

1. Definitions

- 1.1 “Company” means Champion Containers Ltd, its successors and assigns, or any person acting on behalf of, and with the authority of, Champion Containers Ltd.
- 1.2 “Customer” means the person/s hiring and/or purchasing the Container(s), as specified in any quotation, order, invoice or other document, and if there is more than one Customer is a reference to each Customer jointly and severally.
- 1.3 “Container(s)” means all Containers supplied either on a sale or hire basis by the Company to the Customer, at the Customer’s request, from time to time (where the context so permits the term ‘Container’ shall include the provision of any services by the Company).
- 1.4 “Price” means the price payable for the hire (also referred to as hire charges) and/or purchase of the Container(s) as agreed between the Company and the Customer in accordance with clause 4 below.
- 1.5 “GST” goods and services tax pursuant to the Goods and Services Tax Act 1985, or any similar or replacement legislation.

2. Acceptance

- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for any Container(s), or accepts Delivery.
- 2.2 These terms and conditions may only be amended with the Company’s consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and the Company.

3. Change in Control

- 3.1 The Customer shall give the Company not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer’s details (including but not limited to, changes in the Customer’s name, address, contact phone or fax number/s, or business practice). The Customer shall be liable for any loss incurred by the Company as a result of the Customer’s failure to comply with this clause.

4. Price and Payment

- 4.1 At the Company’s sole discretion, the Price shall be either:
 - (a) as indicated on any invoice provided by the Company to the Customer; or
 - (b) the Company’s quoted Price (subject to clause 4.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 4.2 The Company reserves the right to change the Price:
 - (a) if a variation to the Container(s) which are to be supplied is requested (including the quantity, specifications, Hire Period, date of Delivery, or otherwise, etc.);
 - (b) as a result of an increase in the Company’s costs due to changes in statutory, government, or local body charges, taxes, levies, etc. with respect to the Container(s), which are outside the control of the Company (including, without limitation, increases in the cost of labour or materials, foreign exchange fluctuations, or increases in taxes or customs duties or insurance premiums or warehousing costs);
 - (c) upon one (1) months’ written notice to the Customer.
- 4.3 At the Company’s sole discretion, a non-refundable deposit may be required.
- 4.4 Time for payment for the Container(s) being of the essence, the Price will be payable by the Customer on the date/s determined by the Company, which may be:
 - (a) on, or before, Delivery; or
 - (b) by way of instalments/progress payments in accordance with the Company’s payment schedule; or
 - (c) twenty (20) days following the end of the month in which any invoice/s and/or statement is furnished to the Customer by the Company; or
 - (d) the date specified on any invoice or other form as being the date for payment; or
 - (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice/s furnished to the Customer by the Company.
- 4.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking or by any other method as agreed to between the Customer and the Company.
- 4.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to the Company an amount equal to any GST the Company must pay for any supply of Container(s) by the Company under this, or any other, contract. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
- 4.7 Receipt by the Company of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised, and until then the Company’s rights and ownership in relation to the Container(s), and this contract, shall continue.

5. Delivery

- 5.1 Delivery of the Container(s) (“**Delivery**”) is taken to occur at the time that:
 - (a) the Customer (or the Customer’s nominated carrier) takes possession of the Container(s) at the Company’s premises; or
 - (b) the Company (or the Company’s nominated carrier) delivers the Container(s) to the Customer’s nominated address, even if the Customer is not present at the address.
- 5.2 At the Company’s sole discretion, any costs of Delivery are either included in, or in addition to, the Price.
- 5.3 The Customer must take Delivery, by receipt or collection of the Container(s), whenever they are tendered for Delivery. In the event that the Customer is unable to take Delivery, as arranged, then the Company shall be entitled to charge a reasonable fee for redelivery and/or the storage of the Container(s).
- 5.4 Any time or date given by the Company to the Customer is an estimate only. The Customer must still accept Delivery, even if late, and the Company will not be liable for any loss or damage incurred by the Customer as a result of Delivery being late.

5.5 Hire charges shall commence from the time the Container(s) depart from the Company's premises, and will continue until the return of the Container(s) thereto, and/or until the expiry of any applicable minimum hire period, whichever last occurs.

