

PORT MELBOURNE CONTAINERS TERMS AND CONDITIONS OF SALE

1. INTERPRETATION

In these Terms and Conditions 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, invoice or 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.
- “Date for Delivery”** The date on which the Goods are to be delivered to the Customer.
- “Goods”** means all of the product, tools and accessories sold to the Customer.

2. TERMS OF SALE

- 2.1 The Goods sold by the Company are sold on these terms and conditions (**“Terms”**).

3. ORDER

- 3.1 The Company may decline any order received from the Customer by written notice to the Customer within three (3) days of receipt of the order by the Company.
- 3.2 Once an order has been received and accepted by the Company, the Company will issue an invoice to the Customer specifying the Charges.

4. PAYMENT

- 4.1 The Customer agrees to pay the Company the specified price and related Charges (**“Purchase Price”**) of the Goods before delivery of the Goods.
- 4.2 The Purchase Price will be specified on the Company’s invoice.
- 4.3 Payment of the Purchase Price is to be made within the stipulated terms on the Company’s invoice (**“Due Date”**).
- 4.4 If the full amount of the Purchase Price is not paid by the Due Date, then the Customer must pay interest on the amount outstanding at the Due Date (**“Overdue Amount”**). Interest on any Overdue Amount is calculated monthly, at the rate of ten percent (10%) per annum.
- 4.5 The Company reserves the right to require the payment of a deposit from the Customer.

5. CANCELLATION

- 5.1** No order may be cancelled by the Customer except with the written consent of the Company. If there is a cancellation of the order by the Customer, the Company has the right to claim indemnity against all losses suffered by the Company as a result of such cancellation.
- 5.2** In the event that a deposit payment is made by the Customer and the Customer cancels the ordered Goods, then the Company may retain the deposit amount.

6. RETENTION OF TITLE

- 6.1** The Company reserves the following rights in relation to the Goods until all amounts owed by the Customer to the Company are fully paid:
- a. Ownership of the Goods;
 - b. To enter into the Customer's premises (or the premises of any associated company or agent where the Goods are located) without liability for trespass or any resulting damage and retake possession of the Goods; and
 - c. Subject to, and in accordance with, the *Personal Property Securities Act 2009*, to keep or resell any Goods repossessed pursuant to clause 6.1(b) of these Terms.
- 6.2** Until the Company receives payment in full of the Purchase Price the Customer holds the Goods as bailee only. Prior to receipt by the Company of the Purchase Price the Customer agrees that it must and will:
- a. not intermingle the Goods with any other property;
 - b. not change the Goods in any way;
 - c. not change or obscure in any way any identification marking that the Company has placed on the Goods by lettering or numbering;
 - d. not sell the Goods except to a bona fide purchaser for full value;
 - e. keep all proceeds from the sale of the Goods on behalf of the Company in a separate trust account;
 - f. promptly pay the proceeds of any sale of the Goods to the Company.
- 6.3** In the event that the Customer does sell the Goods, then the payment of the proceeds from the sale of the Goods by the Customer to the Company does not relieve the Customer of its obligation to pay to the Company the full amount of the balance of the Purchase Price plus any interest or other amounts payable to the Company.
- 6.4** Risk in the Goods passes to the Customer on delivery to the Customer.

