
General Terms & Conditions

1. Definitions

- 1.1 "Contract" means the terms and conditions contained herein, together with any Quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.2 "Canberra Containers" means Canberra Containers Pty Ltd ATF Canberra Containers Unit Trust T/A Canberra Containers, its successors and assigns or any person acting on behalf of and with the authority of Canberra Containers Pty Ltd ATF Canberra Containers Unit Trust T/A Canberra Containers.
- 1.3 "Sub-Contractor" means and includes:
- (a) railways or airways operated by the Commonwealth or any state or any other country or by any corporation; or
 - (b) any other person or entity with whom Canberra Containers may arrange for the carriage or storage of any Goods the subject of the contract; or
 - (c) any person who is now or hereafter a servant, agent, employee or sub-contractor of any of the persons referred to in sub-clauses (a) and (b).
- 1.4 "Customer" means the person/s, entities or any person acting on behalf of and with the authority of the Customer requesting Canberra Containers to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Customer, is a reference to each Customer jointly and severally; and
 - (b) if the Customer is a partnership, it shall bind each partner jointly and severally; and
 - (c) if the Customer is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (d) includes the Customer's executors, administrators, successors and permitted assigns.
- 1.5 "Consignee" means the person to whom the Goods are to be delivered by way of the Services.
- 1.6 "Goods" means any cargo, together with any container other than those defined as Container, packaging, or pallet(s), to be moved from one place to another by way of the Services.
- 1.7 "Services" means all Services provided by Canberra Containers to the Customer including, but not limited to, anything done or to be done in relation to the Goods/Container, or the provision of any services ancillary to the Goods/Container such as moving, storing or leaving the Goods/Container at any warehouse, yard, terminal, wharf or other place or area, loading or unloading the Goods/Container from any vehicle, vessel or other conveyance, stowing or packing the Goods, or fumigating, transshipping, or otherwise handling the Goods/Container, remodelling, renovating, or re-purposing the Container, or anything else done in relation thereto, including the offering of any advice or recommendations.
- 1.8 "Container" means any container supplied either on a sale or hire basis by Canberra Containers to the Customer, at the Customer's request, from time to time (where the context so permits the term 'Container' shall include the provision of any Services by Canberra Containers).
- 1.9 "Damage Waiver Fee" means the amount calculated as the Damage Waiver Fee to be paid by the Customer if evidence of insurance is not provided to Canberra Containers as provided in clause 20.
- 1.10 "Damage Waiver Limit" shall mean the limit of liability agreed to by both parties.
- 1.11 "Business Day" means any calendar day other than a Saturday, Sunday or public holiday in either ACT or NSW.
- 1.12 "Charges" shall mean the cost of the Services (plus any GST where applicable), as agreed between Canberra Containers and the Customer, subject to clause 6 of this contract.
- 1.13 "GST" means Goods and Services Tax as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).

2. Acceptance

- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for, or accepts, Services provided by Canberra Containers.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 The Customer acknowledges that the supply of Goods on credit shall not take effect until the Customer has completed a credit application with Canberra Containers and it has been approved with a credit limit established for the account.
- 2.5 In the event that the supply of Goods request exceeds the Customers credit limit and/or the account exceeds the payment terms, Canberra Containers reserves the right to refuse Delivery.
- 2.6 These terms and conditions are to be read in conjunction with Canberra Containers quotation, consignment note, agreement, airway bills, manifests, or any other forms as provided by Canberra Containers to the Customer. If there are any inconsistencies between these documents then the terms and conditions contained in this document shall prevail.
- 2.7 These terms and conditions may be meant to be read in conjunction with Canberra Containers Hire/Storage Contract or Purchase Contract, and:
- (a) where the context so permits, the terms 'Goods or 'Services shall include any supply of Containers, as defined therein; and
 - (b) if there are any inconsistencies between the two documents then the terms and conditions contained therein shall prevail.

3. Electronic Transactions Act

- 3.1 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2001 (ACT) or Electronic Transactions Act 2000 (NSW) or any other applicable provisions of that Act or any Regulations referred to in that Act.

4. Change in Control

- 4.1 The Customer shall give Canberra Containers not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax number/s, change of trustees or business practice). The Customer shall be liable for any loss incurred by Canberra Containers as a result of the Customer's failure to comply with this clause.

