

WHAT THIS DOCUMENT DOES

This document applies to all States and Territories across Australia.
Please read the whole document.

This document sets out the terms and conditions of sale ("**Terms**") in respect of the goods ("**Goods**") and the delivery and carriage services ("**Carriage**") to be supplied by Victorian Container Management Pty Ltd. ABN: 32 096 770 642 ("**we**" or "**us**") to you as set out in the quote attached to this document ("**Quote**") (collectively, the "**Agreement**"). You enter into this Agreement by signing or otherwise authorising or accepting the Quote in accordance with the process set out in the Quote. In the event of any inconsistency between these Terms and the Quote, these Terms take precedence to the extent of the inconsistency, except where the Quote contains special conditions, in which case those special conditions will take precedence to the extent of the inconsistency. We may decline to provide a quote for the supply of goods to you in our discretion.

1. PAYMENT

You agree to pay us the specified price and related charges ("**Purchase Price**") of the Goods before delivery or by the due date, as set out in the Quote. We reserve the right to add a credit card surcharge for each credit card payment which will be the actual fee charged by the credit card provider for facilitating the payment. We accept Visa, Mastercard.

2. LATE PAYMENTS

If any amount of the Purchase Price is not paid on the due date specified in the Quote, you must pay interest on the amount not paid ("**Overdue Amount**"). Interest on any Overdue Amount will be calculated monthly, at the rate of eight (8%) percent per annum, from and including the due date to and including the date we receive the full Overdue Amount.

3. RISK AND USE

3.1 Risk in the Goods passes to you on Delivery to you, your agent or carrier.

3.2 You must use and operate the Goods safely, in compliance with all applicable laws, regulations, standards, Codes of Practice, Building Codes, local, state and federal requirements, and only for their intended use.

3.3 For the purposes of this Agreement, "**Delivery**" means either:

- (a) where you require Carriage, upon your acceptance of the Goods by signing a receipt acknowledging delivery, at the location specified in the Quote; or
- (b) where you have arranged to collect and transport the Goods yourself, upon the Goods being loaded onto a vehicle for transport at our, or our subcontractor's, premises, as specified in the relevant Quote.

4. RETENTION OF TITLE

4.1 Notwithstanding that risk in the Goods may have passed pursuant to clause 3, you agree that title to the Goods does not pass to you until we receive payment in full of the Purchase Price. Until we receive payment of such amounts, you will hold the Goods for and on behalf of us as bailee. Prior to receipt by us of the amounts owing you must:

- (a) not intermingle the Goods with any other property;
- (b) not change the Goods in any way;
- (c) not change or obscure in any way any identification marking that we have placed on the Goods by lettering or numbering;
- (d) not sell the Goods except to a bona fide purchaser for full value;

(e) keep all proceeds from the sale of the Goods on our behalf in a separate trust account; and

(f) promptly pay the proceeds of any sale of the Goods to us.

4.2 Payment of the proceeds from the sale of the Goods by you does not relieve you of your obligation to pay to us the balance of the Purchase Price plus any interest or other amounts payable.

5. PERSONAL PROPERTY SECURITIES ACT

5.1 You acknowledge and agree that the provisions of clause 4 create a purchase money security interest in all present and future Goods supplied pursuant to this Agreement. You acknowledge that our rights and interests in proceeds derived from the Goods constitute a security interest in such proceeds for the purposes of the *Personal Property Securities Act 2009* (Cth) (the "**PPS Act**"), and, to the extent applicable the PPS Act applies in addition to any rights we have under these Terms.

5.2 You warrant that any Goods or materials purchased from us are not purchased predominantly for personal, domestic or household purposes.

5.3 You acknowledge that we may do anything reasonably necessary to protect our interest in the Goods, including but not limited to registering any security interest which we have over the Goods under the PPS Act. You agree without charge to provide all information and do all things reasonably necessary to assist us to undertake the matters set out above. You waive pursuant to section 157(3)(b) of the PPS Act the right to receive notice of a verification statement in relation to any registration event.

