



Silverback Cargo Equipment Pty Ltd t/as Silverback
Cargo Care ABN 26 077 294 154 and Silverback Container
Management Pty Ltd ABN 70 120 672 611 ("Silverback")

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These are the entire Terms and Conditions of supply for Silverback, being Silverback Cargo Equipment Pty Ltd t/as Silverback Cargo Care ABN 26 077 294 154 and Silverback Container Management Pty Ltd ABN 70 120 672 611 and associated, related, subsidiary and parent companies, successors and assigns ("the Supplier").

The Glossary

1. DEFINITIONS AND INTERPRETATION

Additional Expenses means any duties, fees, taxes (including GST), imposed by these Terms, including lift fees, PPSA registration charges, delivery charges, demurrage charges, merchant fees and surcharges, transport and freight charges, permit and licence fees, cleaning costs, toll or other road charges, storage fees and environmental levies.

Container means a shipping container that is hired or supplied to You as part of the Services.

Credit Account means the approved commercial account You have with Us to purchase Goods and Services on credit pursuant to these Terms.

Customer means any person, firm or company placing an Order with Us for the purchase of Goods and Services pursuant to these Terms, including Your associated, related, subsidiary and parent companies, successors and assigns (all of which are referred to as "You" and "Your").

Due Date means the date for Your payment of the Goods, Services and Additional Expenses, being 14 days from the date of Our invoice.

Force Majeure means something outside a party's reasonable control, including war, strikes, lockouts, epidemics and pandemics, industrial disputes or civil unrest, government restrictions or intervention, transport delays, fire, act of God, storm or flood, theft and vandalism.

Goods means any goods, products and merchandise supplied by Us to You pursuant to any Quote, Order and/or these Terms, including Containers, industrial consumables, load restraint and cargo protection equipment, spill control tools, signs and labels, warehouse and packing supplies, and safety products.

Hire Period means the time that You hire Containers as part of the Services, as specified in the hire schedule and includes the time that shipping containers are in your possession.

Insolvency Event means any circumstances where We reasonably believe that You are unable to pay Your debts as and when they fall due or You have suffered a material adverse change in Your financial circumstances.

Loss means any claim, demand, cause of action, loss and damage, liability, costs (including legal costs on an indemnity basis), expenses (including any GST payable) and is not limited by the Losses which were contemplated by the parties at the time of entering into these Terms.

Order means a request to purchase Goods and Services placed by You.

PPSA means:

- (a) the *Personal Property Security Act 2009* (Cth) (**PPS Act**) and any regulation made at any time under the PPS Act (each as amended from time to time); and
- (b) any amendment made at any time to any other legislation as a

consequence of the PPS Act.

Quote means Our written description and price of the Goods and Services to be supplied to You, which is valid for 30 days.

Services means all services provided by Us to You pursuant to any Quote, Order and these Terms, including Container management services.

Site means any place at which You request Goods and Services to be supplied, including any on-hire and de-hire depots.

Supplier means the entity or entities specified in these Terms as supplying the Good and Services to You and includes any associated, related, subsidiary and parent companies, successors and assigns (all of which are referred to as "Us", "We" and "Our").

Terms means these Terms and Conditions of Supply.

Website means www.silverback.com.au as redirected from time to time.

In these Terms:

- (a) A Business Day is any day except Saturday, Sunday or a public holiday in the location where the Goods and Services are being supplied;
- (b) writing includes by email and communication through Our website;
- (c) a reference to a clause or paragraph is a reference to these Terms;
- (d) a reference to a party to these Terms or any other document or arrangement includes that party's executors, administrators, successors and permitted assigns;
- (e) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- (f) headings and any explanatory notes are for ease of reference only and do not affect the meaning or interpretation of these Terms;
- (g) a reference to 'including' does not convey any limitation and should be interpreted as if the word 'without limitation' also appear; and
- (h) if these Terms require something to be done on a day that is not a Business Day (for example, payment or notice), then it must be done on the preceding Business Day.