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5. Customer's Financial Information

- 5.1 Canberra Containers will:
- (a) keep the Customer's personal details, including credit card or bank account details for only as long as is deemed necessary by Canberra Containers;
 - (b) not disclose the Customer's credit card or bank account details to any third party;
 - (c) not unnecessarily disclose any of the Customer's personal information, except in accordance with the Privacy Act (clause 16) or where required by law.
- 5.2 The Customer expressly agrees that, if pursuant to this Agreement, there are:
- (a) any unpaid Charges;
 - (b) other amounts due and outstanding by the Customer;
 - (c) any Goods (or any part of them) supplied on hire that are lost or damaged;
 - (d) any other additional charges are due from the Customer which were not known at the time of the return of the Goods,
- Canberra Containers is entitled to immediately charge the Customer's nominated credit card for these amounts, and is irrevocably authorised to complete any documentation and take any action to recover from the credit card issuer any and all amounts which may be due by the Customer pursuant to the terms of this Agreement.

6. Charges and Payment

- 6.1 At Canberra Containers sole discretion the Charges shall be either:
- (a) as indicated on any invoice provided by Canberra Containers to the Customer; or
 - (b) the Charges as at the date of Delivery of the Goods according to Canberra Containers current price list; or
 - (c) Canberra Containers estimated Charges (subject to clause 6.2) which shall not be deemed binding upon Canberra Containers as the actual Charges can only be determined upon Delivery. Canberra Containers will use its skill and experience in estimating the Charges and undertakes to keep the Customer informed should the actual Charges look likely to exceed the original estimate. Variances in the estimated Charges of more than ten percent (10%) will be subject to the Customer's approval before proceeding with the Customer's order; or
 - (d) Canberra Containers quoted Charges (subject to clause 6.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 6.2 Canberra Containers reserves the right to change the Charges:
- (a) if a variation to the Container which are to be supplied is requested (including, but not limited to, the quantity, specifications, Hire Period, date of Delivery, etc. or any variation as a result of non-disclosure of relevant matters by the Customer, delays caused by the Customer or any other party, prerequisite work by any third party not being completed, obscured mechanical and/or electrical faults for repair); or
 - (b) as a result of an increase in Canberra Containers costs due to changes in statutory, government, or local body charges, taxes, levies, etc. with respect to the Container, which are outside the control of Canberra Containers (including, without limitation, increases in the cost of labour or materials, foreign exchange fluctuations, or increases in transport costs, taxes, customs duties or insurance premiums, etc.); or
 - (c) annually for any long term hire of twelve (12) months or more, upon one (1) months' written notice to the Customer, to reflect any increase in the Consumer Price Index (CPI).
- 6.3 Variations will be charged for on the basis of Canberra Containers quotation, and will be detailed in writing, and shown as variations on Canberra Containers invoice. The Customer shall be required to respond to any variation submitted by Canberra Containers within ten (10) working days. Failure to do so will entitle Canberra Containers to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 6.4 Unless specified in writing by Canberra Containers, the Charges does not include the relocation or removal of the Container, the cost of locating (including the removal or deposit of soil), diverting or sealing of existing services, creation of temporary access roads, obtaining licences, permits or consents from the relevant local authority or other competent authority, etc.
- 6.5 Canberra Containers may charge freight by weight, measurement or value, and may at any time re-weigh, or re-value or re-measure or require the Goods to be re-weighed, or re-valued or re-measured and charge proportional additional freight accordingly.
- 6.6 At Canberra Containers sole discretion, deposit may be required.
- 6.7 Time for payment for the Services being of the essence, the Charges will be payable by the Customer on the date/s determined by Canberra Containers, which may be:
- (a) on delivery of the Goods/Containers;
 - (b) by way of instalments in accordance with Canberra Containers payment schedule;
 - (c) the date specified on any invoice or other form as being the date for payment; or
 - (d) failing any notice to the contrary, the date which is thirty (30) days following the date of any invoice given to the Customer by Canberra Containers.
- 6.8 Payment may be made by cash, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Customer and Canberra Containers.
- 6.9 The Customer shall not be entitled to set off against, or deduct from the Charges, any sums owed or claimed to be owed to the Customer by Canberra Containers nor to withhold payment of any invoice because part of that invoice is in dispute.
- 6.10 Unless otherwise stated the Charges does not include GST. In addition to the Charges, the Customer must pay to Canberra Containers an amount equal to any GST Canberra Containers must pay for any provision of Services by Canberra Containers under this contract or any other agreement. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Charges. In addition, the Customer must pay any other taxes and duties that may be applicable in addition to the Charges except where they are expressly included in the Charges.
- 6.11 Receipt by Canberra Containers 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, and until then Canberra Containers rights and ownership in relation to the Container, and this contract, shall continue.

