

## SEA Containers NZ Partnership – Terms & Conditions of Trade

**1. Definitions** 1.1 “SCNZ” means SEA Containers NZ Partnership, its successors and assigns or any person acting on behalf of and with the authority of SEA Containers NZ Partnership. 1.2 “Client” means the person/s buying the Goods (and/or hiring Equipment) as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally. 1.3 “Goods” shall mean containers supplied for the purposes of sale by SCNZ to the Client (and where the context so permits shall include any supply of Services as hereinafter defined) and are as described on the invoices, quotation, work authorisation or any other forms as provided by SCNZ to the Client. 1.4 “Container” shall mean any Container(s) supplied for the purposes of hire by SCNZ to the Client (and where the context so permits shall include any supply of Services as hereinafter defined) and is as described on the invoices, quotation, authority to hire, or any other work authorisation forms as provided by SCNZ to the Client.

1.5 “Minimum Hire Period” means the Minimum Hire Period as described on the invoices, quotation, authority to hire, or any other forms as provided by SCNZ to the Client. 1.6 “Price” means the Price payable for the Goods/Equipment hire as agreed between and the Client in accordance with clause 4 below.

**2. Acceptance** 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of the Goods and/or Container(s). 2.2 These terms and conditions may only be amended with SCNZ’s consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and SCNZ.

**3. Change in Control** 3.1 The Client shall give SCNZ not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client’s details (including but not limited to, changes in the Client’s name, address, contact phone or fax number/s, or business practice). The Client shall be liable for any loss incurred by SCNZ as a result of the Client’s failure to comply with this clause.

**4. Price and Payment** 4.1 At SCNZ’s sole discretion the Price shall be either: (a) as indicated on any invoice provided by SCNZ to the Client in respect of Goods and/or Container(s) supplied; or (b)

SCNZ’s quoted price (subject to clause 4.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.

4.2 SCNZ reserves the right to change the Price if a variation to SCNZ’s quotation is requested.

4.3 Time for payment for the Goods/Equipment being of the essence, the Price will be payable by the Client on the date/s determined by SCNZ, which may be:

- (a) on delivery of the Goods and/or Container(s);
- (b) before delivery of the Goods and/or Container(s);
- (c) by way of instalments/progress payments in accordance with SCNZ’s payment schedule;
- (d) for certain approved Client’s, due twenty (20) days following the end of the month in which a statement is posted to the Client’s address or address for notices;
- (e) the date specified on any invoice or other form as being the date for payment; or
- (f) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by SCNZ.

4.4 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (plus a surcharge of up to two and a half percent (2.5%) of the Price), or by any other method as agreed to between the Client and SCNZ.

4.5 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to SCNZ an amount equal to any GST SCNZ must pay for any supply by SCNZ under this or any other agreement for the sale of the Goods/hire of the Container(s). The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

### 5. Delivery of Goods and/or Container(s)

5.1 Delivery (“Delivery”) of the Goods and/or Container(s) is taken to occur at the time that:

- (a) the Client or the Client’s nominated carrier takes possession of the Goods and/or Container(s) at SCNZ’s address; or
- (b) SCNZ (or SCNZ’s nominated carrier) delivers the Goods and/or Container(s) to the Client’s nominated address even if the Client is not present at the address.

5.2 At SCNZ’s sole discretion the cost of delivery is either included in the Price or is in addition to the Price.

5.3 The Client must take delivery by receipt or collection of the Goods and/or Container(s) whenever either is tendered for delivery. In the event that the Client is unable to take delivery of Goods and/or Container(s) as arranged then SCNZ shall be entitled to charge a reasonable fee for redelivery of the Goods and/or Container(s) and/or the storage of the and/or Container(s).

5.4 Delivery of the Goods and/or Container(s) to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this agreement.

5.5 SCNZ may deliver the Goods and/or Container(s) in separate instalments.

Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions. 5.6 Any time or date given by SCNZ to the Client is an estimate only. The Client must still accept delivery of the Goods/Equipment even if late and SCNZ will not be liable for any loss or damage incurred by the Client as a result of the delivery being late.

5.7 The Client acknowledges that SCNZ’s quotation and delivery conditions are based on the information provided by the Client to SCNZ at the time of booking delivery. In the event that there is any deviation to the delivery address, issues with site access, or any other factors that may contribute to or result in (such as but not limited to) extended waiting times, additional delivery methods (e.g. Crane hire or side loaders) being applicable to the delivery of the container/s and through which SCNZ may incur additional costs shall be chargeable to the Client in addition to the Price.