Framework of these Terms

2. THIS AGREEMENT AND OUR RELATIONSHIPS

- (a) These are the entire terms and conditions of all Goods and Services supplied by Us to You. Except where the parties agree otherwise (which must be by a duly authorised officer and in writing) or where special terms and conditions are listed by Us on any Quote or hire schedule, these Terms apply notwithstanding any provisions to the contrary which may appear on any other document.
- (b) You warrant that You have obtained all the necessary authorisations to enter into and perform the contract created by these Terms. You warrant that any person signing these Terms or instructing Us as to the Goods and Services has Your authority and power to do so.
- (c) You accept these Terms by signing and returning a copy of them to

Us or by other conduct, for example by oral acceptance, making an Order, or by instructing Us to supply the Goods and Services.

- (d) You engage Us to provide Goods and Services strictly as an independent contractor. We are not engaged as Your employee, partner, agent, joint venture or franchisee, nor is any other person working at Our direction.
- (e) These Terms are interpreted according to the laws of the State or Territory as We may determine in Our sole discretion. Proceedings by either party may be commenced and/or continued in the State or Territory We determine in Our sole discretion. If We do not make any determination, You consent to any proceedings being commenced and heard by a Court in the State of Victoria, Australia applying the laws of that State.

3. CHANGES AND UPDATES TO THESE TERMS

- (a) From time-to-time, and at any time, We may update or alter these Terms. We will provide You with 10 days written notice of any updated or altered Terms, after which any updated or altered Terms will apply to all Orders for Our Goods and Services. A copy of current Terms can be found on Our website or by requesting a copy from Us.
- (b) You must notify Us in writing of any material change to Your organisation, including a change of director, bank account details or change of address.
- (c) We may assign and transfer all or any of Our title, estate, interest, benefit, rights, duties and obligations in these Terms to any person, provided that the assignee agrees to assume any of Our duties and obligations owed to You in these Terms.
- (d) You must not assign, transfer, charge, encumber or otherwise deal with any of Your rights and obligations under these Terms, or attempt or purport to do so, without Our prior written consent.

Supplying the Goods and Services

4. PRICES, QUOTATIONS AND ORDERS

- (a) You may purchase Goods and Services by placing an Order with Us verbally or in writing. You warrant that the person who places the Order is authorised by You to do so.
- (b) We may accept or decline any Order by notifying You in writing or by supplying the Goods and Services. The parties agree that these Terms apply to all Orders for the supply of Goods and Services.
- (c) We may issue a Quote to You, but a Quote is not an offer by Us to supply Goods and Services to You. We may vary or cancel any Quote before an Order is accepted.
- (d) You cannot cancel an Order after acceptance without Our written consent and at Our absolute discretion.
- (e) Prices specified on any of Our price lists are subject to change without notice to You. You will be charged in accordance with the price that is current at the time You place Your order.
- (f) Unless the parties agree differently in writing, the price You must pay for Goods and Services is specified in Our invoice and may include Additional Expenses.
- (g) Before accepting any Order or request for a Quote from You, We can change the prices of Goods and Services to be supplied under these Terms without notice. In any other circumstance, We will provide you with 14 days' written notice of any price changes.

5. SUPPLY AND DELIVERY

- (a) Specifications for the Goods and Services being supplied under these Terms are contained in the Order/s You submit from time-to-time.
- (b) The Goods and Services are provided to You with all due skill and care in accordance with Our professional standards.
- (c) The method of delivery of the Goods and Services is at Our sole discretion. At any time, We may appoint an agent to perform Our delivery obligations of these Terms.