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7. Canberra Containers not a Common Carrier

7.1 Canberra Containers is not a Common Carrier and will accept no liability as such. All Goods are carried or transported, and all storage and other services are performed, by Canberra Containers subject only to these terms and conditions and Canberra Containers reserves the right to refuse the carriage or transport of Goods for any person, corporation or body, and the carriage or transport of any class of Goods, at its discretion.

8. Customer-Packed Containers

8.1 If a container has not been stowed by or on behalf of Canberra Containers Canberra Containers shall not be liable for loss of or damage to the Goods caused by:

- (a) the manner in which the container has been stowed; or
- (b) the unsuitability of the Goods for carriage or storage in containers; or
- (c) the unsuitability or defective condition of the container.

9. Nomination of Sub-Contractor

9.1 The Customer hereby authorises Canberra Containers (if it should think fit to do so) to arrange with a Sub-Contractor for the carriage of any Goods that are the subject of the contract. Any such arrangement shall be deemed to be ratified by the Customer upon delivery of the said Goods to such Sub-Contractor, who shall thereupon be entitled to the full benefit of these terms and conditions to the same extent as Canberra Containers. In so far as it may be necessary to ensure that such Sub-Contractor shall be so entitled Canberra Containers shall be deemed to enter into this contract for its own benefit and also as agent for the Sub-Contractor.

10. Canberra Containers Servants or Agents

10.1 The Customer undertakes that no claim or allegation shall be made against any servant or agent of Canberra Containers which attempts to impose upon any of them any liability whatsoever in connection with the Goods and, if any such claim or allegation should nevertheless be made, to indemnify Canberra Containers and any such servant or agent against all consequences thereof.

11. Method of Transport

11.1 If the Customer instructs Canberra Containers to use a particular method of carriage whether by road, rail, sea or air Canberra Containers will give priority to the method designated but if that method cannot conveniently be adopted by Canberra Containers the Customer shall be deemed to authorise Canberra Containers to carry or have the Goods carried by another method or methods.

12. Route Deviation

12.1 The Customer shall be deemed to authorise any deviation from the usual route or manner of carriage of Goods that may in the absolute discretion of Canberra Containers be deemed reasonable or necessary in the circumstances.

13. Charges Earned

13.1 Canberra Containers charges shall be considered earned in the case of Goods for carriage as soon as the Goods are loaded and dispatched from the Customer's premises.

14. Demurrage

14.1 The Customer will be and shall remain responsible to Canberra Containers for all its proper charges incurred for any reason. A charge may be made by Canberra Containers in respect of any delay in excess of thirty (30) minutes in loading or unloading occurring other than from the default of Canberra Containers. Such permissible delay period shall commence upon Canberra Containers reporting for loading or unloading. Labour to load or unload the vehicle shall be the responsibility and expense of the Customer or Consignee.

15. Consignment Note

15.1 It is agreed that the person delivering any Goods to Canberra Containers for carriage or forwarding is authorised to sign the consignment note for the Customer.

16. Customer's Responsibility

16.1 The Customer expressly warrants to Canberra Containers that the Customer is either the owner or the authorised agent of the owner of any Goods or property that is the subject matter of this contract of cartage and/or storage and by entering into this contract the Customer accepts these conditions of contract for the Consignee as well as for all other persons on whose behalf the Customer is acting.

The Customer shall maintain a public liability insurance policy for a minimum of ten million dollars (\$10m) in respect of the location site of where Canberra Containers Equipment of the Customer's property is located.

17. Delivery

17.1 Canberra Containers is authorised to deliver the Goods at the address given to Canberra Containers by the Customer for that purpose and it is expressly agreed that Canberra Containers shall be taken to have delivered the Goods in accordance with this contract if at that address Canberra Containers obtains from any person a receipt or a signed delivery docket for the Goods.

17.2 Canberra Containers may deliver the Goods by separate instalments (in accordance with the agreed delivery schedule). Each separate instalment shall be invoiced and paid for in accordance with the provisions in this contract.

17.3 Delivery of the Goods to a third party nominated by the Customer is deemed to be delivery for the purposes of this agreement.

17.4 It is the Customer's sole responsibility to address adequately each consignment and to provide written delivery instructions to enable effective delivery.

