

**3i Logistics Limited (trading as 3 Islands Intermodal and/or Boxman) – Hire, Lease or Sale Agreement & General Terms and Conditions**

This Agreement records that the Hirer/Lessor/Seller agrees to hire/lease/sell the Containers described below ("the Containers") to the Hiree/Lessee/Purchaser and the Hiree/Lessee/Purchaser agrees to pay the Amount as set out below. Any Guarantor agrees to guarantee, as a principal debtor, the performance of the Hiree/Lessee/Purchaser's obligation under this Agreement, as set out in the General Terms and Conditions.

**PRINCIPAL TERMS**

|                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
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| <b>Hirer, Lessor and/or Seller</b>                                                                                                                                               | 3i Logistics Limited (GST number: 146-516-521) and its associated companies, including 3i Southern Cross Limited (GST number: 144-432-266)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <b>Hiree, Lessee and/or Purchaser</b>                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| <b>Guarantor</b>                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| <b>Description of Containers</b>                                                                                                                                                 | Type:<br><br>Make:<br><br>Model:<br><br>Chassis/Serial Number:<br><br>Vin Number:<br><br>Year:<br><br>Registration No:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <b>Insurance Details</b><br><br><b>Contents Insurance is the responsibility of the Lessee.</b><br><br><b>Claims are required to be made via the lessee's insurance provider.</b> | Insurer/Broker:<br><br>Policy Number:<br><br>Branch:<br><br>Expiry Date:<br><br>Cover Amount:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| <b>Key Terms:</b>                                                                                                                                                                | <b>HIRE AGREEMENT / LEASE AGREEMENT / SALE AGREEMENT</b> (choose one only)<br><br>All Payment Amounts are inclusive of goods and services tax.<br><br>The Payment Amount is to be paid by:<br><br>Advance Payment Amount (incl GST): \$<br><br>Daily/Monthly Payment Amount (incl GST): \$<br><br>The Payment Amounts shall be payable on the ..... day of each and every month, the first of which is due on the ..... day of ..... (month) ..... (year).<br><br>Assumed Residual Value: Nil<br><br>Hire or Lease Period: ..... months from the Commencement Date of this Agreement (subject to termination in the General Terms and Conditions)<br><br>Default Interest Rate is ..... % per annum |
| <b>Place of Payment</b>                                                                                                                                                          | All payments due under this Agreement must be made by automatic bank payment authority or direct debit form, as requested by the Hirer, Lessor, Seller.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <b>Consumer Guarantees Act 1993</b>                                                                                                                                              | The goods and services supplied pursuant to this Agreement are of the type requested by the Hiree/Lessee/Purchaser, and that supply is for the Hiree/Lessee/Purchaser's business use, and the Hiree/Lessee/Purchaser acknowledges that:                                                                                                                                                                                                                                                                                                                                                                                                                                                             |

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|-------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                                   | <p>(a) nothing in the Consumer Guarantees Act 1993 shall apply to that supply;</p> <p>(b) in the case of secondhand goods, the Hiree/Lessee/Purchaser understands that the goods to which this Agreement relates are secondhand goods and that the Hirer/Lessor/Seller does not promise they are fit for use or for any particular purpose.</p>                                                                                                                                                                                                                          |
| <b>Credit Contracts and Consumer Finance Act 2003</b>             | <p>For the benefit of the Hirer/Lessor/Seller, where the Hiree/Lessee/Purchaser is not a company, the Hiree/Lessee/Purchaser declares, pursuant to section 62 of the Credit Contracts and Consumer Finance Act 2003 that the goods leased by the Hiree/Lessee/Purchaser under this Agreement are to be utilised primarily for business purposes.</p> <p>The Hiree/Lessee/Purchaser has signed before entry into this Agreement, and delivered to the Hirer/Lessor/Seller, an independent declaration to this effect in the form required by the Hirer/Lessor/Seller.</p> |
| <b>The Lessee and Guarantor acknowledge</b>                       | <p>The Hiree/Lessee/Purchaser and the Guarantor (and if more than one, each of them) each acknowledge that they have read this Agreement and that prior to the Hiree/Lessee/Purchaser taking possession of the Containers, they have each received a copy of this Agreement including the Terms and Conditions, and that they agree to all the terms of this agreement.</p> <p>The Hiree/Lessee/Purchaser agrees that it has obtained professional advice on the tax and accounting treatment and consequences of this Agreement.</p>                                    |
| <b>EXECUTED BY THE HIREE/LESSEE/PURCHASER</b>                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <p>Name:</p><br><br><p>Signed by:</p>                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <b>EXECUTED BY THE GUARANTOR</b>                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <p>Name:</p><br><br><p>Signed by:</p><br><br><p>Witnessed by:</p> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <b>EXECUTED FOR AND ON BEHALF OF THE HIRER/LESSOR/SELLER</b>      | <p>Signed by:</p><br><br><p>Name:</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <b>Signing Date (DD/MM/YY)</b>                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <b>Commencement Date (DD/MM/YY)</b>                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <b>Termination Date (DD/MM/YY)</b>                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |

**1. Preamble**

- 1.1 All Services of 3i Logistics Limited T/A 3 Islands Intermodal and/or Boxman, whether gratuitous or not, are supplied subject to these terms and conditions and:
- (a) the provisions of Part I shall apply to the provision of all and any Services.
  - (b) the provisions of Part II shall only apply to the Hire of Container(s) Only.
  - (c) the provisions of Part III shall only apply to the Sale of Container(s) Only.

**PART I - GENERAL CLAUSES**

**2. Definitions**

- 2.1 **"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.
- 2.2 **"Boxman"** means 3i Logistics Limited and 3i Southern Cross Limited T/A 3 Islands Intermodal and/or Boxman, its successors and assigns, or any person acting on behalf of, and with the authority of, 3i Logistics Limited and 3i Southern Cross Limited T/A 3 Islands Intermodal and/or Boxman.
- 2.3 **"Customer"** means the person/s, entities or any person acting on behalf of and with the authority of the Customer requesting Boxman to provide the Containers or 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.
- 2.4 **"Container(s)"** means all Containers supplied either on a hire or sale basis by Boxman 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 Boxman, including, but not limited to, packing the Goods into the Container(s) or delivery of the Goods).
- 2.5 **"Goods"** means any personal property that are stored in the Containers by the Customer.
- 2.6 **"Confidential Information"** means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, **"Personal Information"** such as: 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) and pricing details.
- 2.7 **"Cookies"** means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including personal information) specific to a particular client and website, and can be accessed either by the web server or the client's computer. **If the Customer does not wish to allow Cookies to operate in the background when using Boxman's website, then 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 making enquiries via the website.**
- 2.8 **"Charges"** means the price payable for the hire and/or purchase of the Container(s) or storage thereof, as agreed between Boxman and the Customer in accordance with clause 6 below.
- 2.9 **"Delivery"** means the delivery, or access, of the Container(s) to the Customer in accordance with clause 7.

**3. Acceptance**

- 3.1 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 Containers or Services provided by Boxman.
- 3.2 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.
- 3.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 3.4 The Customer acknowledges that the supply of Containers or Services on credit shall not take effect until the Customer has completed a credit application with Boxman and it has been approved with a credit limit established for the account.
- 3.5 In the event that the supply of Containers or Services request exceeds the Customer's credit limit and/or the account exceeds the payment terms, Boxman reserves the right to refuse delivery.
- 3.6 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 226 of the Contract and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act.

**4. Errors and Omissions**

- 4.1 The Customer acknowledges and accepts that Boxman shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- (a) resulting from an inadvertent mistake made by Boxman in the formation and/or administration of this Contract; and/or
  - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by Boxman in respect of the Services.
- 4.2 In the event such an error and/or omission occurs in accordance with clause 4.1, and is not attributable to the negligence and/or wilful misconduct of Boxman; the Customer shall not be entitled to treat this Contract as repudiated nor render it invalid.

**5. Change in Control**

- 5.1 The Customer shall give Boxman 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, or business practice). The Customer shall be liable for any loss incurred by Boxman as a result of the Customer's failure to comply with this clause.

