



HIRE AGREEMENT
BETWEEN CONTAINER WORKS LIMITED ("CONTAINER WORKS")
AND

Full Name..... (the "Hirer")

Company name

Address

Phone Email

Postal address

Credit references: *(Please provide 3 credit references)*

Business Name:Phone Number/Email

Business Name:Phone Number/Email

Business Name:Phone Number/Email

If credit references are not supplied, I consent to Container Works collecting, using and disclosing my personal information for the following purpose:

Carrying out credit checks on me with a credit reporting agency for a purpose of making a credit decision affecting me (including debt collection). This will require Container Works to give my information to the credit reporting agency as well as the credit reporting agency providing information about me to Container Works.

I give my consent

Hire details:

Hire Period from/...../..... to/...../..... Preferred delivery date/...../.....

Delivery address:

Please note any special delivery instructions *e.g. door position front or back*

.....

Are you interested in receiving Container Works monthly newsletter & promotions? Y/N

THIS HIRE AGREEMENT IS SUBJECT TO THE SCHEDULE OF HIRE TERMS ATTACHED AND THE PARTIES AGREE, BY ENTERING THIS AGREEMENT, THEY ARE BOUND BY THOSE TERMS. PLEASE NOTE: THE ATTRIBUTES OF CONTAINERS ARE SUCH THAT THEY ARE SUSCEPTIBLE TO CONDENSATION AND DETERIORATION, BOTH OF WHICH INCREASE OVER TIME. CONTAINER WORKS MAKES NO REPRESENTATION OR WARRANTY AS TO: i) THE WATERTIGHTNESS OR WEATHERTIGHTNESS OF ANY CONTAINER (INCLUDING, WITHOUT LIMITATION, AS A RESULT OF CONDENSATION OR DETERIORATION); OR ii) THE GENERAL SUITABILITY OF ANY CONTAINER FOR STORAGE OF GOODS OR ANY OTHER USE BY THE HIRER WHATSOEVER. CONTAINER WORKS IS NOT LIABLE UNDER ANY CIRCUMSTANCES FOR ANY DAMAGE TO ANY ITEMS STORED IN ANY CONTAINER OR ANY LOSS TO THE HIRER ARISING FROM ITS USE OF THE CONTAINER EXCEPT AS EXPRESSLY PROVIDED FOR IN THIS AGREEMENT. THE HIRER ACKNOWLEDGES THAT THE CONTAINER IS HIRED AND USED IN SOLE RELIANCE ON THE HIRER'S OWN SKILL AND JUDGMENT AND NOT DUE TO ANY ADVICE, STATEMENT OR REPRESENTATION IT MAY HAVE RECEIVED FROM CONTAINER WORKS.

SIGNED for and on behalf of
CONTAINER WORKS LIMITED

SIGNED by HIRER

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SCHEDULE OF HIRE TERMS

1. DEFINITIONS

- 1.1 **Container** means the shipping container(s) supplied by Container Works to the Hirer;
- 1.2 **Delivery** has the meaning ascribed to that term in clause 9;
- 1.3 **Fixed Term** means a Hire Period that is a fixed term as contemplated by clause 5.1(a);
- 1.4 **Hire Charge** means the charges charged by Container Works to the Hirer for hireage of the Container as detailed in clause 6 of these Terms;
- 1.5 **Hire Period** is defined in clause 5;
- 1.6 **Service Charges** means the charges payable by the Hirer for Services provided by Container Works;
- 1.7 **Services** means any services provided by Container Works to the Hirer incidental to the hire of a Container, including but not limited to, delivery, removal and transport of a Container and, if applicable, the sale and/or disposal of Abandoned Goods;
- 1.8 **Terms** means this Schedule of Hire Terms and includes these terms as amended by us from time to time in accordance with clause 4.

2. ACCEPTANCE

- 2.1 Any instructions that are received by Container Works from the Hirer for the hire of a Container (including, where applicable, the Hirer accepting delivery) shall constitute acceptance of these Terms, with these Terms to apply from the date of delivery of the Container, to the exclusion of any other terms proposed by the Hirer (despite anything that may be stated to the contrary in the Hirer's enquiries or on any documentation provided by the Hirer).

3. OWNERSHIP

- 3.1 The parties agree that ownership and title ("Title") of the Container shall remain with Container Works at all times.

