

SCF AGREEMENT TO LEASE CONDITIONS

1. GENERAL

- 1.1. This document sets out the terms and conditions of an agreement between SCF Group (NZ) Limited trading as CSL Containers and the Customer in respect of the lease of Containers and any transport, delivery, collection and relocation services.
- 1.2. Providing the Customer complies in all respects with the terms and conditions of this Agreement, SCF Group agrees to lease Containers to the Customer: (a) for the duration of the Hiring Period(s), and (b) at the Rental Charge(s), as provided in this Agreement.
- 1.3. This Agreement will apply to the Lease of Containers by SCF Group to the Customer despite any conflicting terms proposed by the Customer, unless waived in writing by SCF Group.
- 1.4. If the Customer wishes to lease Containers, the Customer must request SCF Group to complete a Schedule of Supply. SCF Group will provide the completed Schedule of Supply to the Customer for approval and, once approved by the parties, will lease the Containers to the Customer pursuant to the terms of this Agreement. The Customer acknowledges and agrees that the lease of all Containers by the Customer pursuant to a Schedule of Supply are governed by this Agreement.
- 1.5. This Agreement is comprised of this Agreement to Lease and the Schedules of Supply. To the extent of any inconsistency between the terms of the documents, the following order of precedence applies:
 - (a) the relevant Schedule of Supply; then
 - (b) this Agreement to Lease.

2. TERM

- 2.1. This Agreement will apply to the lease of all Containers by SCF Group to the Customer on and from the Agreement Commencement Date for the duration of Hiring Period (as extended) and will continue until termination or expiry as set out in clause 15. This Agreement also applies to Containers hired on a casual basis.
- 2.2. To avoid doubt, the terms of this Agreement do not affect in any way the terms of lease of any containers leased by the Customer from SCF Group prior to the Agreement Commencement Date.

3. HIRING PERIOD

- 3.1. The Hiring Period for each Container leased to the Customer will commence on the Commencement Date (as set in the Schedule of Supply) or the date on which the Container leaves the SCF Group depot, whichever is earlier. The duration of the Hiring Period is for the period specified in the relevant Schedule of Supply.
- 3.2. Providing the Customer has duly observed and performed all of its obligations under this Agreement and upon giving SCF Group notice prior to the expiration of the Hiring Period, the Customer may extend the Hiring Period for all or some of the Containers on the same terms and conditions in this Agreement.
- 3.3. If the Customer fails to exercise its rights to extend the Hiring Period and if SCF Group agrees, the Containers will continue to be leased under the terms and conditions of this Agreement in accordance with clause 3.4 until either party gives one month's notice in writing of its intention to either amend or cease this Agreement.
- 3.4. At the expiration of the Hiring Period initially specified in the Schedule of Supply, the Customer may, if SCF Group agrees, continue to lease the Containers on a daily basis and subject to the terms and conditions of this Agreement. In these circumstances, SCF Group reserves the right to amend the Rental Charges or other terms and conditions listed on the Schedule of Supply by providing seven days' prior written notice to the Customer.

4. RENTAL

- 4.1. The Customer will pay SCF Group the Rental Charge and all other charges specified in the Schedule of Supply and any associated GST, and any other government imposts applicable to this Agreement in addition to, and at the same time as the Rental Charge.
- 4.2. Payment of the Rental Charge and all other charges will be by direct credit to SCF Group's nominated bank account.
- 4.3. The Customer is liable for all Rental Charges payable for the Hiring Period despite any early return of the Containers.