7. DELIVERY

- 7.1 The cost of delivery of the Goods is at the Customer's expense, even if that cost has been omitted from any invoice or quote.
- 7.2 The Customer is required to nominate and provide the Company with an address for delivery of the Goods ("**Address for Delivery**").
- 7.3 The Address for Delivery must be provided to the Company no later than seven (7) days prior to the Date for Delivery.
- 7.4 The Customer confirms and warrants that the Address for Delivery complies with the Company's 'Transport Instructions and Site Access' guide, which is available on the Company's website or upon request.
- 7.5 If the delivery of the Goods fails by reason of Customer's acts or omissions, including the Customer's failure to comply with the 'Transport Instructions and Site Access' guide ("**Guide**"), then the Customer is liable to pay for all the Company's costs in relation to the failed delivery, including the costs of any subcontractors or third party carriers ("**Carriers**") engaged by the Company used to deliver the Goods. The Company's cost may be calculated with reference to the following: -
- a. One hundred and twenty dollars (\$120) per hour (plus GST) for use of a tilt tray truck.
 - b. Two hundred dollars (\$200) per hour (plus GST) for use of a side loader truck.
 - c. Time may be calculated with reference to the time spent, in 15-minute increments, by the Company, its subcontractors or Carriers engaged by the Company in attempting to deliver the Goods.
 - d. Costs of storage of the Goods, while an alternative Date for Delivery is arranged.
- 7.6 The Customer is liable for any loss or damage suffered by the Company, its subcontractors or Carriers as a result of the Customer's failure to comply with the Guide.
- 7.7 Where the Company or its subcontractors or Carriers provide carriage for the Customer, then the Company, its subcontractors or Carriers are not common carriers and accept no liability as such.
- 7.8 The Company is not responsible or liable to the Customer for any loss or damage to Goods in transit caused by any event or by any person.
- 7.9 Delivery of the Goods is performed at the Customer's risk and the Customer bears all risk of loss or damage to or arising out of the delivery of the Goods or their contents.
- 7.10 If the Customer cancels or reschedules the Date for Delivery within 24 hours of the Date for Delivery, then the Company reserves the right to charge a fee. This fee is calculated at between fifty percent (50%) to one hundred percent (100%) of the anticipated delivery costs and the amount charged is at the sole discretion of the Company.
- 7.11 In the event that the Company, its subcontractors, or Carriers are unable to deliver, the Goods on the Date for Delivery, then the Company will notify the Customer as soon as practicable. The Company will then arrange with the Customer an alternative Date for Delivery.
- 7.12 The Company accepts no liability for any loss or damage caused by a failure to deliver

the Goods, or a delay in the delivery of the Goods, due to circumstances outside its control.

- 7.13** The Customer acknowledges and agrees that it:
- a. has the opportunity to inspect the Goods prior to or upon their delivery; and
 - b. accepts the Goods in the state in which they are delivered.
- 7.14** The Date for Delivery will be determined in consultation with the Customer, where possible.
- 7.15** The Date for Delivery is an estimate only.

8. RETURNED GOODS

- 8.1** Except for any provisions to the contrary contained in these Terms, the Company is not under any duty to accept Goods returned by the Customer. The Company will do so only on terms to be agreed in writing in each individual case.
- 8.2** If the Company agrees to accept returned Goods from the Customer pursuant to clause 8.1 of these Terms, then the Customer must return the Goods to the Company's nominated address, at the Customer's cost.

9. PERSONAL PROPERTY SECURITIES ACT

- 9.1** This agreement is a security agreement.
- 9.2** The interest of the Company in the Goods and all proceeds from the sale of the Goods by the Customer to a third party is a security interest.
- 9.3** The Customer consents to the Company registering its security interest on the Personal Property Securities Register and agrees to provide all assistance reasonably required by the Company to facilitate registration.
- 9.4** Until title in the Goods has passed to the Customer as contemplated by clause **Error! Reference source not found.** of this agreement, the Customer agrees not to in any way assign, charge, lease or otherwise deal with the Goods in such a manner as to create, a security interest over, the Goods in favour of the Customer or any third party. The parties agree that this clause will not prohibit the Customer from selling the Goods in the ordinary course of business.
- 9.5** The Customer waives its rights to receive any notice under the PPSA (including notice of verification statement) unless the notice is required by the PPSA and cannot be excluded.
- 9.6** The Company and Customer agree that this agreement and all related information and document(s) are confidential (**Confidential Information**) and will not be disclosed to unauthorised representatives or third parties, except to the extent disclosure is permitted by this agreement or required by law. The Company and Customer agree that the Company will not disclose the Confidential Information pursuant to a request under section 275(1) of the PPSA.

