



SALE AGREEMENT TERMS AND CONDITIONS

Definitions:

- ◆ "The Company" means Container Sales & Leasing Ltd (CSL), as well as "The Vendor".
 - ◆ "The Purchaser" means the company or individual purchasing the equipment from CSL.
 - ◆ "The Equipment" means containers and includes the machinery, cables, plugs, locks & keys and other equipment supplied with the container, or other such things that CSL may sell from time to time.
1. **Acceptances:** No order will be accepted except on these conditions of trading, and any terms proffered by the vendor are hereby excluded. An order placed by a purchaser whether in writing, fax or e-mail shall be deemed to constitute an offer by the purchaser to enter into a contract on these conditions and may be accepted by the Company by fax, e-mail or in writing or, in the case of a verbal order, verbally. All verbal orders must be confirmed in writing to the Company within three working days whether or not such order has been accepted by the company.
 2. **Quoted Prices:** Quoted prices are based on the costs of labour materials, freight and materials at the date of the quotation. The quoted price may be increased by the Company at any time (including by issue of an invoice) to the extent that the cost of the goods to the Company increases as a result of an increase in any of the above costs after the date of the quotation. Additionally if any errors are made by the Company in computing the quoted price, the quoted price may be adjusted to correct such errors. Such increased or corrected price will be the contract price. Unless otherwise stated all quoted prices exclude GST. GST will be charged at the statutory rate (currently 12.5%).
 3. **Cancellation:** When the order is in respect of the sale of "purpose-made" equipment to be manufactured by the Company, the purchaser shall not be entitled to cancel any order which is accepted by the Company once work has begun on it (unless the Company in its' sole discretion agrees to accept such cancellation). If the Company agrees to cancellation, the Company may charge the purchaser for all costs and expenses incurred by the Company (whether directly or indirectly) in respect of the contract including the Company's loss of profit.
 4. **Deposit:** When the quotation is in respect of the sale of purpose made goods to be manufactured by the Company, a deposit of 50% of the amount quoted is payable before work commences. The balance is due on completion of the work before the container is delivered or released.
 5. **Payments:** Unless otherwise stated all payments are required in full before the container leaves the Company's premises. If the purchaser is an approved existing client then payment can be due by the 20th of the month following the issue of the invoice. If any payment is not made thirty (30) days from the date of the invoice, the Company shall have the right to charge default interest on those monies outstanding at 3% above the bank overdraft rate, calculated daily from the due date to the receipt of payment by the Company. The overdue account will also be sent to the Company's credit agency for collection. All debt collection fees and legal costs are payable by the purchaser and will be added to amount owing.
 6. **Illustrations:** Any illustrations shown fairly represent the articles listed but owing to frequent alterations or improvements in design, illustrations and specifications cannot be taken as exact in detail at any time.
 7. **Availability:** All containers are offered subject to availability at date of receipt of order.
 8. **Delivery Time:** Delivery times quoted are subject to, and date from:-
 - (i) Receipt of an order pursuant to a quotation, and
 - (ii) Provision of all necessary information by the purchaser to enable to Vendor to proceed with the sale or fabrication of "purpose-made" equipment.
 - (iii) The Company will use all reasonable endeavours to make delivery at the time requested, but if for any reason whatsoever the delivery shall be delayed, the Company shall not be responsible for any loss or damage whatsoever sustained by the purchaser or any person, firm or corporation by reason of such delay and the purchaser shall still be obliged to accept the delivery.
 9. **Delivery Arrangements:** The Company shall deliver to the purchaser the equipment specified on the sale agreement.

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- 10. Transportation Charges:** If the Company is requested to arrange transport of the equipment listed on the sale agreement, then the transport charges are payable by the purchaser from the Company's premises.
- 11. Force Majeure:** The Company shall not be liable for any delay, alteration or failure in delivery if occasioned by any event beyond the Company's control.
- 12. Ownership:** All articles of equipment supplied on sale are and remain at all times the Company's property until such time the Company has received the full purchase price. If payment has not been received by the payment dates specified then the Company shall re-take possession of the equipment without effect to its right to damages for breach of contract. All recovery costs incurred by the company will be paid by the purchaser and other charges payable hereunder. The purchaser will not sell, mortgage, pledge or sublet the equipment until such time the Company has received the full purchase price.
- 13. Risk:** The purchaser shall accept full responsibility for the safekeeping of the equipment and indemnify the Company for all loss, theft or damage to the equipment, however caused, until such time the ownership is transferred to the purchaser. Such indemnity shall include for negligence or misuse by the purchaser.
- 14. Liability for Loss and Damage:** The purchaser will fully and completely indemnify the Company in respect of all claims by any person whatsoever for injury to person or property caused by or in connection with or arising out of the use of the equipment, and in respect of all costs and charges in connection therewith, whether arising under statute or common law.