- (d) Delivery of Goods and Services may attract Additional Expenses and You agree to those Additional Expenses.
- (e) You authorise Us to:
 - i) supply Goods and Services at the Site nominated by You;
 - ii) arrange for Containers to be collected at a Site nominated by Us;
 - iii) deliver and leave Goods at the Site, whether or not any person is there to accept delivery.
- (f) We are not obliged to obtain a signed receipt, signed delivery docket or other acknowledgement of the Goods and Services being delivered. But if a signed receipt, delivery docket or other acknowledgement is obtained then that document will be conclusive evidence of Your acceptance of the Goods and Services being delivered.
- (g) All delivery times indicated by Us are estimates only. Delivery times are subject to Goods and Services being available, Our reasonable ability to deliver on that date, and Us receiving the required co-operation from You and other organisations to supply the Goods and Services. We will endeavour to deliver Goods and Services at the time you need, but if We fail to deliver Goods and Services within a specified time or We fail to deliver any instalment, You are not allowed to cancel Your Order, refuse to accept delivery or refuse to pay for the Goods and Services.
- (h) You must provide a suitable and safe area for Us to deliver the Goods and Services, including a Site that is compliant with all applicable occupational health and safety legislation for Our (or Our agents, employees or contractors) safe use.
- (i) If You do not provide, or delay in providing any co-operation that We reasonably require of You, We may charge Additional Expenses that are incurred as a result (in addition to any other rights We may have).
- (j) Delivery of Goods is deemed to occur when they are collected by You or delivered by Us. Delivery of the Services is deemed to occur when the Services are completed at the Site nominated by You, or appearing on Your invoice. When delivery occurs Our obligation to supply is discharged.
- (k) You agree to inspect and examine Goods immediately on delivery, including Containers.
- (l) We are not liable for any Loss suffered by You whatsoever after delivery of the Goods and Services to You.
- (m) You must pay all costs and fees We incur due to:
 - i) Any delay in delivery of the Goods and Services which is caused by You, the conditions of the Site or the nature of the Goods and Services being delivered;
 - ii) Any unexpected labour, occupational health and safety requirements, permits, licences or additional costs in connection with delivery.

6. YOUR HIRE OBLIGATIONS

- (a) Prior to the Hire Period and taking possession of a Container, You must:
 - i) Determine the suitability of the Container hired for any purpose You require;
 - ii) Inspect the Container for its condition; and
 - iii) Immediately notify Us in writing of any damage to a Container.
- (b) During the Hire Period, You must:
 - i) Use the Container in a skilful and workman like manner and only for the purposes and within the capacity for which the Container is designed;
 - ii) Ensure that the Container is used by suitably certified, trained or licensed personnel and that the Container is used in accordance with Your instructions;
 - iii) Ensure the safety of all personnel using the Container, including:
 1. Attaching to the Container any safety signs supplied with the Container and ensuring that they are clearly legible by the users of the Container;
 2. Maintaining the safety signs and ensuring that they are not defaced or removed from the Container;

3. Ensuring that all safety information supplied with the Container is conveyed to any person using the Container; and
 4. Ensuring that all users of the Container wear suitable clothing and protective equipment required or recommended by the manufacturer's safety and operating instructions, or as recommended by Us;
- iv) Keep the Container in good repair and condition at Your own expense, including cleaning and preventing the Container from being damaged;
 - v) Only allow the Container to be moved to locations that We have consented to in writing;
 - vi) Not claim any lien over, sell, transfer, charge, part with possession of, assign, or encumber the Container in any way, without Our prior written consent; and
 - vii) Not interfere with the Container, including altering, adding to, defacing, or erasing any identifying mark, plate or number on or in the Container.
- b) You are responsible for any and all loss and damage that occurs to a Container (or in relation to a Container) during the Hire Period and any other time that the Container is in Your possession. This responsibility includes the costs to replace or repair a Container that is lost, stolen or damaged during the Hire Period or Your possession of it. We reserve all rights to charge You for such damage.
 - c) We may inspect the Container from time to time during the Hire Period, and You must permit and arrange access to the Container for Us and Our representatives.
 - d) You must give Us at least 48 hours' notice of the end of the Hire Period (de-hire).
 - e) On completion of the Hire Period (de-hire), You must return the Container to Us or Our control in a clean condition, including all dunnage removed and Containers swept out. You will be charged Additional Expenses if We are required to clean a Container on de-hire.