6. Title

6.1 Where this is a hire contract:

- (a) the Container(s) are, and will at all times remain, the absolute property of the Company, however the Customer accepts full responsibility for:
 - (i) the safekeeping of the Container(s) and indemnifies the Company for all loss, theft, or damage to the Container(s), howsoever 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; and
 - (ii) shall keep the Company indemnified against all liability in respect of all actions, proceedings, claims, damages, costs and expenses in respect of any injury to persons, damage to property, or otherwise arising out of the use of the Container(s) during the hire period and whether or not arising from any negligence, failure or omission of the Customer or any other persons; and
 - (iii) furthermore, the Customer will insure, or self-insure, the Company's interest in the Container(s) against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will effect adequate Public Liability Insurance covering any loss, damage or injury to property arising out of the Container(s). Furthermore, the Customer will not use the Container(s), nor permit them to be used, in such a manner as would permit an insurer to decline any claim.
- (b) The Customer is not authorised to pledge the Company's credit for repairs to the Container(s), or to create a lien over the Container(s) in respect of any repairs.

6.2 Where is this a contract for the purchase of the Container(s):

- (a) the Company and the Customer agree that ownership of the Container shall not pass until:
 - (i) the Customer has paid the Company all amounts owing to the Company; and
 - (ii) the Customer has met all of its other obligations to the Company under this contract.
- (b) It is further agreed that, until ownership of the Container(s) passes to the Customer in accordance with sub-clause (a):
 - (i) the Customer is only a bailee of the Container(s) and must return the Container(s) to the Company on request.
 - (ii) the Customer holds the benefit of the Customer's insurance of the Container(s) on trust for the Company and must pay to the Company the proceeds of any insurance in the event of the Container(s) being lost, damaged or destroyed.
 - (iii) the Customer must not sell, dispose, or otherwise part with possession of the Container(s) other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Container(s) then the Customer must hold the proceeds of any such act on trust for the Company and must pay or deliver the proceeds to the Company on demand.
 - (iv) the Customer should not convert or process the Container(s) or intermix it with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of the Company and must sell, dispose of or return the resulting product to the Company as it so directs.
 - (v) the Company may recover possession of any Container(s) in transit, whether or not Delivery has occurred.
 - (vi) the Customer shall not charge or grant an encumbrance over the Container(s) nor grant nor otherwise give away any interest in the Container(s) while it remains the property of the Company.
 - (vii) the Company may commence proceedings to recover the Price notwithstanding that ownership of the Container(s) has not passed to the Customer.

6.3 The Customer grants the Company (or their agent) the right to (as the invitee of the Customer) enter upon and into land and premises owned, occupied or used by the Customer, or any premises where the Container(s) are situated and take possession thereof, without being responsible for any damage thereby caused in the event of the following:

- (a) at the expiration of any hire period hereby granted; or
- (b) as a result of default by the Customer (including, but not limited to, any default under clause 12, or where the Customer fails to return the Container(s) to the Company); and
- (c) the Customer shall have the Container(s) ready for collection within forty-eight (48) hours. If the Customer fails to adhere to this clause, the Company shall be entitled to:
 - (i) charge the Customer additionally until such time as the Container(s) are ready for collection; and/or
 - (ii) retake possession of the Container(s), including any personal property of the Customer stored therein (and in that instance clause 9.1(b) shall apply to such personal property).

7. Hire of Container(s)

7.1 No allowance whatsoever can be made for time during which the Container(s) are not in use for any reason, unless the Company confirms special prior arrangements in writing. In the event of any malfunction of, or fault in, the Container(s), provided the Customer notifies the Company immediately, hire charges will not be payable during the time the Container(s) are not operational, unless the condition is due to negligence or misuse on the part of or attributable to the Customer.

7.2 The Customer shall:

- (a) inspect the Container(s) on Delivery, to satisfy itself as to the condition, specifications, quality and fitness of the Container(s) for its intended purpose;
- (b) use, maintain, move and store the Container(s) with due care and diligence, and in compliance with the instructions and recommendations of the supplier and manufacturer of the Container(s) as to their use, maintenance and storage, or in accordance with any specific instructions of the Company, and:
 - (i) ensure that all persons use, maintain, move or store the Container(s) safely, strictly in accordance with the law (including all occupation health and safety laws), only for their intended purpose, and in accordance with any manufacturer's instruction whether supplied by the Company or posted on the Container(s);
 - (ii) at their own expense, keep and maintain the Container(s) in proper working order and good and substantial repair;
- (c) ensure that the Container(s) are left locked and/or securely stored when unattended;