**6. Charges and Payment**

- 6.1 At Boxman's sole discretion, the Charges shall be either:
- (a) as indicated on any invoice provided by Boxman to the Customer; or
  - (b) Boxman's 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 For the hire of the Container, the Customer must pay to Boxman immediately upon acceptance of this Contract:
- (a) the initial monthly Charge; and
  - (b) a deposit, in the form of a Bond, which shall be refunded to the Customer by cheque within thirty (30) days of termination of this Contract, provided that the Customer has complied with their obligations hereunder; and
  - (c) the monthly Charge shall be payable in advance on the first day of each monthly period as arranged. Where the Contract commences part way through a monthly period, the initial advance payment shall be calculated on a pro-rata basis commencing from the date the Contract is signed to the end of that monthly period and monthly in advance thereafter.
- 6.3 For the sale and modification of the Containers, the following condition may apply:
- (a) a fifty percent (50%) of the Contract Charge is payable up front and considered a non-refundable deposit; and
  - (b) the balance of the Contract Charge is payable prior to Delivery of the Container.
- 6.4 Boxman reserves the right to change the Charges:
- (a) if a variation to the Container(s) which are to be supplied is requested (including the quantity, specifications, Hire Period, date of Delivery, inaccurate instructions provided by the Customer, nature and location of the collection and/or delivery address, weather conditions or delays beyond the control of Boxman, etc.);
  - (b) as a result of an increase in Boxman's costs due to changes in statutory, government, or local body charges, taxes, levies, etc. with respect to the Container(s), which are outside the control of Boxman (including, without limitation, increases in the cost of labour or materials, or increases in insurance premiums, etc.);
  - (c) upon one (1) months' written notice to the Customer.
- 6.5 Time for payment for the Container(s) being of the essence, the Charges will be payable by the Customer on the date/s determined by Boxman, which may be:
- (a) before Delivery;
  - (b) by way of instalments/periodic payments in accordance with Boxman's payment schedule; or
  - (c) for certain approved Customers, due twenty (20) days following the end of the month in which a statement is posted to the Customer's address or address for notices;
  - (d) the date specified on any invoice or other form as being the date for payment; or
  - (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice/s furnished to the Customer by Boxman.
- 6.6 Payment may be made by electronic/on-line banking, credit card (VISA and MasterCard only and a surcharge per transaction may apply), or by any other method as agreed to between the Customer and Boxman.
- 6.7 The parties agree that the Customer's obligations to Boxman under this Contract shall not cease, and in the case of the sale of the Container(s) ownership thereof shall not pass, until the Customer has paid Boxman all amounts owing to Boxman, and met all of its other obligations to Boxman, under this Contract.
- 6.8 Receipt by Boxman 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 Boxman's rights and ownership in relation to the Container(s), and this Contract, shall continue.
- 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 Boxman, nor to withhold payment of any invoice because part of that invoice is in dispute.
- 6.10 Unless otherwise stated the Charges do not include GST. In addition to the Charges the Customer must pay to Boxman an amount equal to any GST Boxman must pay for any supply of Container(s) by Boxman 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.

## **7. Delivery**

- 7.1 Delivery of the Container(s) is taken to occur at the time that:
- (a) the Customer (or the Customer's nominated carrier) takes possession of (or accesses) the Container(s) at Boxman's premises; or
  - (b) Boxman (or Boxman's nominated carrier) delivers the Container(s) to the Customer's nominated address, even if the Customer is not present at the address.
- 7.2 At Boxman's sole discretion, the cost of Delivery is either included in the Charges or is in addition to the Charges.
- 7.3 The Customer must take Delivery, by receipt or collection of the Container(s), whenever they are tendered for Delivery. In the event that the Customer is unable to take Delivery, as arranged, then Boxman shall be entitled to charge a reasonable fee for redelivery and/or the storage of the Container(s).
- 7.4 Any time or date given by Boxman to the Customer is an estimate only. The Customer must still accept Delivery, even if late, and Boxman will not be liable for any loss or damage incurred by the Customer as a result of Delivery being late. Boxman will not be liable for any loss or damage incurred by the Customer as a result of Delivery being late. In the event that the Customer is unable to take Delivery of the Containers as arranged then Boxman shall be entitled to charge a reasonable fee for redelivery and/or storage.

