

## TERMS AND CONDITIONS OF SUPPLY

### 1. Interpretation

In this agreement unless necessarily inconsistent with the context:

“The Customer”	means the customer or any person acting on behalf of and with the authority of the customer as described on any quotation, authorization or other form as provided by the Company to the Customer.
“The Company”	means Port Melbourne Containers Pty Ltd (ACN 118 191 183) and includes its officers, agents, assigns and successors.
“Charges”	means the amounts invoiced by the Company from time to time and the amounts listed in Clause 5.
“Commencement”	means the date and the time of the Equipment delivery to the Customer.
“Equipment”	means all of the equipment, tools and accessories sold or hired to the Customer
“Hire Period”	means the period from Commencement date and time until the date and the time the Equipment is returned to and in possession of the Company or termination. The anticipated Hire Period is from the Commencement date until the equipment is returned to the Company.

2. In consideration of the Charges, the Company will sell the Equipment to the Customer or allow the Customer to take possession of and use the Equipment during the Hire Period. Unless notified otherwise in writing, the Customer acknowledges that the Equipment has been used prior to the Customer’s purchase or hire of it.
3. AVAILABILITY: The Company does not warrant or represent that any particular part or product will be available or become available at any time.
4. PRICING: The Company reserves the right to change pricing and product specifications without prior notification. In the absence of written agreement of the Company, all orders will be invoiced at prices in effect at the time of shipment. Prices shall exclude GST (unless and to the extent otherwise indicated) which shall be payable to the Company. Unless otherwise agreed in writing, any deposit shall be non-refundable. Interest will accrue in respect of any money payable to the Company at a rate of five per cent higher than the rate fixed under section 2 of the *Penalty Interest Rates Act 1983 (Vic)* (as amended from time to time), calculated on a daily outstanding basis.
5. CUSTOMER OBLIGATIONS: The Customer must:
  - a. Pay the hire fees set out in the Schedule. If the Equipment is not returned by the date set out in the Schedule, then the hire fees shall continue to accrue until the Equipment is returned to the Company. The balance of the hire fees shall be payable immediately on the return of the Equipment.
  - b. Immediately on request by the Company, pay the following:
    - (i) the new list price of any Equipment that for whatever reason is not returned to the Company either following the expiry of the Hire Period or a request by the Company for return of the Equipment;
    - (ii) all costs, fees, charges and expenses incurred in cleaning the Equipment;
    - (iii) all costs, fees, charges and expenses associated with repairing any damage to the Equipment until it is returned to the Company;
    - (iv) all stamp duties, Goods and Services Tax, and other taxes or duties, penalties, levies or charges payable by either the Company or the Customer in respect of this Agreement and the hiring of the Equipment;
    - (v) all costs, fees, charges and expenses associated with or incurred by the Company in delivering and recovering possession of the Equipment;
    - (vi) interest in accordance with **clause 4** above;