4. AMENDMENTS

- 4.1 Container Works may, in its sole discretion, amend, vary or otherwise change any terms of the Terms at any time by posting updated Terms on its website (www.containerworks.nz). If Container Works amends, varies or otherwise changes these Terms, then the amended Terms shall take effect on the date which is 20 working days after the date such

amendment, variation or change is notified to the Hirer.

5. HIRE PERIOD

5.1 The Hire Period in respect of a Container begins from the time Delivery occurs and continues until:

- (a) the date specified in this Hire Agreement or otherwise recorded in documentation provided by Container Works; or
- (b) the date the earliest of the following occurrences:
- (i) the date the Container is returned by the Hirer to the premises of Container Works, provided that the Hirer has given notice under clause 13.1. If the Hirer has not given notice under clause 13.1, the Hirer is deemed to have given notice under clause 13.1 on the date the Container is returned by the Hirer and the Hirer is liable to pay the Hire Charge until the expiry date of that notice period;
- (ii) the expiry date of the notice period in clause 13.1 of the Hire Agreement being the date this Hire Agreement is cancelled; or (iii) the date the Container is removed by Container Works pursuant to clause 13.2,

provided that in all instances Container Works reserves the Hire Period will not end until such time as the Container is available for hire to a third party.

5.2 The Hirer will, subject to clause 6.3, at expiry of the Hire Period:

- (a) with express agreement from Container Works, deliver the Container to Container Works premises (or to such other location as instructed by Container Works);
- (b) arrange for removal of the Container from the Hirer's premises to Container Works' premises (and otherwise in consultation with Container Works);
- (c) obtain Container Works' written consent to the continuation of hire (in which case the Hirer shall pay additional hire charges, at a rate determined by Container Works, for such continued hire period).

5.3 If the Hirer fails to comply with clause 5.2, the Hirer will be liable for any additional charges or Service Charges (if applicable) as determined by Container Works, acting reasonably including without limitation, any

charges payable as a result of the delay in the return of the Container.

6. HIRE CHARGE

6.1 The Hire Charge at Container Works' election:

- (a) is the charge (including Service Charges) recorded on any invoice provided by Container Works to the Hirer in respect of the hire of a Container; or
- (b) if a quotation was provided by Container Works, the Hire Charge is Container Works' quoted price which shall be binding on the Hirer provided that the Hirer accepts the quotation in writing within thirty (30) days of receiving the quotation.

Container Works reserves the right to change the amount of the Hire Charge in the event of a variation to the quotation.

6.2 The Hirer is liable for the following charges, costs and expenses:

- (a) the Hire Charge for the Hire Period (including up until the expiry of any Fixed Term); (b) any Service Charges (if applicable);
- (c) additional charges where clause 5.2(b) or 5.3 apply;
- (d) costs of repair of any damage to the Container;
- (e) repair and/or cleaning fees (if applicable) as provided under clause 6.3;
- (f) default interest for late payment (if applicable); and,
- (g) any costs incurred by Container Works undertaking the activities contemplated by clause 13.3.

6.3 The Hirer must return the Container to Container Works in the same unaltered condition as the condition of the Container on the date the Hire Period commenced (including, without limitation, removing of all goods and/or items not belonging to Container Works) (fair wear and tear excepted).

6.4 If the Hirer does not comply with clause 6.3, Container Works is entitled to charge replacement, repair and/or cleaning fees as determined by Container Works which will be charged if the Hirer returns the Container in a state that Container Works determines (in its sole discretion, but acting reasonably) is not the same unaltered condition as

the condition of the Container on the date the Hire Period commenced (including, without limitation, removing of all goods and/or items not belonging to

Container Works) (fair wear and tear excepted). Container Works will, as soon as reasonably practicable, notify the Hirer of the relevant replacement, repair and/or cleaning fees.

7. PAYMENT

7.1 All amounts payable under this Hire Agreement are in New Zealand dollars and are exclusive of GST. Payments will be made by the Hirer when due and in clear funds, free of any counterclaim, set-off, deduction or other claim whatsoever.

7.2 The Hirer agrees to make payment to Container Works' nominated bank account or as otherwise directed by Container Works.

7.3 At Container Works' sole discretion:

- (a) the first months Hire Charge and all Service Charges must be paid before delivery of the Container and, thereafter, the Hire Charge is payable on the 1st day of each following month in advance until the end of the Hire Period;
- (b) payment terms will be otherwise as determined by Container Works and notified to the Hirer.