5. PAYMENTS

- 5.1. Any monies payable by the Customer to SCF Group under this Agreement including the Rental Charge must be paid without any set off or counterclaim and free of any deduction or withholding unless required by law. To the extent the Customer is required by law to deduct or withhold any amount from a payment under this Agreement:
 - (a) the Customer will pay SCF Group an additional amount so that SCF Group receives a net amount equal to the amount it would have received if no deduction or withholding had been made; and
 - (b) the Customer will, at SCF Group's request, provide SCF Group with reasonable evidence of payment to the relevant government authority of the amount so deducted and withheld.
- 5.2. The Customer will pay SCF Group upon demand the reasonable costs and expenses (including debt collection fees and commission and legal costs on a solicitor client basis) incurred or payable by SCF Group in respect of the recovery and any attempted recovery of any monies payable by the Customer to SCF Group under this Agreement as a result of a breach by the Customer.
- 5.3. The payment by the Customer of the Rental Charge and any other moneys payable by the Customer to SCF Group under this Agreement is an essential term of this Agreement, and unless specified otherwise the Rental Charge is to be paid within 30 days of the date of the Invoice.
- 5.4. If any monies payable by the Customer to SCF Group under this Agreement are not paid on or by the due date for payment the Customer will be liable for:

- (a) an administrative charge of \$50 per month or part thereof that each monthly Rental Charge remains in arrears (up to a maximum amount of 5% of the total Rental Charge or such other maximum amount prescribed under consumer credit laws in respect of short term credit); and
- (b) interest on the outstanding amount in accordance with the following provisions:
 - (i) The rate of interest will be that charged from time to time by the Bank of New Zealand on commercial overdraft facilities plus 4.0%pa (but not exceeding any maximum amount prescribed under consumer credit laws in respect of short term credit).
 - (ii) The interest will accrue on and from the due date of payment of the outstanding amount up to the date of payment.
 - (iii) Interest will be calculated on a daily basis and will be compounded on the last day of each month.

6. USE OF CONTAINERS

- 6.1. When using the Containers, the Customer will:
 - (a) comply with reasonable handling and operating standards, including any provided by SCF Group;
 - (b) ensure that the Containers are not used for any purpose for which they were not designed;

- (c) ensure that any person handling, operating or using the Containers has had any required training and that they will use reasonable care, skill and diligence at all times in doing so;
 - (d) not load the Containers beyond the load capacity limit specified or recommended for the Containers, and
 - (e) comply with all applicable laws, statutes and regulations including all rules and practices of ports, storage and transport companies regulating or affecting the use of containers and any goods or substances that can be stored or carried in the Containers.
- 6.2. The Customer will ensure that its employees, agents and contractors comply with the provisions of this clause 6 and the Customer will be responsible and liable to SCF Group for any failure to comply by its employees, agents and contractors.
- 6.3. Upon request by SCF Group, the Customer will provide to SCF Group in writing details of the current use of the Containers and/or the contents of the Containers.

7. IDENTIFICATION

- 7.1. The Customer will keep the Container's identification plate which states that the Container is the property of SCF Group in good condition and will not obliterate, deface or cover up the identification plate.

8. TERRITORY

- 8.1. The Customer may use the Containers only within New Zealand and will not take or permit any person to take the Containers outside New Zealand.
- 8.2. Upon request by SCF Group, the Customer will advise SCF Group in writing of:
- (a) the location of each Container; and
 - (b) the locations where the Containers were used or stored and the dates thereof at any time during the Hiring Period.

9. COLLECTION & TRANSPORTATION

- 9.1. The Customer acknowledges and agrees that it will be solely responsible for all cost involved in the transport of the Containers to the Customer location and the return of the Containers to SCF Group's site set out in the Schedule of Supply.
- 9.2. Unless agreed otherwise in writing by SCF Group, the Customer will be responsible for the collection of the Containers from SCF Group. SCF Group will notify the Customer no later than seven days prior to the expiry of the Release Validity Period if the Containers have not been collected by that date. If the Customer does not collect the Container(s) within the Release Validity Period, the Customer acknowledges that SCF Group may, in its absolute discretion:
- (a) lease a Container(s) to another party; or
 - (b) if a Container was custom built for the Customer, charge the Customer the Rental Charge from the day commencing on the expiry of the Release Validity Period until the end of the Hiring Period, unless otherwise agreed between the parties.
- 9.3. Notwithstanding the above, if SCF agrees to deliver the Containers to the Customer, the Customer will be liable to pay SCF Group the fee specified in the Schedule of Supply for the Transport Delivery Fee or, if no such fee is specified, then the cost incurred by SCF Group in transporting the Containers to the Customer as may be invoiced by SCF Group to the Customer. The Customer agrees that the Containers will be at the risk of the Customer at all times including transport of the Containers as arranged by SCF Group.
- 9.4. The Customer acknowledges and agrees that SCF Group will not be liable in any event or circumstance to the Customer for any loss, damage, claims, costs or expenses of any kind suffered by the Customer arising out of any delay or inability on the part of SCF Group to supply the Containers to the Customer on the