- (vii) all cost of fuels and consumables provided by the Company and used by the Customer at a price determined by the Company;
  - (viii) all costs, fees, charges and expenses (including, without limiting the generality of the foregoing, legal fees and commission payable to a commercial agent) incurred as a result of a failure by the Customer or its agent to pay any other amounts payable under this Agreement when due; and
  - (ix) all costs, fees, charges and expenses associated with or relating to repairs to or replacement of the Equipment that is damaged, including without limiting the generality of the foregoing, transportation and repossession costs, fees, charges and expenses.
- c. deliver the Equipment to the Company when it is due back to the address at which the Equipment was provided unless otherwise agreed in writing.
  - d. return the Equipment to the Company clean in good repair and in the condition in which was provided to the Customer.
  - e. immediately communicate to the Company, initially verbally and then in writing as soon as is practicable after the event, of any damage occurring to the Equipment for whatever reason.
  - f. comply with all provisions of this Agreement in respect of any damage.
  - g. satisfy itself at the Commencement that the Equipment is, clean, in working order and suitable for its purpose;
  - h. operate the Equipment safely and strictly in accordance with the law, only for its intended use, and in accordance with any manufacturer's instructions whether supplied by the Company or posted on the Equipment or manuals.
  - i. indemnify the Company for all damage caused to persons and property in relation to the Equipment and its operation and take out and maintain sufficient insurance to cover any legal liabilities incurred as a result of the use of the Equipment or its manual.
  - j. ensure that all persons operating or erecting or using the Equipment are suitably instructed in its safe and proper use and where necessary hold a current Certificate of Competency and are fully licensed.
  - k. comply with all occupational health and safety laws relating to the Equipment and its operation.
  - l. safely secure all items loaded in or on the Equipment or in or on the Customer's vehicle.
  - m. hold the Equipment as bailee. It will accordingly be responsible for any loss or theft of the equipment.
  - n. immediately on the request of the Company return possession of the Equipment whether or not the Hire Period has expired.
  - o. Maintain and service the Equipment by authorized personnel while the Equipment is in the Customer's possession pursuant to this agreement.
6. **TERMS:** Rental payment is to be made monthly in advance on the 1<sup>st</sup> day of each month. Purchase price is payable in accordance with the invoice. Acceptable methods of payment are cash or electronic funds transfer. Time shall be of the essence in respect of the customer's obligation to make payment for and take delivery of the products.
7. **DELIVERY:** Where delivery is arranged by the Company, risk in the product passes to the Customer upon delivery. Where the Customer arranges delivery, orders will be shipped freight collect and risk will pass to the customer on

collection of the goods from the Company. Where requested by the customer, the Company may, at its election, arrange delivery and charge for each individual shipment. Failure to accept delivery, delays in accepting delivery or difficult site access may incur further fees, including, without limitation, demurrage fees.

8. **TITLE:** The customer shall have no ownership of property or title in the products and shall hold the products as bailee for the Company. The customer must keep the goods subject to this **clause 8** separate from other goods received by the customer and mark the products as being the property of the Company. Any monies received from the sale of goods subject to this **clause 8** must be held separate from other monies of the customer or its agents and must be held for the benefit of the Company and paid to the Company until the debt is paid in full. The Customer acknowledges and agrees that if it fails to make complete and timely payment for the goods, the Company's representatives can enter the premises where the goods are located and take possession of those goods.
9. **CLAIMS:** Claims for defects, shortages or incorrect products must be made to the Company on receipt of the goods. If the Company is not notified about the defect, shortages or incorrect product on the day of delivery, the Customer shall be conclusively deemed to have accepted the goods supplied in full and final satisfaction of the contract for the hire or sale of goods or services.
10. **RETURNS:** Items returned under warranty shall be subject to factory inspection and will, at the sole discretion of the Company:
  - a. replaced by the same or equivalent goods; or
  - b. repaired.
11. Any alterations to the items or negligence (including incorrect or abnormal installation and use) will void any warranty and costs for repair or replacement of such items will be charged to the Customer. Any items to be returned are to be shipped freight prepaid to the Company. Authorised warranty claims will be returned to the customer freight free.
12. The Customer must not:
  - a. tamper with, damage or repair the Equipment;
  - b. part with possession of the Equipment;
  - c. rely upon any representation relating to the Equipment or its operation other than those contained in this Agreement or manufacturer's instructions or manuals;
  - d. allow any person to operate the equipment if the person:
    - (a) is not suitably experienced and/or qualified; or
    - (b) is affected by drugs and/or alcohol;
  - e. exceed the recommended or legal load and capacity limits of the Equipment; or
  - f. use or carry any illegal, prohibited or dangerous substance in or on the Equipment.
13. **LIABILITY:** To the extent permitted by legislation such as the *Competition and Consumer Act 2010* (as amended from time to time) ("the Act") the sole warranties are those set out in these terms and conditions. If the Equipment is in any other way defective, the liability of the Company will be limited to (at its election) replacement of that Equipment, supply of equivalent Equipment or refund of Charges paid by the Customer. This shall be the sole and exclusive remedy available to the Customer. Any description of the goods under this agreement shall not create an express warranty that any goods shall conform to the description. Provision of a sample does not constitute a warranty that all goods shall conform to the sample or model. The Customer shall make its own determination of the suitability of the material for the use contemplated by the and shall not rely upon any representations, skill or judgment of the Company. References to any delivery date are references to the delivery date sought by the Customer do not constitute a warranty that the Equipment can be supplied by that date or in the quantities requested by the Customer. In no circumstances shall the Company have any liability arising from or as a result of delay in provision of the Equipment to the Customer. The Customer releases, indemnifies and holds harmless the Company from any liability and any claim by any person in respect of the Equipment whether or not the loss or damage arises in connection with any negligence, default or lack of care on the part of the Company or any of its representative,