- (d) notify the Company immediately by telephone of the full circumstances of any defect, malfunction or accident (including any accident resulting in the injury to persons or damage to the Container(s) or property). The Customer is not absolved from the requirements to safeguard the Container(s) by giving such notification, and must cease use of the Container(s) if such use would in any way aggravate the defect or otherwise prejudicially affect the Container(s);
 - (e) not use the Container(s) for any illegal purpose, or any use which would cause damage thereto, or store any illegal, prohibited, or unprotected corrosive/explosive substances or bulk commodities in, or on, the Container(s) which may corrode, oxidise, explode, dent, puncture, contaminate, stain or damage the interior or exterior of the Container(s);
 - (f) not alter or make any additions to the Container(s), including, but without limitation, altering, make any additions to, defacing or erasing any identifying mark, plate or serial number on, or in, the Container(s), or in any other manner interfere with the Container(s) without the express written approval of the Company;
 - (g) not permit the Container(s), or any part thereof, to be used by any other party for any other purpose, without the express written approval of the Company;
 - (h) not exceed the recommended or legal load and capacity limits of the Container(s);
 - (i) keep the Container(s) in their own possession and control and shall not assign the benefit of this contract, nor be entitled to lien over the Container(s);
 - (j) not fix the Container(s) in such a manner as to make them legally a fixture forming part of any freehold;
 - (k) not move the Container(s) from the nominated address without the express written approval of the Company;
 - (l) grant the Company the right to enter the nominated address where the Container(s) are stored at all reasonable times to view the state thereof;
 - (m) on termination of the hire period, return the Container(s) to the Company (complete with all parts and accessories), clean and in good, serviceable condition as delivered, fair wear and tear accepted.
- 7.3 Immediately on request by the Company the Customer will pay:
- (a) the new list price of any Container(s) that are for whatever reason destroyed, written off or not returned to the Company;
 - (b) all costs incurred in cleaning the Container(s), if required;
 - (c) all costs of repairing any damage caused by:
 - (i) the ordinary use of the Container(s) up to an amount equal to ten percent (10%) of the new list price of the Container(s);
 - (ii) the negligence of the Customer or the Customer's agent;
 - (iii) vandalism, or (in the Company's reasonable opinion) in any way whatsoever other than by the ordinary use of the Container(s) by the Customer;
 - (d) any costs incurred by the Company in collecting and returning the Container(s) to the Company's premises if the Customer does not return the Container(s) to the Company's premises or any pre-agreed pickup location when it was originally agreed that the Customer would do so;
 - (e) any hire charges the Company would have otherwise been entitled to for the Container(s), under this, or any other contract;
 - (f) any insurance excess payable in relation to a claim made by either the Customer or the Company in relation to any damage caused by, or to, the Container(s) whilst the same is hired by the Customer, and irrespective of whether charged by the Customer's insurers or the Company's.

8. Sale of Container(s)

- 8.1 Risk of damage to or loss of the Container(s) passes to the Customer on Delivery, and the Customer must insure the Container(s) on, or before, Delivery.
- 8.2 If any Container(s) are damaged or destroyed following Delivery, but prior to ownership passing to the Customer, the Company is entitled to receive all insurance proceeds payable for the Container(s). The production of these terms and conditions by the Company is sufficient evidence of the Company's rights to receive the insurance proceeds without the need for any person dealing with the Company to make further enquiries.
- 8.3 If the Customer requests the Company to leave Container(s) outside the Company's premises for collection, or to deliver the Container(s) to an unattended location, then such Container(s) shall be left at the Customer's sole risk.
- 8.4 In the case of second-hand/used Container(s), unless the Customer is a consumer under the CCA, the Customer acknowledges that it has had full opportunity to inspect the Container(s) prior to Delivery and accepts them with all faults and that to the extent permitted by law no warranty is given by the Company as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Customer acknowledges and agrees that the Company has agreed to provide the Customer with the Container(s), and calculated the Price thereof, in reliance of this clause 8.4.

9. Personal Property Securities Act 1999 ("PPSA")

- 9.1 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in:
 - (a) all Container(s), and/or any monetary obligation of the Customer to the Company for services, previously supplied (if any), and will be supplied in the future, by the Company to the Customer; and
 - (b) all personal property of the Customer in the possession of the Company which have been stored in the Container(s), over which the Company invokes a lien.
- 9.2 The Customer undertakes to:
 - (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Company may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) indemnify, and upon demand reimburse, the Company for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any registration made thereby;
 - (c) not register a financing change statement or a change demand without the prior written consent of the Company.

- (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the registration in favour of a third party without the prior written consent of the Company;
 - (e) immediately advise the Company of any material change in its business practices of selling the Container(s) which would result in a change in the nature of proceeds derived from such sales.
- 9.3 The Company and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 9.4 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 9.5 Unless otherwise agreed to in writing by the Company, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 9.6 The Customer shall unconditionally ratify any actions taken by the Company under clauses 9.1 to 9.5.
- 9.7 Only to the extent that the hire of the Container(s) exceeds a ninety (90) day hire period (with the right of renewal), shall this clause 9 apply, and this contract a security agreement for the purposes of PPSA generally, and in particular Section 36.