5.4 You and we agree that pursuant to section 115 of the PPS Act, the following provisions in the PPS Act do not apply in relation to a security interest in the Goods to the extent, if any, mentioned:

- (a) section 95 (notice of removal of accession);
- (b) section 125 (obligation to dispose of or retain collateral), in that we may extend the time for delay as we consider appropriate;
- (c) section 129 (disposal by purchase);
- (d) section 130 (notice of disposal), to the extent that it requires the secured party to give a notice to the grantor before disposal;
- (e) paragraph 132(3)(d) (contents of statement of account after disposal);
- (f) subsection 132(4) (statement of account if no disposal);
- (g) section 135 (notice of retention);
- (h) section 142 (redemption of collateral); and
- (i) section 143 (reinstatement of security agreement).

5.5 You agree not to disclose information of the kind that can be requested under section 275(1) of the PPS Act. You must do everything necessary on your part to ensure that section 275(6)(a) of the PPS Act continues to apply.

6. WHAT ARE OUR RIGHTS IF YOU COMMIT A BREACH?

If: (i) you fail to pay any amount payable by you to us under these Terms on the due date and you do not remedy your failure within two (2) business days of the date that we notify you in writing of your failure, (ii) you fail to perform any other material obligation under these Terms and you do not remedy your failure within (5) business days of the date that we notify you in writing of your failure, (iii) you cease doing business, or (iv) to the extent permitted by law, a, receiver and manager, administrator, provision liquidator, liquidator or controller (or any other person holding or appointed to an analogous office or acting or purporting to act in an analogous capacity) is appointed to you, or you otherwise become insolvent, commit an act of bankruptcy or become the subject of a proceeding under any bankruptcy act, or its counterpart under the law of any

territory outside of the jurisdiction of Australia, then without limiting our rights or remedies in any way we may (but are not obliged to) immediately and without releasing you from any accrued obligations do one or more of the following:

- (a) terminate this agreement including any sale of the Goods to you;
- (b) declare the balance of the Purchase Price due and payable by you;
- (c) retake possession of the Goods; and
- (d) remedy any default that you commit under these Terms (at your cost).

7. YOUR RIGHTS TO POSSESSION OF THE GOODS CEASE

If we terminate this agreement for the sale of the Goods to you, you will no longer be entitled to possession of the Goods and you must immediately return the Goods to us (at your cost). After we terminate this agreement, nothing in these Terms gives you any express or implied right or entitlement to, and you must not attempt or purport to, sell, hire, lease, encumber, grant any right or interest (of any nature) in or over the Goods.

8. RIGHT TO RECOVER GOODS

If we are entitled under this Agreement to retake possession of the Goods, we may enter upon the premises where the Goods are located, and use such reasonable means necessary to remove the Goods and you authorise us to do so at your cost.

9. WHAT HAPPENS TO PROPERTY ATTACHED TO THE GOODS?

If we retake possession of all or any part of the Goods, you authorise us to also take possession of any property in, on or attached to the Goods.

10. WARRANTIES

Nothing in this clause 10 affects any rights that you may have that cannot be limited, modified or restricted at law, including any such rights under the *Australian Consumer Law*.

10.1 State of the Goods

You acknowledge and agree that you:

- (a) have the opportunity to inspect the Goods prior to or upon their Delivery to you; and
- (b) you accept them in their state as at Delivery.

10.2 Specific warranties excluded

Without limiting paragraph 10.1, we make no express or implied warranty in relation to:

- (a) the fitness of the Goods for any particular purpose;
- (b) the merchantability of the Goods; or
- (c) the description, state, quality or condition of the Goods.

10.3 Not Liable

To the full extent permitted by law, we exclude and are not liable for any condition or warranty (of any kind) which is not expressly set out in these Terms. This does not affect conditions and warranties that cannot be excluded under law including the *Australian Consumer Law*.

10.4 Repair

Any liability of us to you arising under statute which may not be excluded, restricted or modified by agreement is limited to an amount equal to:

- (a) the cost of replacing the Goods;
- (b) the cost of obtaining an equivalent product; or
- (c) the cost of having the Goods repaired, whichever we may elect to the extent that we are permitted to do so by law.