any misrepresentation or any other cause. To the extent permitted by the Act, the Company is not liable for prospective profits or special, indirect or consequential damages. Without limiting the generality of the foregoing, in no circumstances shall the liability of the Company exceed the Charges. The Customer acknowledges that any transportation of the Equipment is at the Customer's risk, including without limitation, transportation of the Equipment arranged by or on behalf of or at the request of either the Customer or the Company.

14. **FORCE MAJEURE:** The Company shall have no liability in respect of failure to deliver or perform, or delay in delivering or performing, any obligations due to any cause outside its reasonable control. If the product requires an authorisation or a permit for its use from any authority then it is solely the customer's obligation to enquire as to the need for and to obtain the permit or authority prior to the use of the goods or services. This contract shall be voidable at the election of the Company if delivery is prevented by fire, flood, drought, frost, strike or other causes beyond the reasonable control of the Company.

This contract shall be voidable at the election of the Company without further if provision is prevented by any cause beyond the reasonable control of the Company.

15. **EFFECT OF BREACH OF CONTRACT:** If the Customer refuses or fails to take delivery of products or to make full payment of all monies owing to the Company then the Company may at its absolute discretion (without prejudice to any other rights at law or in equity):

- a. If the Customer breaches any clause of this Agreement, or becomes bankrupt or being a corporation commences winding-up, insolvent or ceases business, then the Company may:
  - i. repossess the Equipment (and is authorized to enter the Customer's premises to do so);
  - ii. without derogation of other rights under this agreement, immediately terminate this Agreement by written notice; and
  - iii. sue for recovery of the Charges, damages and any other amounts payable under this Agreement.

Despite anything to the contrary contained in this Agreement, the Customer must at the request of the Company immediately pay for all costs, fees, charges and expenses associated with any cleaning, repairs to the or replacement of the Equipment for damage, regardless of how the damage is sustained.

16. **WHEN THE CONTRACT IS FORMED:** When the Company provides the customer with a quotation, the Company is making an offer to sell which remains open for acceptance within seven calendar days of the date of the quotation.

17. **RELEVANT LAW:** These terms and conditions are subject to the laws of the State of Victoria and the parties submit to the exclusive jurisdiction of the Courts of that State.

Notwithstanding the customer's location or provisions of any Court Rules, the parties acknowledge and agree that the appropriate place of trial for any action commenced by either party is Melbourne Central Business District.

18. **PERSONAL PROPERTY SECURITIES ACT 2009 ("PPSA")**

- a. In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- b. 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 create a security interest in all Equipment that has previously been supplied and that will be supplied in the future by the Company to the Customer.
- c. The Customer undertakes to:

- i. promptly 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:
    - (ix) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
    - (x) register any other document required to be registered by the PPSA; or
    - (xi) correct a defect in a statement referred to in clause 18.3(c)(ix) or 18.3(c)(x)
  - ii. 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 established by the PPSA or releasing any Equipment charged thereby;
  - iii. not register a financing change statement in respect of a security interest without the prior written consent of the Company.
  - iv. not register, or permit to be registered, a financing statement or a financing change statement in relation to any Equipment in favour of a third party without the prior written consent of the Company.
- d. The parties agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
  - e. The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
  - f. The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
  - g. Unless otherwise agreed to in writing by Company, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
  - h. The Customer must unconditionally ratify any actions taken by the Company under clauses 18(c) to 18(e).