### 6. Risk to Goods

6.1 Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.

6.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, SCNZ is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by SCNZ is sufficient evidence of SCNZ’s rights to receive the insurance proceeds without the need for any person dealing with SCNZ to make further enquiries.

6.3 If the Client requests SCNZ to leave Goods outside SCNZ’s premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Client’s sole risk.

## 7. Access

7.1 The Client shall be responsible for free access by SCNZ to the site on which the Container is located. If there are any delays due to free access not being available then the Client shall be responsible and shall reimburse SCNZ for all lost hire fees associated with the Container being unavailable. The Client shall also be responsible for all other expenses and costs incurred by SCNZ due to delays in access to the Container such as the hire of a crane. The off-hire receipt will be issued when the Container is returned to SCNZ's premises.

7.2 It is the responsibility of the Client to ensure that access is suitable to accept the weight of laden trucks. The Client agrees to indemnify SCNZ against all costs incurred by SCNZ in recovering such vehicles in the event they become bogged or otherwise immovable.

## 8. Title to Goods

8.1 SCNZ and the Client agree that ownership of the Goods shall not pass until:

- (a) the Client has paid SCNZ all amounts owing to SCNZ; and
- (b) the Client has met all of its other obligations to SCNZ.

8.2 Receipt by SCNZ of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.

8.3 It is further agreed that:

- (a) where practicable the Goods shall be kept separate and identifiable until SCNZ shall have received payment and all other obligations of the Client are met; and
- (b) until ownership of the Goods passes to the Client in accordance with clause 8.1 that the Client is only a bailee of the Goods and must return the Goods to SCNZ on request.
- (c) the Client holds the benefit of the Client's insurance of the Goods on trust for SCNZ and must pay to SCNZ the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
- (d) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If

the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for SCNZ and must pay or deliver the proceeds to SCNZ on demand.

(e) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of SCNZ and must sell, dispose of or return the resulting product to SCNZ as it so directs.

(f) the Client irrevocably authorises SCNZ to enter any premises where SCNZ believes the Goods are kept and recover possession of the Goods.

(g) SCNZ may recover possession of any Goods in transit whether or not delivery has occurred.

(h) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of SCNZ.

(i) SCNZ may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

## 9. Personal Property Securities Act 1999 ("PPSA")

9.1 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:

- (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
- (b) a security interest is taken in all Goods and/or Container(s) previously supplied by SCNZ to the Client (if any) and all Goods and/or Container(s) that will be supplied in the future by SCNZ to the Client.

9.2 The Client undertakes to:

- (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which SCNZ may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
- (b) indemnify, and upon demand reimburse, SCNZ for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods/Equipment charged thereby;
- (c) not register a financing change statement or a change demand without the prior written consent of SCNZ; and
- (d) immediately advise SCNZ of any material change in its business practices of selling Goods which would result in a change in the nature of proceeds derived from such sales.

9.3 SCNZ and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.

9.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.

9.5 Unless otherwise agreed to in writing by SCNZ, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA. 9.6 The Client shall unconditionally ratify any actions taken by SCNZ under clauses 9.1 to 9.5.

## 10. Security and Charge

10.1 In consideration of SCNZ agreeing to supply the Goods and/or Container(s), the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).

10.2 The Client indemnifies SCNZ from and against all SCNZ's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising SCNZ's rights under this clause.

10.3 The Client irrevocably appoints SCNZ and each director of SCNZ as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 10 including, but not limited to, signing any document on the Client's behalf.

## 11. Client's Disclaimer

11.1 The Client hereby disclaims any right to rescind, or cancel any contract with or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Client by SCNZ and the Client acknowledges that the Goods are bought and/or the hire of Container(s) relying solely upon the Client's skill and judgment.

## 12. Defects

12.1 The Client shall inspect the Goods and/or Container(s) on delivery and shall within seven (7) days of delivery (time being of the essence) notify SCNZ of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford SCNZ an opportunity to inspect the Goods and/or Container(s) within a reasonable time following delivery if the Client believes the Goods and/or Container(s) are defective in any way. If the Client shall fail to comply with these provisions the Goods and/or Container(s) shall be presumed to be free from any defect or damage. For defective Goods and/or Container(s), which SCNZ has agreed in writing that the Client is entitled to reject, SCNZ's liability is limited to either (at SCNZ's discretion) replacing the Goods and/or Container(s) or repairing the Goods and/or Container(s).