Managing Risk

7. RISK AND OWNERSHIP

- (a) Legal ownership of any Goods (except for Containers) does not pass to You until We have received all amounts owing by You on any account whatsoever with Us including any Additional Expenses.
- (b) Until legal ownership of the Goods passes to You, or in the situation where ownership never passes to You, all Goods are held by You for Us as bailee. You must store the Goods separately from Your own or anyone else's Goods. Storage must be in a way that clearly identifies the Goods as Our property and prevents the Goods from being damaged or spoiled.
- (c) You may resell any Goods (except Containers) before legal ownership passes to You, provided that You:
 - i) Resell the Goods to a third party in the ordinary course of business;
 - ii) Act in any transaction as Our fiduciary agent;
 - iii) Hold the proceeds of sale of Goods on trust for Us and in a separate account with separate records;
 - iv) Account to Us for those proceeds or any other payment made by a third party for any sale of the Goods; and
 - v) Allow us to inspect any records of any payments received for Goods.
- (d) As part of the Services We may hire or supply Containers to You which are owned by a third-party principal. Legal ownership of Containers remains with the third-party principal at all times and title in a Container does not pass to You at any time.
- (e) All risk and responsibility in the Containers passes to You from the commencement of the Hire Period or the date that You collect/take delivery of the Container, whichever is earlier.
- (f) If You do not pay for Goods and Services by the Due Date or You

suffer an Insolvency Event, then We may repossess the Goods wherever they are located. You irrevocably grant Us (including Our agents or any other nominated representative) an unrestricted right and licence to enter any Site or premises occupied by You without notice for the purpose of identifying and repossessing the Goods. We reserve these repossession rights without being liable to You or any other third party in any way.

Payment for the Services

8. PAYMENT AND CREDIT

General Payment

- (a) Unless the parties agree differently in writing, You must pay for Goods and Services on or before the Due Date.
- (b) All amounts payable by You for Goods and Services are inclusive of GST (unless expressly stated otherwise). You must pay Us GST imposed on any supply of Goods and Services made under these Terms. Payment of any GST must be made at the same time as payment for the Goods and Services.
- (c) At Our discretion, We may require payment (including part payment) for the Goods and Services before any Order or Quote is processed and fulfilled.
- (d) Payment must be made in a method approved by us. There may be Additional Expenses associated with Your chosen payment method.
- (e) If You believe You have a set-off or claim against Us (including any query, dispute or claim), You cannot withhold any payment on that basis without Our prior written consent.
- (f) If You do not pay for Goods and Services by the Due Date, We may:
 - i) Charge You interest on all overdue accounts at a rate which is 4% higher than the cash rate last published by the Reserve Bank of Australia as at the Due Date, calculated and payable daily and compounded from the due date until the invoice is paid in full. The parties agree that this interest charge is not a penalty, but a true measure of damages incurred by Us;
 - ii) Require You to pay cash-on-delivery of any further Goods and Services, or suspend or cease supplying Goods and Services to You;
 - iii) Demand Your immediate payment of all outstanding monies;
 - iv) Lodge a default with credit reporting bodies in accordance with Our Privacy Statement, Privacy Policy, Credit Reporting Policy and Statement of Notifiable Matters and applicable credit reporting laws;
 - v) Charge You a reasonable fee if any payment is dishonoured or returned by Your financial provider (or where we are otherwise unable to process any payment from Your financial provider);
 - vi) Credit any payments received from You first against any interest charges and costs and all such charges will be payable on demand; and
 - vii) Preclude You from participating in any special deals, discounts, bonus payments, redemptions, rebates and all other incentive programs until Your account is no longer overdue.

Credit Accounts

- (g) You may apply for a Credit Account with Us to purchase Goods and Services. We have no obligation to provide or continue to provide credit facilities to You. You are not entitled to credit facilities until You receive an approved Credit Account with Us.
- (h) A Credit Account must only be used by You, which means it cannot be assigned, transferred or made available for use by any other entity or person (including by a subsequent purchaser of You) without Our prior written consent. Any credit limit placed on Your Credit Account is for Our administrative purposes only and does not constitute a term of this or any other contract You have with Us.
- (i) If You exceed the credit limit placed on Your Credit Account, We may require You to make immediate payment on Your Credit Account to

return Your Credit Account to the credit limit before placing any further Orders.

