



## Conditions of Sale or Lease Agreement

### 1 Definitions and interpretation

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#### 1.1 Definitions

**Contractor** means CBox Containers Australia Pty Limited ACN: 162 495 945, the seller or lessor of the Goods

**Customer** means the purchaser or lessee of the Goods, whose details are set out in the invoice.

**Goods** means the products and, if any, services specified in the invoice, whether by sale to the Customer or by lease to the Customer.

**Sale Agreement** means an agreement between the Contractor and the Customer for transfer of ownership of Goods to the Customer for consideration.

**Lease Agreement** means an agreement between the Contractor and the Customer for the Customer's exclusive possession and use of Goods for consideration.

#### 1.2 Interpretation

- (a) These conditions govern, to the extent applicable in the circumstances of the agreement, any Sale Agreement or Lease Agreement between the Contractor and the Customer.
- (b) These conditions govern the entirety of any Sale Agreement or Lease Agreement between the Contractor and the Customer to the exclusion of any other representations, however given, in connection with any Sale Agreement or Lease Agreement.
- (c) Any amendment to these conditions will only be effective if made in writing agreed to by both the Contractor and the Customer.
- (d) For the avoidance of doubt and for the purposes of this clause, agreement via email correspondence shall be regarded as being made in writing.
- (e) If any one of the terms or any part of any term within these conditions is null and void, or is declared null and void, the remainder of the relevant term or terms of these conditions will continue to be effective and bind the parties.

### 2 Offer and Acceptance

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- (a) The Customer's acceptance of any offers and quotations received from the Contractor may be communicated to the Contractor in any form, including orally or by writing.
- (b) All offers and quotations received from the Contractor, in whatever form, are without commitment and may be revoked any time prior to the Customer's acceptance, including, for the avoidance of doubt, where an offer or quotation received from the Contractor states a period for acceptance.

### 3 Packing

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The cost of any packaging and packing materials used in relation to the Goods are at the Customer's expense, even if that cost has been omitted from any quotation.

## **4 Performance**

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- (a) If a Sale Agreement or Lease Agreement is formed between the Contractor and two or more Customers, the Customers are jointly and severally liable for the fulfilment of the obligations under the Sale Agreement or Lease Agreement.
- (b) The Customer is not entitled to assign its rights and obligations under any Sale Agreement or Lease Agreement to a third party.
- (c) The Contractor is entitled to perform any Sale Agreement or Lease Agreement as it deems appropriate, including by engaging third parties or by executing the Contract in separate parts.
- (d) The Contractor reserves the right to assign all rights under any Sale Agreement or Lease Agreement to a third party.
- (e) To the extent that any damage and/or loss is caused to any party or to a third party in connection with performance of a Sale Agreement or Lease Agreement by the Customer, the Customer will indemnify the Contractor to the extent of said loss or damage.
- (f) The Customer is required to remove any brands, numbers and other markings of previous owners or lessees of the Goods, save for any brands, numbers or other markings of the Contractor for Goods provided pursuant to a Lease Agreement, which shall remain affixed to the Goods. If any such brands, numbers or other markings have been removed by the Contractor, the Customer will be liable for the cost of said removal.
- (g) If Goods provided under a Lease Agreement are returned to the Contractor at the conclusion of the Lease Agreement in a damaged state and condition the Customer will indemnify the Contractor for the cost of repairing damage caused to the Goods in the duration of the Lease Agreement or, where the Goods cannot be repaired, the cost of replacing the Goods.

## **5 Delivery**

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- (a) Transport and delivery of Goods will be carried out by the Contractor to the address notified by the Customer. The Customer agrees to indemnify the Contractor for the cost of delivery of the Goods.
- (b) Transport and delivery of Goods may be carried out by a carrier arranged by the Customer only with prior written agreement between the parties. The risk to the Goods in transit by a carrier arranged by the Customer remains with the Customer in accordance with clause 6(b).
- (c) The delivery times made known to the Customer are estimates only and the Contractor is not liable for late delivery or non-delivery.
- (d) Delivery may be suspended for as long necessary for the Customer to fulfil any obligation, by whatever reason, it has to the Contractor.
- (e) Additional costs arising from inadequate access to the Customer's designated delivery location will be fully payable by the Customer.

