrate in good condition and subject to the due compliance by the Hirer of all conditions of Hire.

5. Notices

Notice of amendments or replacements to the Agreement by Unicrate (including the Hire Charges and interest rates) and any other notices from Unicrate to the Hirer will be taken to be given or made the earlier of

- 5.1 the time and date when the notice is delivered, received or left at the address or fax number of the Hirer shown in the Hire Agreement or Credit Account Application or to any other address or fax number which the Hirer may have notified Unicrate but, if delivery or receipt is on a day on which business is not generally carried on in the place to which the communication is sent or is later than 4pm (local time), it will be taken to have been given or made at the commencement of business on the next day on which business is generally carried on in that place; or
- 5.2 the time and date when the notice posted on Unicrate's website.

6. Taxes

The Hirer must pay Unicrate the Hire Charges specified in Unicrate's invoices which includes:

- 6.1 any taxes, duties (including stamp duty), levies, charges or imposts on or in connection with the Agreement; and
- 6.2 a sum equal to the amount of any goods and services tax (GST) payable by Unicrate on any supplies made by Unicrate under or in connection with the Agreement, calculated by multiplying the GST exclusive consideration payable for the relevant supply or supplies by the prevailing GST rate.

7. Due Date

- 7.1 The Hirer must pay the Hire Charges to Unicrate within seven (7) days of the date of Unicrate's invoice to the Hirer free from all deductions, set-offs and counterclaims.
- 7.2 Where any amount payable under the Agreement becomes overdue, all Charges whether due to Unicrate under the terms of the Agreement will become immediately due and payable by the Hirer to Unicrate.

8. Expenses

The Hirer must pay Unicrate on demand any costs or expenses incurred by Unicrate in relation to any actual or contemplated enforcement of the Agreement, or the actual or contemplated exercise, preservation or consideration of any rights, powers or remedies under the Agreement which includes legal costs and expenses on a full indemnity basis.

9. Interest

- 9.1 The Hirer must pay Unicrate interest calculated on overdue amounts from the due date of payment to the date of actual receipt of payment at the rate of 15% per annum or at such other rate as shall be determined by Unicrate from time to time and notified to the Hirer.
- 9.2 Except where this Agreement provide otherwise, interest accrues at the rate set out above on each unpaid amount which is due and payable by the Hirer under or in respect of this Agreement both before and after judgment (as a separate and independent obligation).

10. Ownership of Crates

- 10.1 The Crates are and at all material times shall remain the property of Unicrate.
- 10.2 The Hirer has no right, title, property or interest in the Crates except as bailee and must not sublet, transfer, dispose of or otherwise deal with any rights of interest in the Crates. The Hirer must do everything necessary to protect the rights of Unicrate in the Crates.
- 10.3 Payment of compensation, or any other circumstance or event, does not constitute or result in any transfer of property or interest in the Crates from Unicrate.

11. Risk in the Crates

- 11.1 Risk in the Crates passes to the Hirer on delivery of the Crates to the Hirer.
- 11.2 The Hirer is liable to Unicrate for any and all loss or damage to, or caused by the Crates or caused by the use of the Crates during the Hire Period, and all costs incurred in respect of the Crates including the cost of repairing or