7.4 The Hirer cannot withhold payment of any invoice because part of that invoice is in dispute.

8. DEFAULT

8.1 Interest on overdue amounts shall accrue daily from the date payment is due until the payment is made at a rate of 2.5% per calendar month (compounding each month).

8.2 If the Hirer defaults in the payment of any invoice when due, the Hirer is liable to meet all Container Works' costs incurred in pursuing the debt, including but not limited to legal costs and debt collection costs.

8.3 Container Works will not be liable for any loss or damage suffered by the Hirer as a result of Container Works exercising its rights under this clause 8.

8.4 If an account remains overdue after thirty (30) days then an amount of either \$20.00 or 10% of the overdue amount (up to a maximum of \$200.00), whichever is the greater, shall be levied for administration fees which shall become immediately due and payable by the Hirer to Container Works.

8.5 Without prejudice to Container Works' other remedies at law, Container Works shall be entitled to cancel this Hire Agreement if the Hirer fails to make a payment when due (as required by clause 7.1), or if in Container

Works' reasonable opinion, the Hirer will be unable to meet its payments as they fall due.

9. DELIVERY AND ACCESS

9.1 Delivery of the Container is deemed to have taken place when Container Works places the Container at the disposal of the Hirer, that is on the earlier of: (a) when the Hirer arrives at the site of Container Works to take delivery of the Container; or

(b) when either Container Works or the Hirer's nominated carrier arrives at the site of Container Works to take delivery of the Container and deliver the Container to the Hirer's nominated delivery address (and whether or not the Hirer is present at such address),

where, in both cases, "Delivery" occurs before the Container is loaded onto a vehicle. Container Works shall not be liable for any loss or damage that may occur to any person or property during the transit or unloading of the Container.

9.2 Any delivery date (if stated by Container Works) is an estimate only, and while Container Works will always endeavour to have the Container available for delivery on this date, in the event that it is not possible, Container Works will have no liability whatsoever to the Hirer, nor will the Hirer be entitled to any compensation.

9.3 Preparation of the pad on which to place the Container is entirely the responsibility of the Hirer and must occur prior to Delivery. Container Works can refuse to complete Delivery if it is not satisfied, on a reasonable basis, with the pad the Container will be placed on. The Hirer shall provide Container Works access to inspect the pad prior to delivery.

9.4 It is the responsibility of the Hirer to ensure that access to the Hirer's premises is suitable to accept the weight of laden trucks carrying containers. The Hirer agrees to hold Container Works harmless against all costs incurred by Container Works in recovering such vehicles in the event they become bogged or otherwise immovable due to a breach of this clause.

9.5 Container Works, and its nominated carrier, shall not be liable for any loss or damage to the site (including but not limited to damage to pathways, driveways, concrete areas, paved areas and grassed areas) of the Hirer's premises.

9.6 Containers are designed to sit on their four corner posts. They do not need to be level but each corner does need to share the load equally (or close to) and the Container can twist if not sitting flat. The Hirer will be liable for any damage caused to the Container due

to the Container being situated on an inadequate pad.

9.7 The Hirer shall ensure Container Works has clear and free access to the site where the Container is to be kept at all times. Container Works is entitled to access that site as prescribed by clause 13.2(c) or otherwise at any time to recover the Container following breach of clause 13.2.

10. FAILURE TO ACCEPT DELIVERY

10.1 The Hirer must accept Delivery of the Container whenever it is tendered for Delivery.

10.2 Where the Hirer fails to accept Delivery of the Container as arranged, Container Works, in its sole discretion, may immediately terminate this Hire Agreement, in which case, the Hirer will pay to Container Works all Service Charges plus one month's Hire Charge.

10.3 The Hirer shall be liable for any additional costs that may be incurred due to the postponement or failure to accept Delivery by the Hirer including but not limited to re-delivery costs, transit costs to any storage facility (including Container Works' premises), storage fees and Service Charges.

11. USE OF THE CONTAINER

11.1 The Hirer must ensure that:

- (a) the Container is kept in its original condition and not altered in any way;
- (b) Container Works is able, upon giving reasonable notice, to inspect the Container at any time during the Hire Period;
- (c) all information provided or to be provided to Container Works by the Hirer under this Hire Agreement is complete, accurate, true and correct.