## **8. Title**

- 8.1 Where this is a hire Contract, the Container(s) are, and will at all times remain, the absolute property of Boxman;
- 8.2 Where this is a Contract for the purchase of the Container(s), and until ownership of the Container(s) passes to the Customer in accordance with sub-clause 6.7:
- (a) the Customer is only a bailee of the Container(s), and must return the Container(s) to Boxman on request;
  - (b) the Customer holds the benefit of the Customer's insurance of the Container(s) on trust for Boxman, and must pay to Boxman the proceeds of any insurance in the event of the Container(s) being lost, damaged or destroyed;
  - (c) the Customer must not sell, dispose, or otherwise part with possession of the Container(s), other than in the ordinary course of business, and for market value. If the Customer sells, disposes or parts with possession of the Container(s) then the Customer must hold the proceeds of any such act on trust for Boxman and must pay or deliver the proceeds to Boxman on demand;
  - (d) the Customer shall not charge or grant an encumbrance over the Container(s) nor grant nor otherwise give away any interest in the Container(s) while it remains the property of Boxman;
  - (e) Boxman may commence proceedings to recover the Charges, notwithstanding that ownership of the Container(s) has not passed to the Customer.
- 8.3 The Customer grants Boxman (or their agent) the right to (as the invitee of the Customer) enter upon and into land and premises owned, occupied or used by the Customer, or any premises where the Container(s) are situated and take possession thereof, without being responsible for any damage thereby caused in the event of any default by the Customer under this Contract (including, but not limited to, any default under

clause 14, or where the Customer fails to return the Container(s) to Boxman upon request to do so), and the Customer shall have the Container(s) ready for collection within forty-eight (48) hours of notice by Boxman of its intention to repossess the Container(s). If the Customer fails to adhere to this clause, Boxman shall be entitled to:

- (a) charge the Customer additional Charges until such time as the Container(s) are ready for collection; and/or
- (b) retake possession of the Container(s), notwithstanding any Goods that may be stored therein (and in that instance clause (b) shall apply to such Goods).

**9. Personal Property Securities Act 1999 (“PPSA”)**

- 9.1 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 Container(s), and/or any monetary obligation of the Customer to Boxman for services, previously supplied (if any), and will be supplied in the future, by Boxman to the Customer;
  - (b) all Goods of the Customer in the possession of Boxman which have been stored in the Container(s), over which Boxman invokes a lien.
- 9.2 The Customer undertakes to:
- (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Boxman may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
  - (b) indemnify, and upon demand reimburse, Boxman for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any registration made thereby;
  - (c) not register a financing change statement or a change demand without the prior written consent of Boxman;
  - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the registration in favour of a third party without the prior written consent of Boxman;
  - (e) immediately advise Boxman of any material change in its business practices of selling the Container(s) which would result in a change in the nature of proceeds derived from such sales.
- 9.3 Boxman and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 9.4 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129 and 131 of the PPSA.
- 9.5 Unless otherwise agreed to in writing by Boxman, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 9.6 The Customer shall unconditionally ratify any actions taken by Boxman under clauses 9.1 to 9.5.
- 9.7 Only to the extent that the hire of the Containers exceeds a six (6) month Hire Period (with the right of renewal) shall clause 9 apply as a security agreement in the form of a PPS Lease in respect of Section 36 of the PPSA, in all other matters this clause 9 will apply generally for the purposes of the PPSA.

**10. Security and Charge**

- 10.1 In consideration of Boxman agreeing to supply the Container(s), 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).
- 10.2 The Customer indemnifies Boxman from and against all Boxman's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Boxman's rights under this clause.
- 10.3 The Customer irrevocably appoints Boxman (and each director thereof) as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 10 including, but not limited to, signing any document on the Customer's behalf.

**11. Defects**

- 11.1 The Customer shall inspect the Container(s) on Delivery and shall within seven (7) days thereof (time being of the essence) notify Boxman of any alleged defect, shortage in quantity, damage or failure to comply with the description of the Container(s) on any quotation, order or other document. The Customer shall afford Boxman an opportunity to inspect the Container(s) within a reasonable time following such notification if the Customer believes the Container(s) are defective in any way. If the Customer shall fail to comply with these provisions the Container(s) shall be presumed to be free from any defect or damage. For any defective Container(s), which Boxman has agreed in writing that the Customer is entitled to reject, Boxman's liability is limited to either (at Boxman's discretion) replacing the Container(s) or repairing the Container(s).
- 11.2 Returns of Container(s) will only be accepted provided that:
- (a) the Customer has complied with the provisions of clause 11.1;
  - (b) Boxman has agreed in writing to accept the return of the Container(s);
  - (c) the Container(s) are returned at the Customer's cost within fourteen (14) days of the Delivery date; and
  - (d) Boxman will not be liable for Container(s) which have not been stored or used in a proper manner; and
  - (e) the Container(s) are returned in the condition in which they were delivered and with all instruction material in as new condition as is reasonably possible in the circumstances.
- 11.3 Subject to clause 11.1, non-stocklist items or Containers made to the Customer's specifications are not acceptable for credit or return.