- 9.7** Unless the Goods are used predominantly for personal, domestic or household purposes, the Company and the Customer agree each of the following requirements or rights under the PPSA do not apply to the enforcement of the Company's security interest in the Goods or of this agreement:
- a. any requirement for the seller to give the Company a notice of removal of accession;
 - b. any requirement for the Company to give the Customer a notice of the Company's proposed disposal of the goods;
 - c. any requirement for the Company to include in a statement of account, after disposal of the Goods, the details of any amounts paid to other secured parties;
 - d. any requirement for the Company to give the Customer a statement of account if the Company does not dispose of the Goods;
 - e. any right the Customer has to redeem the Goods before the Company exercises a right of disposal; and
 - f. any right the Customer has to reinstate this agreement before the Company exercises a right of disposal of the Goods.
- 9.8** Expressions defined in the PPSA have the same meaning when used in this agreement.

10. TERMINATION

- 10.1** The Company may terminate this agreement in the event that the Customer fails to pay the full amount of the Purchase Price.
- 10.2** If at any time prior to payment in full of the Purchase Price the Customer becomes bankrupt or insolvent, has a liquidator, administrator, receiver and manager, controller or other like officer appointed over any or all of the Customer's assets, then the Company is permitted to do any of the following: -
- a. terminate this agreement;
 - b. declare the balance of any Purchase Price or Overdue Amount immediately payable; and
 - c. retake possession of the Goods.
- 10.3** If the Company terminates this agreement for the sale of the Goods, then the Customer will no longer be entitled to possession of the Goods and the Customer must immediately return the Goods to the Company at the Customer's expense.
- 10.4** If the Company terminates this agreement, then the Customer must not attempt or purport to, sell, hire, lease, encumber, grant any right or interest (of any nature) in or over the Goods.
- 10.5** If the Company is entitled to retake possession of the Goods, then the Customer hereby irrevocably authorises the Company to enter upon any premises where the Goods are located, and to use such reasonable force as may be necessary, for the purpose of removal of any Goods and to do so at the Customer's expense.

- 10.6** The Customer may terminate this agreement by written notice if:
- a. The Company is in breach of this agreement or these Terms and the breach is not remedied within seven (7) business days of written notice being received by the Company requiring the breach to be remedied; or
 - b. The Company ceases doing business or a liquidator, administrator, receiver and manager, controller or other like officer is appointed over any or all of our assets.

11. INDEMNITY

- 11.1** The Customer indemnifies and holds the Company harmless from all loss, liability, damage, cost or expense ("Loss") arising out of any:
- a. failure by the Customer to comply with its obligations under these Terms;
 - b. any claim for personal injury or death, and for loss of or damage to person or property, arising out of or incidental to the possession, hire, operation, control, use, storage, contents (including dangerous goods), delivery or return of the Goods; and
 - c. any forfeiture, seizure, or impounding of, or claim of charge, lien or encumbrance on the Goods, but only to the extent that we did not cause or contribute to the Loss.
- 11.2** This indemnity survives the termination of this agreement and these Terms.

12. GENERAL

12.1 Notices

All notices under these Terms must be in writing.

12.2 Binding

- a. These Terms are binding upon the Company and Customer, and each of their successors and assigns.
- b. These Terms override and exclude any terms and conditions provided by the Customer, unless agreed by the Company.

12.3 Variation

These Terms may only be modified or varied if agreed in writing by the parties.

12.4 Jurisdiction

These terms are governed by the laws of the state of Victoria. The Company and Customer consent to the jurisdiction of the Courts of Victoria.

12.5 Override and variation

These Terms override and exclude any terms and conditions provided by the Customer.

12.6 No waiver of rights

A failure to exercise or delay in exercising any right, power or remedy by either party does not operate as a waiver.

12.7 Cumulative rights

The rights under these Terms are in addition to, and do not exclude, any rights at common law, equity or any other agreement between the Company and the Customer.

12.8 Expenses

Should it be necessary for the Company to incur legal and/or other expenses (including commercial agent and private enquiry fees) in enforcement of its rights under these Terms or in obtaining or attempting to obtain payment of any amount due by the Customer, the Customer undertakes to reimburse the Company on an indemnity basis the whole amount of such expenses and fees.