commencement date of the Hiring Period specified in the Schedule of Supply.

- 9.5. Subject to Clause 9.6, the Customer further acknowledges and agrees that it will be obliged to return the Containers to the return depots as set out in the Schedule of Supply, and that in the event that it does not do so, the Customer will be liable to pay SCF Group the total cost incurred by SCF Group in transporting the Containers to the return depots (including lift fees), as may be invoiced by SCF Group to the Customer.
- 9.6. The Customer agrees that if the Schedule of Supply specifies any pre-paid de-hire charges, the Customer will pay such charges to SCF Group in accordance with the terms of this Agreement and SCF Group will arrange the return of the Containers to the return depots.

10. RETURN OF CONTAINERS

- 10.1. At the end of the Hiring Period (as extended), the Customer will return the Containers to an SCF Group depot as set out in the Schedule of Supply.
- 10.2. The Containers will be returned in a cleaned condition without debris or residue. Charges will apply for the removal of waste from the Containers.

11. MAINTENANCE AND REPAIRS

- 11.1. All Containers not manufactured by SCF Group will be subject to the manufacturer's warranty (if any).
- 11.2. SCF Group warrants that the Containers are in good and serviceable condition and correspond with the description in the Schedule of Supply. Within 5 business days of delivery of the Containers to the Customer, the Customer must advise SCF Group in writing of any damage or structural defect to or in the Containers and, if necessary, provide SCF Group the opportunity to either repair or substitute the Containers.
- (a) Repairs: The relevant Schedule of Supply specifies SCF Group's repair standard for Containers supplied under the terms of this Agreement. A more detailed version of SCF Group's repair standard can be obtained from head office. Subject to this clause 11, the Customer will at its cost take all reasonable steps to ensure that the Containers are repaired to comply with the SCF Group's repair standard.
 - (b) Maintenance: The relevant Schedule of Supply describes the regular maintenance standards expected of the Containers. Subject to this clause 11, the Customer will at its cost take all reasonable steps to ensure that the Containers are maintained to comply with the SCF Group's regular maintenance standards.
- 11.3. The Customer will, at its own expense, comply with the Regular Maintenance Requirements and replace or repair (in accordance with SCF Group's repairs standard), any Container or component thereof that has been damaged, lost, stolen or destroyed as a result of any deliberate or wilful damage of or any act or omission of the Customer or any of its employees, agents or contractors.
- 11.4. The Customer will, at its own cost, transport the Containers to the nearest practicable depot notified by the SCF Group to allow the SCF Group to perform any repairs or maintenance on the Containers required to comply with this clause 11. The Customer will give SCF Group a reasonable time to have the work completed.
- 11.5. For so long as a Container is in the possession of SCF Group for the purpose of carrying out repairs or maintenance on the Container, SCF Group must use all reasonable endeavours to provide the Customer with a replacement container meeting the same or substantially the same specifications. The provisions of this Agreement will apply to that replacement container in all relevant respects. Further, the Customer acknowledges that SCF Group may at any time during the Hiring Period replace any