**12. Consumer Guarantees Act 1993**

- 12.1 If the Customer is acquiring Containers for the purposes of a trade or business, the Customer acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Container(s) by Boxman to the Customer.

**13. Intellectual Property**

- 13.1 Where Boxman has designed, drawn or developed Container(s) for the Customer, then the copyright in any designs and drawings and documents shall remain the property of Boxman. Under no circumstances may such designs, drawings, and documents be used without the express written approval of Boxman.
- 13.2 The Customer warrants that all designs, specifications or instructions given to Boxman will not cause Boxman to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify Boxman against any action taken by a third party against Boxman in respect of any such infringement.

- 13.3 The Customer agrees that Boxman may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which Boxman has created for the Customer.
- 14. Default and Consequences of Default**
- 14.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at Boxman's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 14.2 If the Customer owes Boxman any money, the Customer shall indemnify Boxman from and against all costs and disbursements incurred by Boxman in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Boxman's collection agency costs, and bank dishonour fees).
- 14.3 Further to any other rights or remedies Boxman may have under this Contract, if a Customer has made payment to Boxman 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 Boxman under this clause 14, where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this agreement.
- 14.4 Without prejudice to any other remedies Boxman may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions:
- (a) Boxman may refuse access to the Container by the Customer and/or enact their right to terminate this Contract in accordance with the terms and condition herein; and
  - (b) in the event the Charges (or any other monies owing) are not paid in full within twenty-eight (28) days of the due date for payment, Boxman may (without further notice) enter the Container(s) or repossess the Container(s) in accordance with clause 8.3, and take possession and/or sell or dispose of any Goods stored in the Container(s) on such terms that Boxman may determine. Boxman may also require the payment of any costs associated with the seizure and/or repossession of the Container(s). Any excess monies recovered by Boxman on the disposal of the Goods will be returned to the Customer; and
  - (c) Boxman will not be liable to the Customer for any loss or damage the Customer suffers because Boxman has exercised its rights under this clause.
- 14.5 Without prejudice to Boxman's other remedies at law, Boxman shall be entitled to cancel all, or any part, of any order of the Customer which remains unfulfilled, and all amounts owing to Boxman shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to Boxman becomes overdue, or in Boxman's opinion the Customer will be unable to make a payment when it falls due;
  - (b) the Customer has exceeded any applicable credit limit provided by Boxman;
  - (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;
  - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.
- 15. Cancellation**
- 15.1 Boxman may cancel any contract to which these terms and conditions apply, or cancel the supply of Container(s) at any time before Delivery, by giving written notice to the Customer. On giving such notice Boxman shall repay to the Customer any money paid by the Customer for the Container(s). Boxman shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 15.2 In the event that the Customer cancels this Contract, or Delivery, the Customer shall be liable for any and all loss incurred (whether direct or indirect) by Boxman as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 15.3 Cancellation of orders for any Container(s) made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once an order has been placed.
- 16. Privacy Policy**
- 16.1 All emails, documents, images or other recorded information held or used by Boxman is Personal Information as defined and referred to in clause 16.3 and therefore considered confidential. Boxman acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1993 ("the Act") including Part II of the OECD Guidelines and as set out in Schedule 5A of the Act 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"). Boxman acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customer's Personal Information, held by Boxman that may result in serious harm to the Customer, Boxman 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.
- 16.2 Notwithstanding clause 16.1, privacy limitations will extend to Boxman in respect of Cookies where the Customer utilises Boxman's website to make enquiries. Boxman 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 Boxman when Boxman sends an email to the Customer, so Boxman may collect and review that information ("collectively Personal Information")
- If the Customer consents to Boxman's use of Cookies on Boxman's website and later wishes to withdraw that consent, the Customer may manage and control Boxman's privacy controls via the Customer's web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 16.3 The Customer authorises Boxman (or Boxman's agent) to:
- (a) access, collect, retain and use any information about the Customer;
    - (i) (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Customer's creditworthiness and enforcing any rights given to either party under this Contract;
    - (ii) for the purpose of marketing products and services to the Customer.
  - (b) disclose information about the Customer, whether collected by Boxman from the Customer directly or obtained by Boxman from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Customer.