To the extent that the law permits you to present Goods to us for repair or replacement, the Goods may be replaced by refurbished

goods of the same type rather than being repaired. Refurbished parts may be used to repair the Goods.

11. GENERAL

11.1 Notices

All notices under these Terms must be in writing and be given to the address shown in the Quote, or to such other address as may be designated in writing by either party to the other.

11.2 Binding

These Terms are binding upon you and us, your and our successors and assigns and are governed by the laws of Victoria. The parties consent to the non-exclusive jurisdiction of the courts of Victoria.

11.3 Override and variation

These Terms override and exclude any terms and conditions provided by you. These Terms may only be modified or varied if agreed in writing by the parties.

11.4 No waiver of rights

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

11.5 Cumulative rights

Our rights under these Terms are in addition to, and do not exclude, any rights at common law, equity or any other agreement between you and us.

11.6 Intellectual property

We own all intellectual property rights attributable to the Goods or anything we do in connection with these Terms including in any inventions, drawings, designs or other work. Drawings provided are our property and are conditionally loaned to you and you agree not to reproduce them in whole or in part, nor make any use of them that has not been approved in writing by us.

11.7 Consent

You consent to us using your personal information for the purposes of customer satisfaction surveys.

11.8 Consequential Loss

To the full extent permitted by law, we are not liable for any indirect, economic, special or consequential loss or damage of any nature, including, without limitation, any loss of business or revenue, loss of profits, loss of opportunity, loss of goodwill, anticipated savings or expenses, in connection with or arising out of this Agreement. Nothing in this clause 10.8 does, or is intended to, exclude or limit any rights you may have under the *Australian Consumer Law* which cannot lawfully be excluded or limited. To the extent permitted by section 64A of the *Australian Consumer Law* in respect of goods and services other than of a kind ordinary acquired for personal, domestic or household use or consumption, our liability is limited to the re-supply of the relevant goods or services or the cost of doing so.

11.9 Expenses

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

11.10 Your Right to Terminate

You may terminate this Agreement by written notice if: (i) we are in breach of this agreement and the breach is not remedied within five (5) business days of written notice being received by us requiring the breach to be remedied; or (ii) we cease doing business or a liquidator, administrator, receiver and manager, controller or other like officer is appointed over any or all of our assets.

12. CARRIAGE

- (a) This clause 12 only applies where your Quote specifies that Carriage will be provided.
- (b) You acknowledge and agree that we may subcontract the performance of Carriage for you to one of our subcontractors.
- (c) Where we or our subcontractors provide Carriage for you, we and our subcontractors are not common carriers and accept no liability as such.
- (d) This clause 12(d) does not apply if this Agreement is a 'regulated transaction'. For the purposes of this clause, a 'regulated transaction' arises where you are a 'consumer' within the meaning of section 3 of the Australian Consumer law or this Agreement is a 'consumer contract' or a 'small business contract' for the purposes of section 23 of the Australian Consumer Law. All Carriage is performed at your risk. You bear all risk of loss or damage to or arising out of the Goods or their contents.
- (e) You must not request Carriage for any dangerous, explosive, flammable, hazardous or damaging goods without presenting a full description of those goods.
- (f) We and our subcontractors are not liable for failure to deliver, delay in delivery of, or misdelivery of the Goods or their contents, due to weather or other circumstances beyond our control. In this event we or our subcontractors will deliver as soon as reasonably possible.
- (g) Clauses 10 and 11.8 of these Terms (with any necessary changes) apply to Carriage with references to the provision of Goods in those sections to read as references to the provision of Carriage.

13. Transport

- (a) 20-minute load/unload waiting time is included per job. After this, a fee of \$150.00 per hour will apply, charged in 15-minute increments.
- (b) If the direction of the container needs to be changed at the drop-off point, a \$100.00 fee will apply.
- (c) If delivery is cancelled within 24 hours of scheduled delivery, up to 50% of fee may be withheld.