- specific Container with a replacement so long as the replacement is of the same specifications and in substantially the same condition and the Customer does not incur any disruption or delay in connection with that replacement process.
- 11.6. During the Hiring Period, the Customer will, at its own expense, be responsible for all repairs and maintenance on the Containers so that at the end of the Hiring Periods (including any extension thereof under this Agreement) the Containers will be in a clean and serviceable condition, ready for re-hire with a SCF Group approved certified third party certificate. Any units returned in an uncleaned or serviceable condition will incur cost to the Customer, including without limitation costs for a third party to undertake cleaning and residue removal.
- 11.7. The Customer will only use the Containers in accordance with IMDG requirements (if applicable) or any other relevant standard.
- 11.8. The Customer undertakes to deliver the Containers to SCF Group for any periodic maintenance test required by statutory requirements. The cost of such required periodic inspection and testing will be to SCF Group's account. The Container will remain on hire during the testing. Any damage, cleaning and preparation to the Containers found at the time will be to the Customer's account.
- 11.9. The Customer cannot make any modifications or alterations to the Containers during the Hiring Period unless prior written consent is given by SCF Group.
- 11.10. At the termination or expiration of the Hiring Period, SCF Group may arrange for all or any repairs (including staining and pitting), maintenance, cleaning, removal of waste and/or dunnage, inspection, survey or any other requirement pursuant to this clause 11 to be carried out for and on behalf of the Customer and at the Customer's expense. The Customer will pay or reimburse SCF for the fees and charges for such work as set out in the relevant Schedule of Supply or SCF reasonable estimate provided for such work (as applicable).
- 12. LOSS OR DAMAGE**
- 12.1. The Customer will be liable to SCF Group for any and all damage to, loss or destruction of the Containers or any of them, arising out of the negligence or wilful acts of the Customer, its agents, contractors or employees.
- 12.2. If the Customer fails to repair any damage to any Container for which it is responsible within a reasonable time and to the reasonable satisfaction of SCF Group, then SCF Group may repair the damage and the costs of repair will be paid by the Customer to SCF Group within 30 days of the notification of the costs. All Containers will be repaired to the standard set out in the relevant Schedule of Supply (as applicable) unless otherwise advised.
- 12.3. The Customer will notify SCF Group immediately if any Container is stolen, lost, destroyed or damaged in any way, fair wear and tear being excluded.
- 12.4. The Customer will pay SCF Group the Replacement Value and all other reasonable costs and expenses incurred by SCF Group for and incidental to the purchase of a new Container to replace that which is stolen, lost, destroyed or damaged beyond economic repair due to the negligent or wilful acts of the Customer, its agents, contractors or employees ("Replacement Costs"). The expression "damaged beyond economic repair" means damaged to the extent where the cost of repairing the damage exceeds "the replacement value" of the same type as the one damaged.
- 12.5. The Customer will pay SCF Group the Replacement Costs within 30 days of notification of the amount and, after such payment, SCF Group will provide the Customer with a replacement Container as soon as is reasonably possible.
- 12.6. The Customer will continue to pay the Rental Charge for any Container stolen, lost, destroyed or damaged beyond economic repair until the Customer has paid SCF Group the costs of a replacement.
- 13. POSSESSION**
- 13.1. For the duration of the Hiring Period, the Customer will not without the prior written approval of SCF Group, which consent will not unreasonably be withheld or delayed:
- (a) part with the possession of the Containers, other than in the normal course of the Customer's business;
 - (b) voluntarily relinquish or part with effective control of the Containers, other than in the normal course of the Customer's business;
 - (c) assign this Agreement or any right or obligation under this Agreement to any person;
 - (d) grant any sub-lease, licence or any right to any person to use the Containers or any of them;
 - (e) make or authorise any alteration or modification to the Containers; or
 - (f) grant or attempt to grant any interest or right to any person in or to the Containers or any of them.
- 14. OWNERSHIP OF THE CONTAINERS**
- 14.1. SCF Group retains full legal and beneficial ownership of the Containers at all times.
- 15. TERMINATION**
- 15.1. SCF Group may terminate this Agreement or any individual hire of Containers:
- (a) if the Customer fails to pay any amount which it owes to SCF Group pursuant to this Agreement or commits any other material or persistent breach or default in the due and punctual performance of any of the Customer's obligations under this Agreement and fails to remedy such breach or default within 30 days of notice to the Customer; or
 - (b) upon written notice to the Customer if the Customer is presented with a petition for liquidation, appoints voluntary administrators, has a receiver appointed over any or all of its assets or makes an arrangement, composition or assignment for the benefit of its creditors;
- 15.2. The Customer may terminate this Agreement or any individual hire of Containers if SCF Group commits any material or persistent breach or default in the due and punctual performance of any of SCF Group's obligations under this Agreement and fails to remedy such breach or default within 90 days of notice to SCF Group.
- 15.3. Upon termination of this Agreement or an individual hire of a Container and without prejudice to any other right or remedy which SCF Group or the Customer may have:
- (a) SCF Group will be entitled to repossess the Containers. For the avoidance of doubt, SCF Group will also be entitled to repossess the Containers during any period of default referred to in clause 15.1 or if SCF Group decides not to terminate the Agreement pursuant to this clause 15;
 - (b) the Customer will immediately return the Containers to SCF Group as specified in clause 10;
 - (c) all amounts payable by the Customer under this Agreement and unpaid will, at the option of SCF Group and notwithstanding any delay or previous waiver of the right to exercise that option, immediately become due and payable without the necessity for any demand or notice to the Customer; and
 - (d) without limiting clause (c), the Customer will pay all amounts payable by the Customer to SCF under this Agreement in respect of transport of Containers (see clause 9.5) and repairs and maintenance (see clause 11.10).