17.5 Any time specified by Canberra Containers for the delivery of Goods is an estimate only and Canberra Containers will not be liable for any loss or damage incurred by the Customer as a result of delivery being late. However both parties agree that they shall make every

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endeavour to enable the Goods to be delivered at the time and place as was arranged between both parties. In the event that Canberra Containers is unable to deliver the Goods as agreed solely due to any action or inaction of the Customer then Canberra Containers shall be entitled to charge the Customer any additional costs incurred by Canberra Containers as a direct consequence of any resultant delay or rescheduling of the delivery.

18. Loss or Damage

18.1 Subject to any statutory provisions imposing liability in respect of the loss of or damage to the Goods (including but not limited to chilled, frozen, refrigerated or perishable Goods):

- (a) Canberra Containers shall not be under any liability for any damage to, loss, deterioration, misdelivery, delay in delivery or non-delivery of the Goods (whether the Goods are or have been in the possession of Canberra Containers or not) nor for any instructions, advice, information or service given or provided to any person, whether in respect of the Goods or any other thing or matter, nor for any consequential or indirect loss, loss of market or consequences of delay; and
- (b) the Customer will indemnify Canberra Containers against all claims of any kind whatsoever, howsoever caused or arising brought by any person in connection with any matter or thing done, said or omitted by Canberra Containers in connection with the Goods.

19. Insurance

19.1 The Customer acknowledges that:

- (a) the Goods are carried and stored at the Customer's sole risk and not at the risk of Canberra Containers; and
- (b) Canberra Containers is under no obligation to arrange insurance of the Goods and it remains the Customer's responsibility to ensure that the Goods are insured adequately or at all; and
- (c) under no circumstances will Canberra Containers be under any liability with respect to the arranging of any such insurance and no claim will be made against Canberra Containers for failure to arrange or ensure that the Goods are insured adequately or at all.

20. Damage Waiver Fee

20.1 In the case of a Hire/Storage Contract in respect of Canberra Containers Equipment, the Customer must pay an optional Damage Waiver Fee unless the Customer provides Canberra Containers with a certificate of currency in respect of an insurance policy covering the Equipment and public liability insurance as per clause 0, and Canberra Containers approves the said insurance.

20.2 The Customer acknowledges that the Damage Waiver Fee is not insurance and that payment of the Damage Waiver Fee relieves the Customer of any liability in excess of the Damage Waiver Limit for loss or damage caused to the Equipment for loss or damage caused to the Equipment by graffiti, theft, forced or attempted forced entry, earthquake, hail, windstorm, hurricane and tornado. The Damage Waiver Fee will not limit the Customer's liability unless the Customer:

- (a) takes reasonable precautions against theft and forced entry;
- (b) notifies Canberra Containers of loss or damage to the Equipment within five (5) days of discovery of such an event;
- (c) deliver to Canberra Containers satisfactory proof of the loss or damage and the police report in the events of theft and forced entry within thirty (30) days of discovery of such an event; and
- (d) the Customer complies with the terms of Canberra Containers Hire/Storage Contract.

20.3 The Customer authorises Canberra Containers to pay the Damage Waiver Fee in the manner provided in clause 5 at the beginning of each monthly period during the hire/storage period provided the Damage Waiver Fee is payable under this clause.

20.4 Subject to the Damage Waiver Fee provisions under clauses 20.1 to 20.3, the Customer shall be liable for and shall indemnify Canberra Containers in respect of any claim made against Canberra Containers and all damages, costs, and expenses suffered or incurred by Canberra Containers on a full indemnity basis in the respect of:

- (a) personal injury;
- (b) damage to property;
- (c) a claim by a third party;

arising from the state, condition or use of the Equipment in any way whatsoever from the hire or store of the Equipment under Canberra Containers Hire/Storage Contract. The Customer's liability under this indemnity is diminished to the extent that Canberra Containers breach of the Hire/Storage Contract or Canberra Containers negligence caused the liability claims, damage, loss, costs or expenses.

20.5 It shall be the Customer's responsibility to insure any stored goods and the Customer's own equipment.

20.6 Canberra Containers are not liable for any consequential loss (including loss or profit and/or contract) or damage to the stored property or the client's own equipment or otherwise arising from any failure in the Equipment or non-arrival or late delivery of the Equipment or any breach of the Hire/Storage Contract whatever by Canberra Containers or the Customer for any cause whatsoever, including negligence on Canberra Containers part of that of Canberra Containers employees, servants, agents and/or contractors.