10. Security and Charge

- 10.1 In consideration of the Company agreeing to supply the Container(s), the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 10.2 The Customer indemnifies the Company from and against all the Company's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Company's rights under this clause.
- 10.3 The Customer irrevocably appoints the Company and each director of the Company as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 10 including, but not limited to, signing any document on the Customer's behalf.

11. Defects

- 11.1 The Customer shall inspect the Container(s) on Delivery and shall within seven (7) days thereof (time being of the essence) notify the Company of any alleged defect, shortage in quantity, damage or failure to comply with the description or the Company's quotation. The Customer shall afford the Company an opportunity to inspect the Container(s) within a reasonable time following such notification if the Customer believes the Container(s) are defective in any way. If the Customer shall fail to comply with these provisions the Container(s) shall be presumed to be free from any defect or damage. For any defective Container(s), which the Company has agreed in writing that the Customer is entitled to reject, the Company's liability is limited to either (at the Company's discretion) replacing the Container(s) or repairing the Container(s).
- 11.2 The Container(s) will not be accepted for return other than in accordance with 11.1 above.

12. Default and Consequences of Default

- 12.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Company's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 12.2 If the Customer owes the Company any money the Customer shall indemnify the Company from and against all costs and disbursements incurred by the Company in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Company's collection agency costs, and bank dishonour fees).
- 12.3 Without prejudice to any other remedies the Company may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions the Company may suspend or terminate the supply of Container(s) to the Customer (or repossess the Container(s) under clause 6.3). The Company will not be liable to the Customer for any loss or damage the Customer suffers because the Company has exercised its rights under this clause.
- 12.4 Without prejudice to the Company's other remedies at law, the Company shall be entitled to cancel all, or any part, of any order of the Customer which remains unfulfilled, and all amounts owing to the Company shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to the Company becomes overdue, or in the Company's opinion the Customer will be unable to make a payment when it falls due;
 - (b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

13. Cancellation

- 13.1 The Company may cancel any contract to which these terms and conditions apply, or cancel the supply of Container(s) at any time before the Container(s) are delivered, by giving written notice to the Customer. On giving such notice the Company shall repay to the Customer any money paid by the Customer for the Container(s). The Company shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 13.2 In the event that the Customer cancels this contract, or Delivery, the Customer shall be liable for any and all loss incurred (whether direct or indirect) by the Company as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 13.3 Cancellation of orders for any Container(s) made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once an order has been placed.

14. Privacy Act 1993

- 14.1 The Customer authorises the Company or the Company's agent to:
- (a) access, collect, retain and use any information about the Customer;

- (i) (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Customer's creditworthiness and enforcing any rights given to either party under this contract;
 - (ii) for the purpose of marketing products and services to the Customer.
 - (b) disclose information about the Customer, whether collected by the Company from the Customer directly or obtained by the Company from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Customer.
- 14.2 Where the Customer is a natural person/individual the authority given in clause 14.1 ensures compliance on the behalf of the Company with the Privacy Act 1993.
- 14.3 The Customer shall have the right to request the Company for a copy of the information about the Customer retained by the Company and the right to request the Company to correct any incorrect information about the Customer held by the Company.

15. Miscellaneous

- 15.1 The failure by the Company to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Company's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 15.2 Unless expressly negated or varied, these terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of New Zealand.
- 15.3 The Company shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Company of these terms and conditions (alternatively the Company's liability shall be limited to damages which under no circumstances shall exceed the Price).
- 15.4 The Company may license or sub-contract all or any part of its rights, title, interest and/or obligations under this contract (including amount due and to become due) without the Customer's consent.
- 15.5 The Customer agrees that the Company may amend these terms and conditions at any time. If the Company makes a change to these terms and conditions, then that change will take effect from the date on which the Company notifies the Customer of such change. The Customer will be taken to have accepted such changes if the Customer makes a further request for the Company to supply Container(s) to the Customer.
- 15.6 The Customer hereby disclaims any right to rescind, or cancel any contract with the Company or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Customer by the Company and the Customer acknowledges that the Container(s) are purchased or hired relying solely upon the Customer's skill and judgment.
- 15.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 15.8 The Customer warrants that it has the power to enter into this contract and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this contract creates binding and valid legal obligations on it.
- 15.9 Any personal guarantee made by a third party shall not exclude the Customer in any way from the liabilities and obligations contained in this contract, and such guarantor/s and the Customer shall be jointly and severally liable under the terms and conditions of this contract.
- 15.10 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by the Company nor to withhold payment of any invoice because part of that invoice is in dispute.