12.2 Goods and/or Container(s) will not be accepted for return for any reason other than those specified in clause 12.1 above (or in the case of Container(s), normal

termination of Container(s) hire in accordance with the full terms and conditions herein).

### **13. Warranty**

13.1 To the extent permitted by statute, no warranty is given by SCNZ as to the quality or suitability of the Goods/Container(s) for any purpose and any implied warranty, is to the maximum extent allowed by law expressly excluded. SCNZ not be responsible for any loss or damage to the Goods/Container(s), or caused by the Goods/Container(s), or any part thereof however arising.

### **14. Default and Consequences of Default**

14.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at SCNZ's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

14.2 If the Client owes SCNZ any money the Client shall indemnify SCNZ from and against all costs and disbursements incurred by SCNZ in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, SCNZ's collection agency costs, and bank dishonour fees).

14.3 Without prejudice to any other remedies SCNZ may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions SCNZ may suspend or terminate the supply of Goods and/or Container(s) to the Client. SCNZ will not be liable to the Client for any loss or damage the Client suffers because SCNZ has exercised its rights under this clause.

14.4 Without prejudice to SCNZ's other remedies at law SCNZ shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to SCNZ shall, whether or not due for payment, become immediately payable if:

- (a) any money payable to SCNZ becomes overdue, or in SCNZ's opinion the Client will be unable to make a payment when it falls due;
- (b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

### **15. Consumer Guarantees Act 1993**

15.1 If the Client is acquiring Goods for the purposes of a trade or business, the Client acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Goods by SCNZ to the Client.

### **16. Cancellation**

16.1 SCNZ may cancel any contract to which these terms and conditions apply or cancel delivery of Goods/Equipment at any time before the Goods and/or Container(s) are delivered by giving written notice to the Client. On giving such notice SCNZ shall repay to the Client any money paid by the Client for the Goods and/or Container(s). SCNZ shall not be liable for any loss or damage whatsoever arising from such cancellation.

16.2 In the event that the Client cancels delivery of Goods and/or Container(s) the Client shall be liable for any and all loss incurred (whether direct or indirect) by SCNZ as a direct result of the cancellation (including, but not limited to, any loss of profits).

### **17. Privacy Act 1993**

17.1 The Client authorises SCNZ or SCNZ's agent to:

- (a) access, collect, retain and use any information about the Client;
  - (i) (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Client's creditworthiness; or
  - (ii) for the purpose of marketing products and services to the Client.
- (b) disclose information about the Client, whether collected by SCNZ from the Client directly or obtained by SCNZ from any other source, to any other

credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Client.

17.2 Where the Client is an individual the authorities under clause 17.1 are authorities or consents for the purposes of the Privacy Act 1993.

17.3 The Client shall have the right to request SCNZ for a copy of the information about the Client retained by SCNZ and the right to request SCNZ to correct any incorrect information about the Client held by SCNZ.

### **18. General**

18.1 The failure by SCNZ to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect SCNZ's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

18.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of New Zealand.

18.3 SCNZ shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by SCNZ of these terms and conditions (alternatively SCNZ's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods/Equipment hire).

18.4 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by SCNZ nor to withhold payment of any invoice because part of that invoice is in dispute.

18.5 SCNZ may license or sub-contract all or any part of its rights and obligations without the Client's consent.

18.6 The Client agrees that SCNZ may amend these terms and conditions at any time. If SCNZ makes a change to these terms and conditions, then that change will take effect from the date on which SCNZ notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for SCNZ to provide Goods/Equipment to the Client.

18.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.

18.8 The Client warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and

that this agreement creates binding and valid legal obligations on it.

## **Additional Terms & Conditions Applicable to Hire Only**

### **19. Hire Period**

19.1 Hire Charges shall commence from the time the Container is collected by the Client from SCNZ's premises and will continue until the return of the Container to SCNZ's premises, and/or until the expiry of the Minimum Hire Period, whichever last occurs.

19.2 If SCNZ agrees with the Client to deliver and/or collect the Container, hire charges shall commence from the time the Container leaves SCNZ's premises and continue until the Client notifies SCNZ that the Container is available for collection, and/or until the expiry of the Minimum Hire Period, whichever last occurs.