21. The Commonwealth Competition and Consumer Act 2010, Fair Trading Acts

21.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Fair Trading Acts in each of the States and Territories of Australia (including any substitute to those Acts or re-enactment thereof), except to the extent permitted by those Acts where applicable.

21.2 Where the Customer purchases the Services as a consumer these terms and conditions shall be subject to any laws or legislation governing the rights of consumers and shall not affect the consumer's statutory rights.

21.3 Liability of ABC arising out of any one incident whether or not there has been any declaration of value of the Goods, for breach of warranty implied into these terms and conditions by the Competition and Consumer Act 2010 or howsoever arising, is limited to any of the following as determined by Canberra Containers:

- (a) the supplying of the Services again; or
- (b) the payment of the cost of having the Services supplied again; or
- (c) where the Customer is a consumer as defined in the Competition and Consumer Act 2010 then the Customer shall also be entitled to a refund.

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22. Claims

- 22.1 Notwithstanding clauses 18 and 19 in the event that the Customer believes that they have any claim against Canberra Containers then they must lodge any notice of claim for consideration and determination by Canberra Containers within seven (7) days of the date of delivery, or for non-delivery within seven (7) days of the anticipated date of delivery or the removal or destruction of the Goods.
- 22.2 The failure to notify a claim within the time limits under clause 22.1 is evidence of satisfactory performance by Canberra Containers of its obligations.

23. Default and Consequences of Default

- 23.1 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 one half percent (2.5%) per calendar month (and at Canberra Containers sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 23.2 If the Customer owes Canberra Containers any money the Customer shall indemnify Canberra Containers from and against all costs and disbursements incurred by Canberra Containers in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Canberra Containers contract default fees, and bank dishonour fees).
- 23.3 Further to any other rights or remedies Canberra Containers may have under this contract, if the Customer has made payment to Canberra Containers by credit card, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by Canberra Containers under this clause 23 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this Contract.
- 23.4 Without prejudice to Canberra Containers other remedies at law Canberra Containers shall be entitled to cancel all or any part of any order of the Customer which remains unperformed in addition to and without prejudice to any other remedies and all amounts owing to Canberra Containers shall, whether or not due for payment, become immediately payable in the event that:
- (a) any money payable to Canberra Containers becomes overdue, or in Canberra Containers opinion the Customer will be unable to meet its payments as they fall due; or
 - (b) the Customer has exceeded any applicable credit limit provided by Canberra Containers;
 - (c) the Customer 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
 - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

24. Carrier's Lien

- 24.1 Canberra Containers shall have a right to take a particular and general lien on any Goods the property of the Customer or a third party owner which are in the possession or control of Canberra Containers (and any documents relating to those Goods) for all sums owed at any time by the Customer or a third party owner to Canberra Containers (whether those sums are due from the Customer on those Goods or documents, or on any other Goods or documents), and Canberra Containers shall have the right to sell such Goods or cargo by public auction or private treaty after giving notice to the Customer as per the requirements of the Storage Liens Act 1935 No. 19 or any subsequent amendments. Canberra Containers shall be entitled to retain the sums due to it, in addition to the charges incurred in detention and sale of such Goods or cargo, from the proceeds of sale and shall render any surplus to the entitled person.
- 24.2 Notwithstanding clause 24.1 nothing shall prejudice Canberra Containers rights to use any of Canberra Containers other rights and remedies contained in this agreement to recover any outstanding charges or fees payable in respect of the Goods that were not recovered out the sale of the Goods in accordance with clause 24.1 and no exception shall be taken upon the grounds that the Charges realised is less than the full market value of the Goods.

25. Personal Property Securities Act 2009 ("PPSA")

- 25.1 The terms "Collateral", "Debtor", "Financing Statement", "Financing Charge Statement", "Grantor", "Proceeds", "Security Party", "Security Agreement" and "Security Interest" have the meanings given in the PPSA.
- 25.2 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA, and creates a security interest in:
- (a) all Goods being transported, carried or handled by Canberra Containers, over which Canberra Containers invokes a lien; and
 - (b) any purchase by the Customer on credit terms from Canberra Containers will constitute a purchase money security interest as defined under section 14 of the PPSA (PMSI); and
 - (c) the PMSI granted herein will continue to apply to any Goods coming into existence or proceeds of sale of Goods coming into existence;
 - (d) all the Customer's present and after acquired property being a charge, including anything in respect of which the Customer has at any time a sufficient right, interest or power to grant a security interest in for the purposes of securing repayment of all monetary obligations of the Customer to Canberra Containers for Services – that have previously been provided and that will be provided in the future by Canberra Containers to the Customer.
- 25.3 The Customer undertakes to:
- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Canberra Containers may reasonably require to:
 - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 25.3(a)(i) or 25.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, Canberra Containers for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any registration made thereby;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of Canberra Containers;