16. WAIVER

The waiver of a breach of any condition of this Agreement will not operate as a general waiver of such condition or of any subsequent breach of that condition or any other condition of this Agreement.

17. SEVERANCE

Any condition of this Agreement held by a court to be invalid or unenforceable will be severed and the remaining provisions will continue to apply with full force and effect.

18. INDEMNITY AND EXCLUSION OF LIABILITIES

18.1. Subject to clause 18.3, and except as expressly provided to the contrary in this Agreement, all guarantees, terms, conditions, warranties, undertakings, inducements or representations whether express or implied, statutory or otherwise, relating to this Agreement or its subject matter are excluded to the maximum extent permitted by law.

18.2. Nothing in this Agreement excludes, restricts or modifies any right or remedy, or any guarantee, term, condition, warranty, undertaking, inducement or representation, implied or imposed by any legislation which cannot lawfully be excluded or limited.

18.3. Where SCF Group is not able to exclude a guarantee, term, condition, warranty, undertaking, inducement or representation imposed by legislation in relation to this Agreement ("Non-Excludable Provision"), then the liability of SCF Group for breach of the Non-Excludable Provision is limited to the repair or replacement of the Containers or the supply of substitute Containers (or the cost of doing so).

18.4. Subject to the foregoing obligations under the Non-Excludable Provisions and to the maximum extent permitted by law, SCF's maximum aggregate liability for all claims under or relating to this Agreement or its subject matter, whether in contract, tort (including without limitation negligence), in equity, under statute, under an indemnity, is limited to an amount equal to the fees paid by the Customer under this Agreement. In calculating SCF's aggregate liability under this clause, the parties must include any amounts paid or the value of any goods or services replaced, repaired or supplied by SCF for a breach of any Non-Excludable Provisions.

18.5. The Customer will indemnify SCF Group and keep SCF Group indemnified against all claims, demands and actions and all losses, damages, costs and expenses incurred or suffered by the Customer in respect of any death, bodily injury, loss or damage to any person or property whatsoever caused by, arising out of or in connection with the use of the Containers, other than those arising from the negligence or wilful acts of SCF Group, its agents, contractors or employees.

18.6. To the maximum extent permitted by law, neither party will be liable to the other for any indirect, economic, special or consequential loss or damage (including, without limitation, any loss of business or revenue, loss of profit or opportunity, loss of goodwill, anticipated savings or expenses) in connection with or arising out of this Agreement or the supply of the Containers.