## **6 Loss or damage in transit**

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- (a) The Contractor must provide the Customer with such assistance as may be reasonably necessary to institute claims against a carrier for damages to Goods in transit so long as the

Customer has notified the Contractor and the carrier in writing immediately after loss or damage is discovered by the Customer on receipt of Goods.

- (b) The Contractor is not liable for any damages, or to provide any assistance in a claim for damages, to the Customer arising from damage to Goods in transit caused by any carrier arranged by the Customer in accordance with clause 5(b).

## **7 Consumer guarantees**

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The Contractor's liability for a breach of a condition or warranty implied by Part 3-2 Division 1 of the Australian Consumer Law is limited to:

- (a) in the case of Goods, any one or more of:
  - (i) the replacement of the Goods or the supply of equivalent goods;
  - (ii) the repair of the Goods;
  - (iii) the payment of the cost of replacing the Goods or of acquiring equivalent goods; and
  - (iv) the payment of the cost of having the Goods repaired; or
- (b) in the case of services:
  - (i) the supplying of the services again; or
  - (ii) the payment of the cost of having the services supplied again.

## **8 Prices**

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- (a) Unless otherwise stated all offers and quotations received from the Contractor are exclusive of Goods and Services Tax (**GST**).
- (b) Prices quoted are calculated at the date of issue of a relevant quotation and include rates provided by third party providers. These third party rates include the cost of freight, insurance, customs duties, exchange, shipping expenses, sorting and stacking charges, cartage, rate of water, cost of materials and other charges affecting the cost of production (**Third Party Rates**). Third Party Rates may vary slightly from the date of the quotation to the time of delivery of the Goods. The Buyer will be liable for any increase in the Third Party Rates.
- (c) The Contractor may change the consideration payable for Goods at any time. The Contractor must inform the Customer of any intended change to the consideration payable for Goods prior to implementation of said change. The Customer may terminate any Sale Agreement or Lease Agreement that is subject to a change in consideration payable at any time up to one (1) month after the date of the Contractor's notification of a change in consideration payable.

## **9 Payment**

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- (a) Any amounts owed to the Contractor under Sale Agreement or Lease Agreement are payable within fourteen (14) days of the billing date (the "Payment Due Date").

- (b) The Buyer must pay interest on any outstanding amount not paid by Payment Due Date. Interest will be calculated on the basis of the Reserve Bank of Australia Cash Rate as published from time to time plus 5%. Interest will accrue daily from the Payment Due Date until the outstanding amount is paid in full.
- (c) The Customer agrees to indemnify the Contractor for any costs associated with recovery of any outstanding amounts owed to the Contractor, including but not limited to debt collection costs, legal fees and court fees.
- (d) Payments made by the Customer to the Contractor will serve first to reduce (to the extent that they remain outstanding) costs of recovery of overdue payments and interest owed (in this order), and then to reduce the principal sums, where old amounts payable will take precedence over new amounts payable, notwithstanding any contrary indication by the Customer.
- (e) The Contractor reserves the right to terminate a Sale Agreement or Lease Agreement with immediate effect and to repossess the Goods if the Customer does not make full payment of amounts owed by the Payment Due Date.
- (f) Where a Lease Agreement exceeds one (1) month, invoices will be issued monthly, payable within fourteen (14) days of the billing date.

## **10 Rights in Relation to Goods**

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- (a) The Contractor reserves the following rights in relation to the Goods until all obligations of the Customer pursuant to the Sale Agreement or Lease Agreement are met:
  - (i) ownership of the Goods;
  - (ii) to enter the Buyer'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
  - (iii) subject to, and in accordance with, the Personal Property Securities Act 2009, to keep or resell any Goods repossessed.
- (b) The risk of the Goods shall pass to the Customer upon delivery.

## **11 Customer's property**

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Any property of the Customer under the Contractor's possession, custody or control is completely at the Customer's risk as regards loss or damage caused to the property or by it.