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- (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of Canberra Containers.
- 25.4 Canberra Containers and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 25.5 The Customer hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 25.6 The Customer waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 25.7 Unless otherwise agreed to in writing by Canberra Containers, the Customer waives its right to receive a verification statement in accordance with section 157 of the PPSA.
- 25.8 The Customer shall unconditionally ratify any actions taken by Canberra Containers under clauses 25.3 to 25.5.
- 25.9 Only to the extent that the hire of the Equipment exceeds a two (2) year hire period with the right of renewal shall clause 25 apply as a security agreement in the form of a PPS Lease in respect of Section 20 of the PPSA, in all other matters this clause 25 will apply generally for the purposes of the PPSA.
- 26. Security and Charge**
- 26.1 In consideration of Canberra Containers agreeing to supply Services, the Customer 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 Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 26.2 The Customer indemnifies Canberra Containers from and against all Canberra Containers costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Canberra Containers rights under this clause.
- 26.3 The Customer irrevocably appoints Canberra Containers and each director of Canberra Containers as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 26 including, but not limited to, signing any document on the Customer's behalf.
- 27. Privacy Policy**
- 27.1 All emails, documents, images or other recorded information held or used by Canberra Containers is Personal Information, as defined and referred to in clause 27.3, and therefore considered Confidential Information. Canberra Containers acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1988 ("the Act") including the Part IIIC of the Act being Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB) and any statutory requirements, where relevant in a European Economic Area ("EEA"), under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). Canberra Containers acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customers Personal Information, held by Canberra Containers that may result in serious harm to the Customer, Canberra Containers will notify the Customer in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Customer by written consent, unless subject to an operation of law.
- 27.2 Notwithstanding clause 27.1, privacy limitations will extend to Canberra Containers in respect of Cookies where transactions for purchases/orders transpire directly from Canberra Containers website. Canberra Containers agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Customer's:
- (a) IP address, browser, email client type and other similar details;
 - (b) tracking website usage and traffic; and
 - (c) reports are available to Canberra Containers when Canberra Containers sends an email to the Customer, so Canberra Containers may collect and review that information ("collectively Personal Information")
- In order to enable / disable the collection of Personal Information by way of Cookies, the Customer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable, provided on the website prior to proceeding with a purchase/order via Canberra Containers website.
- 27.3 The Customer agrees for Canberra Containers to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) about the Customer in relation to credit provided by Canberra Containers.
- 27.4 The Customer agrees that Canberra Containers may exchange information about the Customer with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Customer; and/or
 - (b) to notify other credit providers of a default by the Customer; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Customer including the Customer's repayment history in the preceding two years.
- 27.5 The Customer consents to Canberra Containers being given a consumer credit report to collect overdue payment on commercial credit.
- 27.6 The Customer agrees that personal credit information provided may be used and retained by Canberra Containers for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Goods; and/or
 - (b) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Goods; and/or
 - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
 - (d) enabling the collection of amounts outstanding in relation to the Goods.
- 27.7 Canberra Containers may give information about the Customer to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
 - (b) allow the CRB to create or maintain a credit information file about the Customer including credit history.
- 27.8 The information given to the CRB may include:

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- (a) Personal Information as outlined in 27.3 above;
 - (b) name of the credit provider and that Canberra Containers is a current credit provider to the Customer;
 - (c) whether the credit provider is a licensee;
 - (d) type of consumer credit;
 - (e) details concerning the Customer's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
 - (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Customer no longer has any overdue accounts and Canberra Containers has been paid or otherwise discharged and all details surrounding that discharge(e.g. dates of payments);
 - (g) information that, in the opinion of Canberra Containers, the Customer has committed a serious credit infringement;
 - (h) advice that the amount of the Customer's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 27.9 The Customer shall have the right to request (by e-mail) from Canberra Containers:
- (a) a copy of the Personal Information about the Customer retained by Canberra Containers and the right to request that Canberra Containers correct any incorrect Personal Information; and
 - (b) that Canberra Containers does not disclose any Personal Information about the Customer for the purpose of direct marketing.
- 27.10 Canberra Containers will destroy Personal Information upon the Customer's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 27.11 The Customer can make a privacy complaint by contacting Canberra Containers via e-mail. Canberra Containers will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Information Commissioner at www.oaic.gov.au.