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- replacing
the Crates at the full new replacement cost, salvage costs and Hire Charges incurred while the Crates are repaired or replaced.
- 11.3 The liability of the Hirer to Unicrate set out above includes all claims that are made against or suffered by Unicrate.
- 12. Use of the Crates**
- 12.1 The Hirer acknowledges that its purpose in hiring the Crates is to transfer Produce and for no other purpose.
- 12.2 The Hirer may not
- 12.2.1 use the Crates; or
- 12.2.2 allow the Crates to be used,
for any other purpose in the absence of Unicrate's prior written authorisation;
- 12.3 The Hirer may not permit the Crates to be transported out of the State of Western Australia or to the North-West of the State above the 26th parallel.
- 12.4 Without limiting the generality of these clauses, the Crates cannot be used for any of the following purposes:-
- 12.4.1 for display of produce or any other goods;
- 12.4.2 storage.
- 12.5 The Hirer must not reuse the Crates unless Unicrate gives its prior written authorisation.
- 12.6 The Hirer must immediately report any claim, accident, damage or loss in respect of the Crates to Unicrate.
- 13. Claims**
- 13.1 The Hirer must inspect the Crates upon delivery and if the Hirer believes the Crates are damaged, incorrect or otherwise not in accordance with the Agreement or the Hirer's order, the Hirer must give written notice to Unicrate setting out full particulars and evidence of the Hirer's claims, within seven (7) of delivery of the Crates.
- 13.2 If Unicrate does not receive that written notice from the Hirer with the specified seven (7) days, the Hirer is deemed to have accepted the Crates and the Hirer waives and abandons any claim against Unicrate
- 13.2.1 in respect of the Crates; and
- 13.2.2 in connection with the Crates or any related matter.
- 13.3 Even if the Hirer complies with clauses set out above the entire extent of Unicrate's liability is limited to the replacement or repair of the defective Crates if, upon Unicrate's inspection, the Crates are deemed by Unicrate to be defective as claimed by the Hirer.
- 13.4 The Hirer shall bear all transportation and handling costs in respect of Crates returned to Unicrate pursuant to these clauses.
- 14. Destruction or Loss of the Crates**
- 14.1 If the Hirer establishes to Unicrate's satisfaction that Crates on hire have been destroyed or lost the Hirer must pay to Unicrate compensation in a liquidated amount equal to the then current value, as determined by Unicrate, of the Crates.
- 14.2 The Hirer remains liable to Unicrate for hiring charges in respect of destroyed or lost Crates until payment of the compensation required by these clauses.
- 14.3 Where Crates which are in Unicrate's opinion contaminated, rendered unusable or damaged beyond reasonable repair are returned to Unicrate, those Crates will be treated as Destroyed Crates and the Hirer must pay compensation for it in accordance with the above together with any costs of disposal, including transport costs.
- 15. Access, Inspection and Repossession**
- 15.1 Unicrate and its employees, agents, contractors, sub-contractors and representatives have the right to enter the location of the Crates at all reasonable times to inspect, maintain, repair or repossess the Crates.
- 15.2 The Hirer must assist Unicrate and its employees, agents, contractors, sub-contractors and representatives in exercising its rights under these clauses.
- 15.3 The Hirer gives Unicrate an irrevocable licence to enter premises occupied, owned or controlled by the Hirer at any time and take any steps Unicrate considers reasonably necessary or appropriate to obtain repossession of Crates.
- 15.4 The Hirer must pay Unicrate 's costs of repossessing the Crates.
- 15.5 The Hirer, or anyone claiming under or through the Hirer, shall not have any claim of any kind howsoever arising against Unicrate or any of Unicrate's employees, agents, contractors, sub-contractors and representatives, as a consequence of any act or omission under these clauses.



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16. General Indemnity

The Hirer continually indemnifies Unicrate and any officer, agent or employee of Unicrate against any claim that anyone else brings in the name of the Hirer or on behalf of the Hirer, arising directly or indirectly out of or in connection with in relation to or arising from:

- 16.1 any breach of the Agreement by the Hirer,
- 16.2 any default, negligent act or omission by the Hirer;
- 16.3 the exercise of Unicrate's rights under this Agreement;
- 16.4 any breach of any laws by the Hirer.

17. Liability

17.1 To the full extent permitted by law all legislation which at any time directly or indirectly:

- 17.1.1 lessens, varies or affects in favour of the Hirer any obligation under this Agreement; or
- 17.1.2 delays, prevents or prejudicially affects the exercise by Unicrate of any right, power or remedy conferred by this Agreement,

is excluded from this Agreement.

17.2 Unicrate's liability for loss or damage (including consequential loss or loss of profit) incurred by the Hirer or a person making a claim against the Hirer is excluded as far as the law permits. To the extent it cannot be excluded, it is limited as far as the law permits to the repair or replacement of the Crates.

17.3 Unicrate and its officers, employees and representatives are not liable to the Hirer for negligent acts or omissions.

18. Control Accounts

The accounts kept by Unicrate constitute sufficient evidence, unless proven wrong, of the amount at any time due by the Hirer to Unicrate under the Agreement.

19. Hirer as Trustee

19.1 Where the Hirer is the trustee of a trust, the Hirer acknowledges that it enters into this Agreement both in its individual capacity and in its capacity as trustee and that:

- 19.1.1 each reference to it is a reference to it in their individual capacity and their capacity as trustee (unless stated otherwise); and
- 19.1.2 all of its obligations under this Agreement bind it in each of those capacities.