11.2 The Hirer must not:

- (a) transfer, sell or otherwise part with possession of the Container;
- (b) allow the Container to be fixed or installed onto any land;
- (c) use or allow the Container to be used in breach of any Act, regulations, rules, or bylaws;
- (d) unless the Hirer has appropriate authority, consent or licence to do so, store hazardous, dangerous illegal, stolen, environmentally harmful or explosive substances inside the Container;
- (e) allow any sign-writing or advertising to be affixed to the Container without written consent of Container Works.

12. REPAIRS DURING TERM

- 12.1 The Hirer must regularly inspect the Container for any damage. If the Container requires repair or salvage (regardless of cause) the Hirer shall notify Container Works immediately and follow the instructions of Container Works with respect of the Container.
- 12.2 The Hirer shall ensure that no repairs or salvage are arranged or undertaken without Container Works' prior written authority.
- 12.3 If the Container requires repair or salvage, Container Works may:
- (a) elect to provide the Hirer with a replacement Container within a reasonable timeframe, taking into account other Containers available for hire; or
 - (b) elect not to provide the Hirer with a replacement Container and cancel this Hire Agreement where cancellation is effective immediately.

13. CANCELLATION AND RIGHT TO TERMINATE

- 13.1 Where the Hire Period is not a Fixed Term, either party must give no less than 28 days' notice of their cancellation of the Hire Agreement, either in person, telephone or email to the other party.
- 13.2 Container Works may terminate this Hire Agreement and/or recover the Container without notice if: (a) Clauses 8.5 and/or 12.2 apply;
- (b) the Hire Period expires without satisfactory arrangements having been made between Container Works and the Hirer;
 - (c) the Hirer breaches these Terms; or
 - (d) Container Works reasonably suspects that the Hirer may be in breach of this Agreement, Upon termination the Hirer must comply with clause 6.3.
- 13.3 The Hirer agrees and acknowledges that Container Works will have a lien over any goods, possessions and/or items stored in, attached to or otherwise located in the Container at the end of the Hire Period or when the Container is returned to Container Works ("**Abandoned Goods**"). Container Works has the right to, in its sole discretion, sell or otherwise dispose of the Abandoned Goods (whether for consideration or not). Where Container Works sells Abandoned Goods, it has the right set off the proceeds of sale against any amount it is owed by the Hirer. The Hirer holds Container Works harmless against any claim, loss or damages to any person or persons arising from the sale, disposal or continued storage of Abandoned

Goods. The Hirer agrees, any balance of the sale proceeds unclaimed by the Hirer after 20 days written notice from Container Works may be dealt with by Container Works as determined in its sole discretion.

14. RISK

- 14.1 Notwithstanding Section 148 of the Contract and Commercial Law Act 2017, the Hirer bears all risks of loss of or damage to the Container from Delivery.
- 14.2 If the Hirer requests that Container Works leave the Container outside Container Works' premises or site for collection or to deliver the Container to an unattended location then such Container shall be left at the Hirer's sole risk.

15. PERSONAL PROPERTY SECURITIES ACT 1999 ('PPSA')

- 15.1 The Hirer acknowledges and agrees:
- (a) this Hire Agreement constitutes a security agreement for the purposes of the PPSA; and
 - (b) Container Works is entitled to register a security interest in any Container hired by the Hirer.
- 15.2 The Hirer agrees to sign any further documents and/or supply any further information which Container Works may reasonably require to register a financing statement and/or financing change statement on the Personal Property Securities Register.
- 15.3 The Hirer agrees to meet Container Works' expenses incurred in registering a financing statement and/or financing change statement and/or releasing any Container charged on the Personal Property Securities Register.
- 15.4 The parties agree nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these Terms.
- 15.5 The Hirer waives its rights as a debtor under sections 116,120(2), 121,125,126,127,129,131 and 132 of the PPSA.
- 15.6 Unless otherwise agreed to in writing by Container Works, the Hirer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 15.7 The Hirer agrees to unconditionally ratify any actions taken by Container Works under this clause.

16. CONSUMER LEGISLATION

16.1 For the purposes of this Hire Agreement, "consumer" means a Hirer who is a "consumer" for the purposes of the Consumer Guarantees Act 1993 and/or the Fair Trading Act 1986.

16.2 If the Hirer is hiring the Container for the purposes of a trade or business, then the Hirer agrees that, to the extent permissible under law, both the Consumer Guarantees Act 1993 and the Fair Trading Act 1986 do not apply to the hire of the Container and the supply of Services by Container Works to the Hirer. The parties agree and acknowledge that the exclusions in this clause 16.2 are fair and reasonable.