- (j) You authorise Us to debit Your Credit Account with the price of Goods and Services supplied to You and all other amounts owed by You to Us (including fees and interest payable under the Contract).
- (k) We may apply any payments You make to Us towards any debt You owe Us. We may also set-off any credit amount that We owe to You against any debt owed to Us by You.
- (l) Time is of the essence in relation to this section. This section survives expiry or termination of these Terms.

Our Security for Payment

9. PERSONAL PROPERTY SECURITIES ACT 2009 (CTH)

- (a) You acknowledge and agree that these Terms constitute a security agreement for the purposes of the PPSA ("**Security Agreement**") and create a security interest in the Goods supplied by Us from time to time and any proceeds of the supply of the Goods to secure payment for the Goods ("**Security Interest**").
- (b) Each supply of Goods by Us under these Terms is subject to the Security Agreement for the purposes of the PPSA.
- (c) We may lodge a financing statement on the Personal Property Securities Register ("**PPSR**") in respect of the Security Interest in the Goods and the proceeds of supply of the Goods, including as a purchase money security interest (as that term is defined in the PPSA) ("**PMSI**"), pursuant to these Terms.

Assurances

- (d) You must do all things, provide all information and sign all documents that are necessary and reasonably required to enable Us to acquire a perfected Security Interest in the Goods, including for the purposes of:
 - i) Ensuring that any Security Interest created under, or provided for, by these Terms:
 - a. Attaches to the Goods that are intended to be covered by that Security Interest; and
 - b. Is enforceable, perfected and otherwise effective; and
 - c. Has the priority required by Us.
 - ii) Enabling Us to prepare and register a financing statement or financing change statement;
 - iii) Enabling Us to register a PMSI pursuant to the PPSA; and
 - iv) Enabling Us to exercise and maintain any of the Our rights or powers in connection with any such Security Interest.
- (e) If You dispose of the Goods, You must:
 - i) Immediately pay any proceeds to Us in reduction of all amounts owing by You to Us, which We may apply towards amounts owing by You to Us in such order as specified by subsection 14(6)(c) of the PPSA, unless otherwise specified by Us in writing; and
 - ii) Not allow any other charge or security interest to exist over those proceeds without Our written consent if that security interest could rank ahead of Our Security Interest.
- (f) If a higher-priority security interest does arise in the Goods despite Your obligations under this section, You must:
 - i) Ensure that You receive cash proceeds for the Goods of at least equal to the market value of the Goods; and
 - ii) Immediately pay those proceeds to Us in reduction of all amounts owing by You to Us, which We may apply towards amounts owing by You to Us in such order as We see fit.
- (g) You must not change Your name, structure, status or partnership, or assign or sell Your business to another party, or initiate any change to any registered documentation, or act in any other manner which would impact on Our registered Security Interest without Our prior written consent. You agree that Your liability under these Terms is not affected by such an event until a new application for credit in Your

new entity name as restructured or changed is made and approved by Us in writing.

Exclusion of Notices and Other Obligations

- (h) To the extent permitted by law and for the purposes of sections 115(1) and 115(7) of the PPSA:
 - i) We do not need to comply with sections 95, 118, 121(4), 125, 129(2), 129(3), 130, 132(3)(d) or 132(4); and
 - ii) Sections 142 and 143 are excluded;
 - iii) For the purposes of section 115(7) of the PPSA, We do not need to comply with sections 132 and 137(3).
- (i) To the extent permitted by law, You agree to waive:
 - i) Your rights to receive any notice that is required by any provision of the PPSA (including a notice of a verification statement) or any other law before a secured party or a receiver exercises a right, power or remedy; and
 - ii) Any time period that must otherwise lapse under any law before a secured party or a receiver exercises a right, power or remedy.
- (j) If the law that requires a period of notice or a lapse of time cannot be excluded, but the law provides that the period of notice or lapse of time may be agreed, that period or lapse is one day or the minimum period the law allows to be agreed (whichever is the longer).