19.3 No allowance whatever can be made for time during which the Container is not in use for any reason, unless SCNZ confirms special prior arrangements in writing. In the event of Container breakdown provided the Client notifies SCNZ immediately, hiring charges will not be payable during the time the Container is not working, unless the condition is due to negligence or misuse on the part of or attributable to the Client.

### **20. Risk to Container**

20.1 SCNZ retains property in the Container nonetheless all risk for the Container passes to the Customer on delivery.

20.2 The Client accepts full responsibility for the safekeeping of the Container and indemnifies SCNZ for all loss, theft, or damage to the Container howsoever caused and without limiting the generality of the foregoing whether or not such loss, theft, or damage is attributable to any negligence, failure, or omission of the Client. 20.3 The Client will insure, or self insure, SCNZ's interest in the Container against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will effect adequate Public Liability Insurance covering any loss, damage or injury to property arising out of the use of the Container. Further the Client will not use the Container nor permit it to be used in such a manner as would permit an insurer to decline any claim.

20.4 The Client accepts full responsibility for and shall keep SCNZ indemnified against all liability in respect of all actions, proceedings, claims, damages, costs and expenses in respect of any injury to persons or damage to property arising out of the use of the Container during the hire period however arising and whether or not arising from any

negligence, failure or omission of the Client or any other persons.

20.5 To the extent permitted by statute, no warranty is given by SCNZ as to the quality or suitability of the Container for any purpose and any implied warranty, is expressly excluded.

### **21. Title to the Container(s)**

21.1 The Container is and will at all times remain the absolute property of SCNZ and is returnable to SCNZ on demand.

21.2 If the Client fails to return the Container to SCNZ when requested then SCNZ or SCNZ's agent may enter upon and into land and premises owned, occupied or used by the Client, or any premises where the Container is situated as the invitee of the Client and take possession of the Container, without being responsible for any damage thereby caused.

21.3 The Client is not authorised to pledge SCNZ's credit for repairs to the Container or to create a lien over the Container in respect of any repairs.

### **22. Client's Responsibilities**

22.1 The Client shall:

- (a) satisfy itself at commencement that the Container is suitable for its purposes;
- (b) notify SCNZ immediately by telephone of the full circumstances of any mechanical breakdown or accident. The Client is not absolved from the requirements to safeguard the Container by giving such notification;
- (c) be solely responsible for ensuring temperature settings on refrigerated Containers are to their requirements;
- (d) not use the Container for any illegal purpose or store any illegal, prohibited, or unprotected corrosive substances or goods in or on the Container;
- (e) notify SCNZ of any dangerous goods which are to be stored in the Container and comply with any regulatory body requirements and/or occupational health and safety laws relating to such storage or which relate to the use, or movement of, the Container;
- (f) not move the Container from its specified location without the express written approval of SCNZ;
- (g) grant SCNZ the right to enter the site where the Container is stored at all reasonable times to view the state of the Container;

(h) ensure that any person(s) moving the Container have the appropriate skills and licences to do so;

(i) on termination of the hire deliver the Container complete with all its parts clean and in good order as delivered, fair wear and tear accepted, to SCNZ;

(j) keep the Container in their own possession and control and shall not assign the benefit of the hire contract nor be entitled to lien over the Container;

(k) operate any refrigerated Container with an adequate power source;

(l) not alter or make any additions to the Container including, but without limitation, altering, making any additions to, defacing or erasing any identifying mark, plate or number on or in the Container, or in any other manner interfere with the Container;

(m) employ the Container solely in its own work and shall not permit the Container of any part thereof to be used by any other party for any other work;

(n) not exceed the recommended or legal load and capacity limits of the Container;

(o) not pledge SCNZ's credit for repairs to the Container, nor take or allow alien over the Container;

(p) not fix any of the Container in such a manner as to make it legally a fixture forming part of any freehold.

22.2 Immediately on request by SCNZ the Client will pay:

- (a) the new list price of any Container that is for whatever reason destroyed, written off or not returned to SCNZ;
- (b) all costs incurred in cleaning the Container;
- (c) all costs of repairing any damage caused by the ordinary use of the Container up to an amount equal to 10% of the new list price of the Container;
- (d) the cost of repairing any damage to the Container caused by the negligence of the Client or the Client's agent;
- (e) the cost of repairing any damage to the Container caused by vandalism, or (in SCNZ's reasonable opinion) in any way whatsoever other than by the ordinary use of the Container by the Client.

**Please note that a larger print version of these terms and conditions is available from SCNZ on request.**

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