17. PRIVACY ACT 1993

17.1 The Hirer allows Container Works to collect, retain and use any information about the Hirer for the purpose of:

- (a) assessing the Hirer's creditworthiness; and
- (b) marketing Container Works' products and services to the Hirer.

17.2 Container Works may disclose information about the Hirer (whether collected by Container Works from the Hirer directly or obtained by Container Works from any other source) to any credit provider or credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Hirer.

17.3 The authority given by the Hirer under this clause shall be considered consent for the purposes of the Privacy Act 1993.

17.4 The Hirer shall have the right to request a copy of all information held by Container Works about the

Hirer.

17.5 The Hirer shall have the right to request Container Works to correct any incorrect information about the Hirer held by Container Works.

18. LIMITATION OF LIABILITY

18.1 To the maximum extent permitted by law:

- (a) Container Works will not be liable under any circumstances for any loss or damage whatsoever to any items stored or located inside the Container. For the avoidance of doubt, it is the responsibility of the Hirer to insure items stored or located in the Container;
- (b) Container Works' liability (whether at law, in contract or otherwise) in connection with the Container, its hire, or Services provided under this

Hire Agreement is limited to its liability or obligations under the Consumer Guarantees Act 1993 and shall not in any event exceed the Hire Charge paid by the Hirer for the hire of the

Container in the 3 months prior to the date the Hirer makes a claim against Container Works;

(c) Container Works will not be liable to the Hirer for any special, indirect or consequential loss (including without limitation loss of profits or opportunity) or damage suffered or incurred by the Hirer in connection with the use of the Container or the Services provided or otherwise under this Hire Agreement;

(d) Container Works will not be liable for any oral advice, information, statements or representations provided by any person in respect of the hire of the Container or Services.

18.2 The Hirer is liable for and will hold harmless Container Works from:

- (a) any loss or damage to the Container or any items stored or located in it during the Hire Period;
- (b) any loss of, or damage to, property of the Hirer or third parties arising out of or in connection with the hire of the Container by the Hirer; and
- (c) any consequential damage, loss or costs, including salvage costs, loss of ability to re-hire and loss of revenue, incurred by Container Works as a result of the Hirer's breach of this Hire Agreement.

18.3 To the extent permitted by law the Hirer agrees to release, waive, discharge and hold harmless Container Works, and all persons connected to Container Works from any and all liability for death, disability, personal injury (including mental injury), property damage, property theft, loss of personal equipment and all other risks, claims or actions of any kind (including negligence) whatever and however occurring which may arise, at any time, from or in connection with, directly or indirectly, as a consequence of the Hirer hiring the Container.

19. DISPUTE RESOLUTION

19.1 All disputes between the Hirer and Owner shall be referred to arbitration by an arbitrator agreed upon by both parties.

19.2 If the parties are unable to agree upon an arbitrator then the arbitrator shall be selected by the President of Waikato Bay of Plenty District Law Society.

19.3 Such arbitration is to be carried out in accordance with the provisions of the Arbitration Act 1996.

19.4 Nothing in this clause 19 will preclude or prevent either party from taking immediate steps to seek urgent interlocutory relief before an appropriate court.

20. GENERAL PROVISIONS

20.1 **Assignment:** The rights and/or obligations of Container Works under these Terms may be assigned or novated by Container Works to any person. The Hirer may only assign its rights and/or obligations under these Terms with the prior consent in writing of Container Works, which may be withheld by Container Works in its absolute discretion.

20.2 **Relationship:** These Terms do not create any relationship of partnership, agency, employment or joint venture between the Hirer and Container Works.

20.3 **Severability:** If any part or provision of these Terms are held to be invalid, illegal or unenforceable for any reason, that part or provision will be deemed to be

deleted from these Terms and the remainder of these Terms will continue in full force and effect.

20.4 **Waiver:** A failure, delay or indulgence by any party in exercising any power or right will not operate as a waiver of that power or right, unless in writing.

20.5 **Force Majeure:** Container Works will not be liable for any delay or failure in the performance of any of the obligations imposed by these Terms, provided that the failure is beyond the reasonable control of Container Works.

20.6 **Notices:** Notices under these Terms will be sufficiently given if successfully transmitted by email to the Hirer at its last known email address. Container Works' address is provided on its website. The Hirer will notify Container Works of any change to their notification details.

OFFICE USE ONLY	
Date delivered:/...../.....	
Size:	Type:
Container number:	
Date returned:/...../.....	