Provision of Information

- (k) You agree not to exercise Your rights to make any request of Us under section 275(6) of the PPSA, to authorise the disclosure of any information under that section or to waive any duty of confidence that would otherwise permit non-disclosure under that section.
- (l) The parties must not disclose information of the kind mentioned in section 275(1) of the PPSA, except in the circumstances where:
 - i) Disclosure is required by sections 275(7)(b) to (e) of the PPSA; and/or
 - ii) We disclose information of a kind mentioned in section 275(1) of the PPSA to the extent that We are not doing so in response to a request made by an "interested person" (as defined in section 275(9) of the PPSA) pursuant to section 275(1) of the PPSA.
- (m) Notwithstanding the obligations of this section, You shall only authorise the disclosure of information for the purposes of section 275(7)(c) of the PPSA, or request information under section 275(7)(d) of the PPSA, if We approve such disclosure or request for information in writing.
- (n) Nothing in this part prevents any disclosure of information by Us that We believe is reasonably necessary to comply with any other obligations that We may have under the PPSA.

Other

- (o) If You default in the timely performance of any obligation owed to Us, We may enforce the Security Interest by exercising all or any of Our rights under these Terms, the general law and the PPSA.
- (p) Nothing in this part limits or is limited by any other provision of these Terms and Conditions or any other agreement between the parties.

Exclusions, Indemnity and Limitation of Liability

10. WARRANTIES AND EXCLUSIONS

- (a) Neither party excludes or limits the application of any statute (including the Competition and Consumer Act 2010 (Cth) as amended from time to time ("**the Act**")), where to do so would contravene the Act or cause any provision of these Terms to be void. Nothing in these Terms modifies or excludes the conditions, warranties, undertakings and other legal rights under the Act and other laws.
- (b) If You are a consumer as that term is defined under the Australian Consumer Law, Our Goods and Services come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the Goods and Services repaired or

replaced if the Goods and Services fail to be of acceptable quality and the failure does not amount to a major failure. The benefits provided to You under this part are in addition to other rights and remedies available to You under the law

- (c) However, We only deal with commercial customers purchasing Goods and Services for business purposes and do not deal with consumers (as that term is defined in the Australian Consumer Law). The Australian Consumer Law will not apply to Goods and Services supplied by Us. When purchasing Goods and Services You acknowledge that You are not a Consumer (as that term is defined in the Australian Consumer Law).
- (d) Except as expressly set out in the Act, these Terms or a separate warranty document, We make no warranties or other representations under or in connection with these Terms, and Our liability in that respect is limited to the fullest extent permitted by law.
- (e) We make no representations or warranties as to the fitness or suitability for any purpose of any of the Goods and Services (whether express or implied and even if that purpose is made known to Us) and You agree that You have not relied on any inducement, representation or statement made by or on behalf of Us in purchasing the Goods and Services. You are responsible for ensuring that the Goods and Services are suitable for Your intended use.
- (f) To the extent permitted by law, all other implied conditions and warranties are excluded, including any sale by sample or description.

11. LIMITATION OF LIABILITY

- (a) If We are lawfully allowed to limit our liability to You in respect of the Goods and Services (including but not limited to Our breach of these terms, tort law or negligence) then Our liability to You is limited to Our choice of:
 - i) re-supply of the Goods and/or Services; or
 - ii) the cost to replace the Goods and/or Services with equivalent Goods and/or Services; or
 - iii) reimbursement of some or all of the price paid by You for the Goods and/or Services.
- (b) In any situation, Our total liability to You will not exceed the price of the Goods and/or Services supplied by Us (to the extent that is permitted by law).
- (c) We are not liable to You for any loss of profits, loss of sales, loss of market, loss of goodwill or reputation, third party claims, incidental or special damages or indirect or consequential loss of any kind.
- (d) We will not be liable to You if:-
 - i) Goods and Services have not been paid for;
 - ii) Goods have been abused, misused or neglected by You;
 - iii) You have used the Goods other than for the purposes for which they were designed, including for an illegal purpose;
 - iv) The Goods have been altered or modified by someone other than Us;
 - v) The Goods have been subject to abnormal conditions, including environment, temperature, water, fire, humidity, pressure or other stress.
- (e) Neither party will be liable for any breach of these Terms which is wholly or partly caused by a Force Majeure event. This exclusion does not include Your obligation to pay for Goods and Services and any Additional Expenses.