28. Cancellation

- 28.1 Without prejudice to any other remedies Canberra Containers may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions Canberra Containers may suspend or terminate the supply of Goods to the Customer. Canberra Containers will not be liable to the Customer for any loss or damage the Customer suffers because Canberra Containers has exercised its rights under this clause.
- 28.2 Canberra Containers may cancel any contract to which these terms and conditions apply, or cancel delivery of Goods at any time before the Goods are delivered, by giving written notice to the Customer. On giving such notice the Customer shall repay to the Customer any sums paid in respect of the Charges. Canberra Containers shall not be liable for any loss or damage whatever arising from such cancellation.
- 28.3 In the event that the Customer cancels the delivery of Goods, or the provision of any Services, then the Customer shall be liable for any loss incurred by Canberra Containers (including, but not limited to, any loss of profits) up to the time of cancellation, or as a direct result of the cancellation.
- 28.4 Cancellation of orders for Goods made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

29. Service of Notices

- 29.1 Any written notice given under this contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
 - (b) by leaving it at the address of the other party as stated in this contract;
 - (c) by sending it by registered post to the address of the other party as stated in this contract;
 - (d) if sent by facsimile transmission to the fax number of the other party as stated in this contract (if any), on receipt of confirmation of the transmission;
 - (e) if sent by email to the other party's last known email address.
- 29.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

30. General

- 30.1 Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising hereunder, shall be submitted to, and settled by, arbitration in accordance with the Commercial Arbitration Act 2017 (ACT) or Commercial Arbitration Act 2010 (NSW) or its replacement(s).
- 30.2 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party'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.
- 30.3 These terms and conditions and any contract to which they apply shall be governed by the laws of either Australian Capital Territory or New South Wales in which state the Goods and/or Services were provided by Canberra Containers to the Customer however, in the event of a dispute that deems necessary for the matter to be referred to a Magistrates or higher Court then jurisdiction of the Australian Capital Territory Courts will apply in which Canberra Containers has its principal place of business.
- 30.4 Subject to clause 21, Canberra Containers shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by Canberra Containers of these terms and conditions (alternatively Canberra Containers liability shall be limited to damages which under no circumstances shall exceed the Charges).
- 30.5 Neither party to this contract may assign this Contract, any payment or any other right, benefit or interest under this contract without the written consent of the other party (which shall not be unreasonably withheld). Canberra Containers may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this contract by so doing. Furthermore, the Customer agrees and

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- understands that they have no authority to give any instruction to any of Canberra Containers sub-contractors without the authority of Canberra Containers.
- 30.6 The Customer agrees that Canberra Containers may amend their general terms and conditions for subsequent future contracts with the Customer by disclosing such to the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for Canberra Containers to provide Goods to the Customer.
- 30.7 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.
- 30.8 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.

ADDITIONAL CLAUSES APPLICABLE TO (HIRE/PURCHASE OF) CONTAINERS ONLY

31. Delivery

- 31.1 Delivery ("**Delivery**") of the Container is taken to occur at the time that:
- (a) the Customer or the Customer's nominated carrier takes possession of the Container at Canberra Containers address; or
 - (b) Canberra Containers (or Canberra Containers nominated carrier) delivers the Container to the Customer's nominated address even if the Customer is not present at the address.
- 31.2 At Canberra Containers sole discretion, any costs of Delivery are in addition to the Charges.
- 31.3 Canberra Containers shall accept no responsibility for Services undertaken by any third party contractor employed by Canberra Containers. If the Customer believes that they have any claim in relation to Services undertaken by that third party then said claim must be made against the third party contractor in the first instance.