19. INSURANCE

19.1. For the duration of the Hiring Period and any extension to the Hiring Period under clause 3, the Customer:

- (a) will insure for the loss and damage to the Containers caused by fire, theft, flood, inundation, cyclone, high wind event, vandalism, accident and for any other risk as determined by SCF Group, for not less than the stipulated Replacement Value of the Containers as listed in the Schedule of Supply. The insurance policy will name SCF Group as being an interested party;
- (b) will insure for death and or bodily injury, loss and damage to any person or property caused by, arising out of or in connection with the use of the Containers by the Customer

and its employees, agents and contractors for the amount of \$20,000,000; and

- (c) agrees that SCF Group will not insure and will accept no liability for any damage to cargo sustained whilst carried in the Containers.

19.2. The Customer will comply strictly with the terms and conditions of the insurance policy and will ensure that it does not do anything or fail to do anything which:

- (a) may invalidate or breach the insurance policy; or
- (b) will or may be likely to cause the insurer to refuse any claim or reduce the payable in respect of any claim under the insurance policy.

19.3. The Customer will punctually pay all premiums in respect of the insurance policy on the due date.

19.4. The Customer will not enforce, conduct, settle or compromise any claim against the insurer pursuant to the insurance policy without prior written approval of SCF Group.

19.5. Any moneys payable by the insurer in respect of any claim pursuant to the insurance policy will be paid direct to SCF Group but, if paid to the Customer, then the Customer will:

- (a) hold all moneys to it in trust for SCF Group; and
- (b) pay the moneys forthwith upon demand.

20. INSPECTION AND ACCESS TO CONTAINERS

20.1. The Customer will permit SCF Group or any person authorised by SCF Group to inspect the condition of the Containers upon reasonable notice.

20.2. The Customer hereby grants to SCF Group and any person authorised by SCF Group the right upon reasonable notice to enter onto any premises or sites owned by the Customer (or which the Customer has a right to occupy) on which a Container is located together with any equipment to:

- (a) inspect the state and condition of any Container; and
- (b) remove the Containers or any of them if SCF Group is entitled to repossess the Containers.

20.3. The Customer will execute all such documents and perform such acts or deeds as may be necessary to allow SCF Group to exercise its right of entry referred to in clause 20.2.

21. FORCE MAJEURE

21.1. No party is liable for any failure to perform its obligations under this Agreement if the failure or delay is due to anything beyond that party's reasonable control. If that failure exceeds 90 days, the other party may terminate this Agreement with immediate effect by giving notice to the other party. This clause 21 does not apply to any obligation to pay the Rental Charge due by the Customer in accordance with this Agreement

22. NOTICES

22.1. Any notice or other communication in connection with this Agreement is taken to have been duly given when made in writing and delivered or sent by post or email to the party to which such notice or communication is intended to be given at the address set out in the Schedule of Supply or such other address or email address as may be from time to time notified in writing from one party to the other for the purpose of this clause 22.

22.2. Any notice or other communication sent by post will be taken to have been received at the expiration of two business days after the date of posting.

22.3. Any notice or other communication sent by facsimile transmission is taken to have been received upon completion of a successful transmission to the recipient. However, if the facsimile is transmitted after 5.00pm at the place of receipt or on a day which is not a business day, it will be deemed to have been received on the next business day.

23. GOVERNING LAW

23.1. This Agreement will be governed by and construed in accordance with the law of the New Zealand and the parties to this Agreement agree to submit to the jurisdiction of the courts of New Zealand.

24. CONFIDENTIAL INFORMATION

24.1. The Customer acknowledges and agrees that confidential information regarding the operation of SCF Group's intellectual property, business, its products, services and systems ("Confidential Information") may be disclosed to it during the term of this Agreement.