12. INDEMNITIES

- (a) To the extent permitted by law, You indemnify Us against and You must pay Us for any Loss that We may suffer or incur as a result of any act or omission by You (or any entity or person that You are responsible for) in relation to the Goods and Services and/or these Terms, including but not limited to any breach of these Terms by You, Your negligence, Your failure to perform the obligations in these Terms and any claim made by You against Us. This indemnity does not apply to Loss that occurs due to Our breach of these Terms or Our negligence.

- (b) Specifically, You must indemnify Us and hold Us harmless (or Our agents, employees or contractors) from:
 - i) All reasonable legal costs which We incur as a result of any breach, act or omission by You under these Terms, however that breach, act or omission arises. This includes, but is not limited to, legal or mercantile agent fees on an indemnity basis in the recovery or attempted recovery of any overdue amount for Goods and Services and any action taken to secure any charge;
 - ii) Any stamp duty or other government rates, taxes (including GST) or charges levied on or in connection with the Credit Account and supply of Goods and Services;
 - iii) Loss and damage that occurs to a Container during the Hire Period or Your possession of it, including costs that We may incur to repair, replace or clean a Container;
 - iv) All costs associated with the registration, maintenance and withdrawal of any Security Interest created under these Terms;
 - v) Any and all Loss arising out of Your (or Your agent, employee, contractor or other representative's) attendance at Our premises;
 - vi) Any and all Loss arising out of Your failure to provide a safe, suitable and compliant Site for Goods and Services (including any personal injury or death) except to the extent that We have committed an act of negligence, breach of the law or breach of the Terms;
 - vii) Any liability that We incur in connection with Our reliance on information provided by You or on Your behalf which is inaccurate, incomplete or misleading, or Your failure to provide Us with relevant information.
- (c) This indemnity is a continuing obligation which is separate and independent from your other obligations under these Terms or at law and this indemnity survives termination of these Terms.

Dealing With Issues and Ending Our Agreement

13. RETURNS

- (a) Unless We agree otherwise in writing, We are not required to accept returned Goods from You or issue You with a credit for Goods. Our consent to return Goods will not be unreasonably withheld.
- (b) If You wish to return Goods for any reason, You must notify Us in writing within 7 days of delivery. If You do not notify Us within 7 days of receiving Goods, You will be deemed to have accepted those Goods and We may refuse to accept return of any such Goods.
- (c) All returns for Goods relating to damage or incorrect orders will be dealt with in accordance with this section of the Terms. All returns Goods relating to a change of mind will be dealt with in accordance with the returns policy displayed on Our Website and as updated from time-to-time.
- (d) If We agree to accept Goods by return or provide You with a credit, You must provide Your proof of purchase for the Goods and all evidence of the damage or short delivery (including photographs).
- (e) We may charge You reasonable restocking, disposal or repacking charges which We incur from the Goods being returned.
- (f) Any Goods which are not in original or resaleable condition cannot be returned, including Goods which are not in their original shipping cartons.
- (g) You are responsible for any Additional Expenses associated with any return of Goods.
- (h) Credits may only be redeemed against future orders and are subject to Our minimum order policy. No cash refunds will be issued for credits.