## **12 Storage**

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The Contractor reserves the right to charge a reasonable fee for storage if delivery instructions are not provided by the Customer within five (5) days of a request by the Contractor for such instructions. The parties agree that the Contractor may charge for storage from the first day after the Contractor requests the Customer to provide delivery instructions.

## **13 Description of Goods**

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All Goods to be supplied by the Contractor to the Customer are as described on the purchase or lease order agreed by the Contractor and the Customer, and the description on such purchase or

lease order as so agreed prevails over all other descriptions of the Goods including any specification or enquiry of the Customer.

## 14 Cancellation

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No sale or lease order may be cancelled by the Customer except with the written consent of the Seller. If there is a cancellation of the order by the Customer, the Contractor has the right to claim indemnity against all losses suffered by the Contractor as a result of such cancellation.

## 15 Personal Property Securities Act (Cth) 2009 (PPSA)

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- (a) The Customer acknowledges that the Contractor's interest under a Sale Agreement or Lease Agreement is a Security Interest for the purposes of the PPSA:
  - (i) That Security Interest relates to the Goods and all proceeds of any kind;
  - (ii) The Sale Agreement or Lease Agreement is a security agreement for the purposes of the PPSA
- (b) The Customer consents to the Contractor registering its security interest on the Personal Property Securities Register and agrees to provide all assistance reasonably required by the Contractor to facilitate registration.
- (c) Until title in the Goods has passed to the Customer, 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.
- (d) The Customer waives its rights to receive any notice under PPSA (including notice of verification statement) unless the notice is required by the PPSA and cannot be excluded.
- (e) The Contractor 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 Contractor and Customer agree that the Contractor will not disclose the Confidential Information pursuant to a request under section 275(1) of the PPSA.
- (f) Unless the Goods are used predominantly for personal, domestic or household purposes, the Seller and the Buyer agree each of the following requirements or rights under the PPSA do not apply to the enforcement of the Seller's security interest in the Goods or of this agreement:
  - (i) any requirement for the seller to give the Buyer a notice of removal of accession;
  - (ii) any requirement for the Seller to give the Buyer a notice of the Seller's proposed disposal of the goods;
  - (iii) any requirement for the Seller to include in a statement of account, after disposal of the Goods, the details of any amounts paid to other secured parties;
  - (iv) any requirement for the Seller to give the Buyer a statement of account if the Seller does not dispose of the Goods;
  - (v) any right the Buyer has to redeem the Goods before the Seller exercises a right of disposal; and

- (vi) any right the Buyer has to reinstate this agreement before the Seller exercises a right of disposal of the Goods.

## **16 Termination**

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- (a) In the absence of any breach of this agreement, either party may terminate a Sale Agreement or Lease Agreement in its absolute discretion with a minimum of thirty (30) days' written notice to the other party.
- (b) This agreement will automatically terminate if a party enters into any composition or arrangement with its creditors or has a receiver appointed over any of its assets or is the subject of any resolution or petition for winding up or judicial management (other than for the purpose of amalgamation or reconstruction).
- (c) Either party may terminate this agreement if the other party is in material breach of any of its obligations under this agreement and if the breach is capable of remedy fails to remedy the breach for a period of ten (10) days after receipt of a written notice by the other party requiring rectification of the breach.
- (d) Exercise of the right of termination afforded to either party under this clause will not prejudice the legal rights or remedies which either party may have against the other in respect of a breach of any term, condition or warranty of this agreement.
- (e) The obligations of the parties that by their nature could reasonably construed as being intended to continue to apply beyond the termination of this agreement will continue to apply.

## **17 Events Beyond Control**

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Neither Party shall be liable to the other party for any loss caused by any failure to observe the terms and conditions of this agreement, where such failure is occasioned by causes beyond its reasonable control, including but not limited to include strikes, mass staff sickness, insurrection, boycotts, blockades, sabotage, fire, stroke of lightning, machinery breakdown, business interruptions, impediments to and other interruptions of transportation, withdrawals of permits, irrespective of whether these occur at the Contractor's operations or at the operations of the relevant third parties or suppliers.

## **18 Governing Law**

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This agreement shall be governed by and construed in accordance with New South Wales and Australian law. The parties submit to the non-exclusive jurisdiction of the courts and tribunals of the governing law jurisdiction.