24.2. The Customer will not, during or after the termination or earlier expiration of the term of this Agreement:

- (a) use the Confidential Information for any other purpose or in connection with any other goods or services;
- (b) disseminate, distribute, offer for sale, sell, dispose of or publish the Confidential Information to a third party without SCF Group's consent;
- (c) permit unauthorised persons, including third parties, to have access to areas where the Confidential Information may be displayed, reproduced or stored; or
- (d) make, or assist any person to make any unauthorised use of the Confidential Information.

25. PERSONAL PROPERTY SECURITIES ACT 1999

25.1. The Customer acknowledges and agrees that SCF Group has a security interest (as that term is defined in the *Personal Property Securities Act 1999* ("PPSA")) in the Containers under the PPSA and that:

- (a) the Customer will not grant or seek to grant any security interest in any Container adverse to the interest of SCF Group;
- (b) SCF Group's security interest secures all monies owing by the Customer under this Agreement;
- (c) SCF Group's security interest in each Container is a "purchase money security interest" (PMSI) under the PPSA; and
- (d) SCF Group's security interest attaches (as "attach" is used in the context of the PPSA) to each Container no later than when the Customer attains possession of that Container.

25.2. The parties acknowledge that the security interests include all proceeds from any dealings with the Containers in accordance with the PPSA.

25.3. The Customer must do such acts and provide such information (which information the Customer warrants to be complete, accurate and up to date in all respects) as in the opinion of SCF Group may be required or desirable to enable SCF Group to perfect a security interest created under the PPSA. The Customer undertakes not to change its name in any form or other details on the Personal Property Securities Register without first notifying SCF Group.

25.4. The Customer waives its right to receive any notice under the PPSA (including notice of a verification statement after registration or variation of a registration). The Customer:

- (a) agrees that nothing in sections 114(1)(a), 133 and 134 of the PPSA will apply to this Agreement; and
- (b) waives its right to:
 - receive a statement of account under section 116 of the PPSA;
 - (i) receive notice of a proposal by SCF Group to retain any secured property under section 120(2) of the PPSA or object to any such proposal under section 121 of the PPSA;
 - (ii) not have goods damaged when SCF Group removes an accession under section 125 of the PPSA;

- (iii) be reimbursed for damage caused when SCF Group removes an accession under section 126 of the PPSA;
- (iv) refuse permission to remove an accession under section 127 of the PPSA;
- (v) receive notice of the removal of an accession under section 129 of the PPSA; and
- (vi) apply to the court for an order concerning the removal of an accession under section 131 of the PPSA.

25.5. The Customer agrees to pay the costs, charges and expenses of any incidental to the need for, or desirability of registration of, a financing statement or financing change statement or any action taken by SCF Group to comply with the PPSA or to protect its position under the PPSA. The Customer agrees to pay any costs incurred by SCF Group arising from any disputes or negotiations with third parties claiming an interest in goods supplied by SCF Group.

25.6. If the PPSA is amended to permit the SCF Group and the Customer to agree not to comply with or to exclude other provisions of the PPSA, SCF Group may notify the Customer that any of these provisions is excluded, or that the Customer need not comply with any of these provisions, in each case, to the extent accepted in writing by the Customer after it receives such notification from SCF Group.

25.7. The Customer acknowledges that, unless otherwise defined in this Agreement, the terms and expressions used in this clause 25 have the meanings given to them in, or by virtue of, the PPSA.

26. PRIVACY

26.1. The privacy of the Customer's personal and credit related personal information ("personal information") is important to SCF Group. SCF Group is committed to respecting the Customer's right to privacy and protecting the personal information provided by the Customer in the Credit Application. SCF Group is bound by the New Zealand Privacy Principles in the Privacy Act 2020.