32. Customer's Responsibilities

- 32.1 Prior to Delivery, it shall be the Customer's responsibility to:
- (a) mark all boundaries of the nominated address, and if applicable to the Container supplied, locating all gas pipes, water pipes, sewage lines, drainage lines, telephone cabling, and other utilities that are on, near, or adjacent to the land upon which the Container is to be located; and
 - (b) ensure the nominated address is level and Canberra Containers has clear and free access within twenty (20) metres thereof to enable them to deliver and/or remove the Container. Canberra Containers shall not be liable for any loss or damage to the address (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of Canberra Containers, and the Customer shall be responsible for the payment of any extra charges incurred by Canberra Containers as a result of delays or difficulties in delivering the Container (including, but not limited to, in the event the Container needs to be lifted over a fence, etc.); and
 - (c) ensure access is suitable to accept the weight of laden trucks. The Customer agrees to indemnify Canberra Containers against all costs incurred thereby in recovering such vehicles in the event they become bogged or otherwise immovable; and
 - (d) advise Canberra Containers of any possibility or knowledge of any subsidence, slip, erosion, flooding, or any other thing that may constitute a hazard on the nominated address where the Container is to be delivered, or on any adjacent land.
- 32.2 It shall be the responsibility of the Customer to arrange and pay for suitably licensed contractors to provide works and materials in order for the Container to be suitable for occupancy or habitation in accordance with all relevant laws and legal requirements of the State in which the Container will be located, and:
- (a) the construction or alteration of footings, or a concrete slab, for the Container; or
 - (b) connecting or installing services for use at the location address; or
 - (c) conveying services to the Container, e.g. gas, water, electricity or telecommunication services, etc.; or
 - (d) the issuance of planning or building permits or similar authorisations (excluding the Code of Compliance for the Container itself) that are related to works required hereunder.

33. Defects

- 33.1 The Customer shall inspect the Container on Delivery and shall within seven (7) days thereof (time being of the essence) notify Canberra Containers of any alleged defect, shortage in quantity, damage or failure to comply with the description or Canberra Containers quotation. The Customer shall afford Canberra Containers an opportunity to inspect the Container within a reasonable time following such notification if the Customer believes the Container is defective in any way. If the Customer shall fail to comply with these provisions the Container shall be presumed to be free from any defect or damage. For any defective Container, which Canberra Containers has agreed in writing that the Customer is entitled to reject, Canberra Containers liability for any defect or damage to the Container is:
- (a) limited to the value of any express warranty provided to the Customer to Canberra Containers (at Canberra Containers sole discretion); or
 - (b) limited to any warranty to which Canberra Containers is entitled, if Canberra Containers did not manufacture the Container; or
 - (c) otherwise negated absolutely.
- 33.2 The Container will not be accepted for return other than in accordance with 33.1 above.
- 33.3 Notwithstanding clause 33.1, Canberra Containers shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- (a) the Customer failing to properly maintain, install or store the Container; or
 - (b) the Customer using the Container for any purpose other than that for which it was designed; or
 - (c) the Customer continuing the use of the Container after any defect became apparent, or should have become apparent to a reasonably prudent operator or user; or
 - (d) the Customer failing to follow any instructions or guidelines provided by Canberra Containers; or

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(e) fair wear and tear, any accident, or act of God.

- 33.4 In the case of second hand Goods, unless the Customer is a consumer under the CCA, the Customer acknowledges that it has had full opportunity to inspect the second hand Goods prior to Delivery and accepts them with all faults and that to the extent permitted by law no warranty is given by Canberra Containers as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Customer acknowledges and agrees that Canberra Containers has agreed to provide the Customer with the second hand Goods and calculated the Charges of the second hand Goods in reliance of this clause 33.4.
- 33.5 Canberra Containers may in its absolute discretion accept non-defective Goods for return in which case Canberra Containers may require the Customer to pay handling fees of up to fifteen percent (15%) of the value of the returned Goods plus any freight costs.

34. Intellectual Property

- 34.1 Where Canberra Containers has designed, drawn or developed Containers for the Customer, then the copyright in any designs and drawings and documents shall remain the property of Canberra Containers. Under no circumstances may such designs, drawings and documents be used without the express written approval of Canberra Containers.
- 34.2 The Customer warrants that all designs, specifications or instructions given to Canberra Containers will not cause Canberra Containers to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify Canberra Containers against any action taken by a third party against Canberra Containers in respect of any such infringement.
- 34.3 The Customer agrees that Canberra Containers may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Containers which Canberra Containers has created for the Customer.

35. Other Applicable Legislation

- 35.1 At Canberra Containers sole discretion, if there are any disputes or claims for unpaid Containers and/or Services then the provisions of the Building and Construction Industry (Security of Payment) Act 2009 (Australian Capital Territory) and the Building and Construction Industry Security of Payments Act 1999 (New South Wales) and may apply.
- 35.2 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the any of the Acts listed in clause 35.1 (each as applicable), except to the extent permitted by the Act where applicable.