19.2 Where the Hirer is the trustee of a trust, the Hirer represents, warrants and agrees, in respect of the trust that:

- 19.2.1 it is the only trustee of the trust;
- 19.2.2 no action has been taken or proposed to remove it as trustee of the trust;
- 19.2.3 it has power under the trust deed to enter into and comply with its obligations under this Agreement;
- 19.2.4 it has in full force and effect the authorisations necessary to make this Agreement, perform obligations under this Agreement and allow them to be enforced (including under the trust deed and its constitution (if any));
- 19.2.5 it has a right to be fully indemnified out of the property held on trust by the trustee under the trust deed in respect of obligations incurred by it under this Agreement;
- 19.2.6 it is not, and has never been, in default under the trust deed;
- 19.2.7 no action has been taken or proposed to terminate the trust;
- 19.2.8 it and its directors and other officers have complied with their obligations in connection with the trust;
- 19.2.9 Unicrate's rights under this Agreement rank in priority to the interests of the beneficiaries of the trust;
- 19.2.10 it has considered the purpose of this Agreement and considers its terms to be fair and reasonable and that the entry into and performance of this Agreement arise for the benefit of the beneficiaries whose consent (if necessary), has been obtained; and prior to the satisfaction of all of its obligations under this Agreement, it will not do anything which:
 - 19.2.10.1 effects or facilitates the retirement, removal or replacement of the trustee;
 - 19.2.10.2 could restrict the trustee's right of indemnity from the property held on trust by the trustee in respect of obligations incurred by the trustee under this Agreement;
 - 19.2.10.3 could restrict or impair the ability of the trustee to comply with its obligations under this Agreement;
 - 19.2.10.4 effects or facilitates the termination of the trust; effects or facilitates the variation of the trust deed;
 - 19.2.10.5 effects or facilitates resettlement of the property held on trust by the trustee;
 - 19.2.10.6 or could result in the property held on trust by the trustee being mixed with other property.



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20. **Severance**

20.1 If any provision of this Agreement

20.1.1 is or becomes void, voidable, illegal or unenforceable in its terms;

20.1.2 would not be void, voidable, illegal or unenforceable if it were read down;

20.1.3 and is capable of being read down,

then that provision will be read down accordingly.

20.2 If, notwithstanding clause the above clause, a provision of this Agreement is still void, voidable, illegal or unenforceable, then:

20.2.1 if the provision would not be void, voidable, illegal or unenforceable if some words were omitted, those words are severed; and

20.2.2 otherwise, the whole provision is severed,

and the rest of this Agreement will be of full force and effect.

21. **No Adverse Construction**

The Agreement is not to be constructed to the disadvantage of a party because that party was responsible for its preparation.

22. **Acknowledgement by the Hirer**

The Hirer acknowledges that the Hirer has not relied on any oral statements, representations, undertakings, covenants or agreements in relation to the subject matter of this Agreement other than those referred to in this Agreement.

23. **Assignment**

23.1 The Hirer may not assign or transfer any of its respective rights or obligations under this Agreement.

23.2 Unicrate may assign or transfer all or any of its rights or obligations under this Agreement at any time.

23.3 Unicrate may disclose to a proposed assignee, transferee or sub-participant information which relates to the Hirer or was furnished in connection with this Agreement.

24. **Survival of Terms**

Unless otherwise stated, the terms and conditions of this Agreement:

24.1 are of a continuing nature and are independent of each other;

24.2 are payable on demand; and

24.3 survive termination or discharge of this Agreement.

25. **No Waiver**

25.1 No failure by Unicrate to exercise and no delay in exercising any right, power or remedy under this Agreement operates as a waiver. Nor does any single or partial exercise of any right, power or remedy preclude any other or further exercise of that or any other right, power or remedy.

25.2 the rights, powers and remedies provided to Unicrate in this Agreement are in addition to, and do not exclude or limit, any right, power or remedy provided by law.

26. **Privacy**

The Hirer agrees that Unicrate may obtain, disclose and use information:

26.1 about the Hirer's credit worthiness or for the purpose of obtaining and maintaining credit information file about the Hirer or collecting overdue payments; and

26.2 about the Hirer for the purpose of providing services to the Hirer, including sharing information with other Unicrate Operations.

27. **Jurisdiction**

27.1 This Agreement is governed by the law applicable in Western Australia.

27.2 Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Perth, Western Australia.