14. TERMINATION

- (a) By giving You written notice, We can:
 - i) Suspend or cancel supply of Goods and Services (including or any current Order(s) for Goods and Services;

- ii) Suspend or terminate Your Credit Account;
 - iii) Require immediate payment of the balance of any Credit Account, invoices or any other amounts due and payable whether or not the Due Date has expired;
 - iv) Register a default with any credit reporting agency, where applicable;
 - v) Enforce Our rights under any Security Interest;
 - vi) Suspend or terminate the contract created by these Terms (collectively "**Our Termination Rights**")
- (a) We can exercise Our Termination Rights immediately when:
- i) You have not paid for Goods and Services by the Due Date;
 - iii) You exceed the limit of Your Credit Account;
 - iv) You breach a material term of these Terms;
 - v) Either of the parties suffer a Force Majeure Event which delays or prevents performance of the whole or any part of these Terms;
 - vi) You allow distress to be levied or a judgment, order or security to be enforced, or to become enforceable against Your property including under the PPSA;
 - vii) You engage in illegal activity related to the Goods and Services;
 - viii) You engage in conduct which, in Our reasonable opinion, may damage Our goodwill or reputation;
 - ix) An Insolvency Event occurs.
- (c) In any other situation, either party may terminate these Terms:
- i) Immediately by written notice if the other party is in breach of a material term of these Terms and the breach is not rectified within 14 days of the termination notice.
- (b) If the agreement created by these Terms is terminated, then We may:
- i) recover any of Our Containers, equipment, property, goods, materials and all related data, documentation and records from You and You must return all such things on demand;
 - ii) recover any sums payable by You;
 - iii) subject to any limitation on liability applicable, recover from You the amount of any loss or damage sustained as a consequence of the termination, including loss of the benefits which the performance of these Terms would have conferred on Us;
 - iv) be regarded as discharged from any further obligations under these Terms; and
 - v) pursue any additional or alternative remedies provided by law.

- (f) A notice is deemed to have been delivered and received on the day if by hand, courier, email or fax, or otherwise on the second business day after posting.

16. PRIVACY

- (a) We may collect personal and credit information in Our dealings with You (or any of Your guarantors) in accordance with Our Privacy Statement, Privacy Policy, Credit Reporting Policy and Statement of Notifiable Matters pursuant to the Credit Reporting Code, the Privacy Act 1988 (Cth), the *Privacy (Enhancing Privacy Protections) Act 2012*, and the Australian Privacy Principles. You consent to that information being collected. You can obtain a copy of Our Privacy Statement, Privacy Policy, Credit Reporting Policy and Statement of Notifiable Matters by contacting Us in writing or by visiting Our Website.

17. ELECTRONIC COMMUNICATIONS

- (a) You agree to receive invoices via email.
- (b) You agree to accept service of notices under the Building and Construction Industry Security of Payment Act 2002 (VIC) as amended from time to time, or any like or similar legislation that may be applicable in the State or Territory where the Services were delivered to You, via e-mail (in addition to any and all other forms of service authorised under the legislation, or regulations made by the Act).
- (c) You agree that website or email communications from Us to You constitute an "electronic communication" within the meaning of the Electronic Transactions (Victoria) Act 2000 ("**the Act**").
- (d) You agree that the receipt and service of notices via email is "an information system for the purpose of receiving electronic communications" within the meaning of the Act.
- (e) You agree that evidence of the "dispatch" (within the meaning of the Act) by Us of an email is also prima facie evidence of the "receipt" of the email by You within the meaning of the Act. Unless the contrary is proven the time of receipt will be deemed to be twenty (20) seconds after the time of the "dispatch" of the email.

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General Information

15. GENERAL

- (a) Any clauses which are expressed to or are, by their nature, intended to survive expiry or termination of these Terms will survive expiry or termination of these Terms for any reason.
- (b) A failure to exercise or a delay in exercising any right, power or remedy under these Terms does not operate as a waiver. A single or partial exercise or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.
- (c) If any provision (whole or part) of these Terms is or becomes invalid, illegal or unenforceable, it will be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If modification is not possible, the relevant provision (whole or part) will be deleted. Any modified or deleted provision will not affect the validity and enforceability of the rest of these Terms.
- (d) These Terms may be executed in any number of counterparts, each of which when executed and delivered constitutes a duplicate original, but all counterparts together constitute one agreement.
- (e) In addition to any other method of service provided by law, a notice may be sent by prepaid post, facsimile, email or courier to the address of a party as that address set out in the Contract or subsequently notified. A notice has no legal effect unless it is in writing.