Furthermore, the purchaser acknowledges that the Company has made no warranties, express or implied of any kind or nature whatsoever, relating to or effecting the use and/or operation of the container. The purchaser agrees that in no event shall the Company be liable to it for any loss of profits or consequential damages arising out of the use of any equipment purchased from the company, and covered under this agreement, or any extension thereof, or by any other person(s) permitted or authorised to use or operate the equipment.
- 15. Site Access:** Acceptance of any sale gives the Company any necessary licence with a right of access to any site to which its equipment has been delivered at all times, or to any other site at which the Company's property is located, and for any purposes connected with the sale transaction. The purchaser indemnifies the Company against all costs (including legal costs) and claims associated with any action brought against the Company on the basis it does not have a right of access to a site for the purposes of this provision.
- 16. Right to Terminate Agreement and Retake Equipment:** In the event that the purchaser fails to perform any of its obligations, or has a trustee or receiver appointed for it, or has an arrangement in bankruptcy or reorganisation or other modification or alteration to the rights of its creditors accomplished, or if the purchaser files any petition for or consent to any such modifications or alteration, or seeks to make any arrangements for the benefit of creditors before such time that the equipment has been paid for in full, the purchaser shall thereupon be in default under this agreement. In these circumstances the Company will then have the right to immediately terminate the agreement by written notice to the purchaser, and enter and retake the equipment from the purchaser's premises. The purchaser agrees that retaking the equipment under these circumstances, would be without any further liability of obligations to the purchaser, and would not release the purchaser from its obligations for the payment of all outstanding debts.
- 17. Variation:** The Company is entitled to vary these terms and conditions at any time without giving notice.
- 18. Waiver:** Even if the Company does not insist on strict performance of these terms and conditions, the Company is not taken to have waived its right to later require strict performance.
- 19. Severability:** If any of these terms and conditions are invalid or unenforceable in any jurisdiction they are, if possible, to be read down so as to be valid and enforceable. The read down provision will only apply in the relevant jurisdiction. If the provision cannot be read down, and it can be severed to the extent of the invalidity or unenforceability, it is to be severed. The rest of the provisions, and the validity or enforceability of the affected provision in any other jurisdiction, will not be affected.
- 20. Governing law and jurisdiction:** These terms and conditions are governed by New Zealand law.

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21. Title and Security (Personal Property Securities Act 1999):

- i) Title in any equipment supplied by the Vendor passes to the Purchaser only when the purchaser has made payment in full for all equipment provided by the Vendor and of all other sums due to the Vendor by the purchaser on any account whatsoever. Until all sums due to the Vendor by the purchaser have been paid in full, the Vendor has a security interest in all equipment.
- ii) If the equipment is attached, fixed or incorporated into any property of the purchaser, by way of any manufacturing or assembly process by the purchaser or any third party, title in the equipment shall remain with the Vendor until the purchaser has made payment for all equipment, and where that equipment is mixed with other property so as to be part of or a constituent of any new equipment, title to this new equipment shall be deemed to be assigned to the vendor as security for the full satisfaction by the vendor of the full amount owing between the vendor and the purchaser.
- iii) The purchaser gives irrevocable authority to the vendor to enter any premises occupied by the purchaser or on which equipment is situated at any reasonable time after default by the purchaser or before default if the vendor believes a default is likely and to remove and repossess any equipment and any other property to which the equipment is attached or in which the equipment is incorporated. The vendor shall not be liable for any costs, damages, expenses or losses incurred by the purchaser or any third party as a result of this action, nor liable in contract or in tort or otherwise in any way whatsoever unless by statute such liability cannot be excluded. The vendor may either resell any repossessed products or equipment and credit the purchaser's account with the net proceeds of sale (after deduction of all repossession, storage, selling and other costs) or may retain any repossessed products or equipment and credit the purchaser's account with the invoice value thereof less such sum as the vendor reasonably determines on account of wear and tear, depreciation, obsolescence, loss or profit and costs.
- iv) Where equipment or product is retained by the vendor pursuant to clause 21.iii the purchaser waives the right to receive notice under s.120 of the Personal Property Securities Act 1999 ("PPSA") and to object under s.121 of the PPSA.
- v) The following shall constitute defaults by the purchaser:
 - a) Non payment of any sum by the due date.
 - b) The purchaser intimates that it will not pay any sum by the due date.
 - c) Any equipment or product are seized by any other creditor of the purchaser or any other creditor intimates that it intends to seize equipment or product.
 - d) Any equipment or products in the possession of the purchaser are materially damaged while any sum due from the purchaser to the vendor remains unpaid.
 - e) The purchaser is bankrupted or put into liquidation or a receiver is appointed to any of the purchaser's assets or a landlord distains against any of the purchaser's assets.
 - f) A Court judgment is entered against the purchaser and remains unsatisfied for seven (7) days.
 - g) Any material adverse change in the financial position of the purchaser.
- vi) If the credit repossession act applies to any transaction between the purchaser and the vendor, the purchaser has the rights provided in that Act despite anything contained in these terms and conditions of trade.
- vii) On the Vendor's request the purchaser must promptly execute any documents and do anything else necessary to ensure that the security interest created under this document constitutes a perfected security interest (as that term is defined in the Personal Property Securities Act 1999) over your assets and undertaking, including:
 - a) executing any amendments to the documents that are reasonably requested;
 - b) executing any replacement or additional security documents; and
 - c) providing any information that the vendor requires to complete a financing statement or financing charge statement.