26.2. The Customer acknowledges that any personal information collected by SCF Group is subject to SCF Group's Privacy Policy, available at www.scf.com.au or www.container.co.nz

26.3. SCF Group's Privacy Policy sets out:

- (a) the purposes for which the Customer's personal information is collected;
- (b) the consequences if the Customer's personal information is not provided to SCF Group;
- (c) the third parties to which SCF Group discloses the Customer's personal information;
- (d) how the Customer may seek access or correction of its personal information;
- (e) whether the Customer's personal information is likely to be disclosed to overseas entities and in which countries; and
- (f) how the Customer can complain about a breach of SCF Group's obligations in respect of the Customer's personal information and how such a complaint will be dealt with.

27. VARIATION

SCF Group may add to or vary the terms of this Agreement from time to time by giving seven days' written notice to the Customer.

28. ELECTRONIC DOCUMENTS

28.1. Each party acknowledges that (a) SCF Group may issue to the Customer a Schedule of Supply; and (b) the Customer may accept the Schedule of Supply by electronic means, and SCF Group and the Customer agree that the issue or acceptance of such documents electronically (irrespective of whether the relevant document is signed) will be deemed to be of the same effect as if the document had been issued or accepted as a signed hard copy.

28.2. SCF Group will not be liable to the Customer or to any other person for any loss or damage suffered in relation to any

document transmitted electronically, including any loss or damage under, our of, or in connection with:

- (a) the transmission of any harmful code (such as viruses) to the Customer by email (including in any document attached to email); or
- (b) any failure by SCF Group to notify the Customer that SCF Group may have received any harmful code (such as viruses) from the Customer in any email (including in any document attached to email).

28.3. The parties to this Agreement consent to the execution of this document wherever necessary by virtue of electronic communication permitted by the *Electronic Transaction Act 2002*.

29. INTERPRETATION

29.1. In this Agreement, unless the context otherwise requires:

- (a) words denoting the singular will include the plural and vice versa;
- (b) headings are for convenience of reference only and do not affect the construction or interpretation of this Agreement;
- (c) "Agreement" means this Agreement to Lease;
- (d) "Agreement Commencement Date" means the date on which a Container is leased to the Customer pursuant to a Schedule of Supply (as applicable);
- (e) "Agreement Initial Term" means a term of seven years commencing on the date this Agreement commences pursuant to clause 2.1
- (f) "business day" means a day which is not a Saturday or a Sunday or a public holiday in Auckland
- (g) "Commencement Date" means the Commencement Date specified in the Schedule of Supply;
- (h) "Containers" refers to the Containers described in the relevant Schedule of Supply or any replacement container provided by SCF Group in the circumstances specified in clause 11;
- (i) "Credit Application" means the credit application issued to the Customer by SCF Group;
- (j) "government authority" includes a State and Federal government department and instrumentality, a statutory body, local government, council and a port authority;
- (k) "GST" means goods and services tax chargeable, or to which a person may be liable, under the Goods and Services Tax Act 1985;
- (l) "insurance policy" means an insurance policy effected by the Customer pursuant to clause 19 of this Agreement;
- (m) "Invoice" means the invoice issued by SCF Group to the Customer which sets out the Rental Charges;
- (n) "Hiring Period" means the hiring period described in the relevant Schedule of Supply commencing on the Commencement Date;
- (o) "Customer" means the customer of the SCF Group as detailed at the start of this Agreement;
- (p) "person" includes a body corporate;
- (q) "Regular Maintenance Requirements" means the regular maintenance requirements specified in the relevant Schedule of Supply;
- (r) "regulation" will include proclamation, by-law, notice and direction by any government authority,
- (s) "Release Validity Period" means the release validity period specified in the relevant Schedule of Supply;
- (t) "Rental Charge" means the rental charge price specified in the relevant Schedule of Supply;
- (u) "Replacement Value" means the replacement value as specified in, and calculated in accordance with, the relevant Schedule of Supply;
- (v) "SCF Group" refers to S.C.F Group (NZ) Limited NZBN 9429049359442;

- (w) "Schedule of Supply" refers to the Schedule(s) of Supply which detail the Containers, in the form as annexed to this Agreement;
- (x) "use of the Containers" includes loading, unloading and storing of the Containers; and transporting of the Containers.