### **3i Logistics Limited (trading as 3 Islands Intermodal and/or Boxman) – Hire, Lease or Sale Agreement & General Terms and Conditions**

- 16.4 Where the Customer is a natural person/individual the authority given in clause 16.1 ensures compliance on the behalf of Boxman with the Privacy Act 1993.
- 16.5 The Customer shall have the right to request Boxman for a copy of the information about the Customer retained by Boxman and the right to request Boxman to correct any incorrect information about the Customer held by Boxman.
- 17. Service of Notices**
- 17.1 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.
- 17.2 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.
- 18. Trusts**
- 18.1 If the Customer at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not Boxman may have notice of the Trust, the Customer covenants with Boxman as follows:
- (a) the Contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust and the trust fund;
  - (b) the Customer has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Customer against the Trust or the trust fund. The Customer will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
  - (c) the Customer will not without consent in writing of Boxman (Boxman will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
    - (i) the removal, replacement or retirement of the Customer as trustee of the Trust;
    - (ii) any alteration to or variation of the terms of the Trust;
    - (iii) any advancement or distribution of capital of the Trust; or
    - (iv) any resettlement of the trust property.
- 19. General**
- 19.1 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.
- 19.2 Unless expressly negated or varied, these terms and conditions, and any contract to which they apply, shall be governed by the laws of New Zealand, and are subject to the jurisdiction of the Nelson Courts of New Zealand.
- 19.3 Boxman 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 Boxman of these terms and conditions (alternatively Boxman's liability shall be limited to damages which under no circumstances shall exceed the Charges).
- 19.4 Boxman may license or sub-contract all or any part of its rights, title, interest and/or obligations under this Contract (including amount due, and to become due) without the Customer's consent.
- 19.5 The Customer cannot licence or assign without the written approval of Boxman.
- 19.6 The Customer agrees that Boxman 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 Boxman to provide Goods to the Customer.
- 19.7 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.
- 19.8 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.
- 19.9 Any personal guarantee made by a third party shall not exclude the Customer in any way from the liabilities and obligations contained in this Contract, and such guarantor/s and the Customer shall be jointly and severally liable under the terms and conditions of this Contract.

### **PART II - HIRE OF CONTAINER(S) ONLY**

- 20. Hire Period**
- 20.1 The hire period shall start from the time that:
- (a) the Container(s) depart from Boxman's premises, and will continue until the return of the Container(s) thereto, and/or until the expiry of the hire period (or extension thereto granted by Boxman), whichever last occurs; or
  - (b) the date as agreed between the parties (and as stipulated in this Contract), and will continue until the expiry of the hire period (or extension thereto granted by Boxman), and/or termination of this Contract.
- 20.2 No allowance whatsoever can be made for time during which the Container(s) are not in use for any reason, unless Boxman confirms special prior arrangements in writing.
- 20.3 In the event the Container(s) are not returned to Boxman, or the Goods remain stored in the Container(s) on the termination of the Contract, or expiry of any specified hire period (or extension thereof), at Boxman's sole discretion:
- (a) the hire of the Container(s) shall continue on a monthly basis, unless terminated by way of the either party providing the other with seven (7) days' written notice (and the Container(s) shall be returned or delivered up Boxman in accordance with clause 25.1. Boxman shall be entitled to charge the Customer additional Charges (on a pro rata basis) if less than the requisite notice is given by the Customer; or
  - (b) Boxman may advise the Customer that unless the Goods are removed (within sixty (60) days of the date of such advice) those Goods shall be forfeited to Boxman without payment or compensation. If the Customer fails to comply with such notice, ownership of the Goods shall immediately pass to Boxman; or
  - (c) Boxman may enforce its rights under clause 8.3.

**21. Insurance and Indemnity**

- 21.1 The Containers are (at all times) stored, handled and transported at the Customer's sole risk. Boxman shall not be responsible for any damage to the Goods stored in the Container(s), and it is the Customer's responsibility to ensure that the Goods are insured against all possible damage (including, but not limited to, the perils of accident, fire, flood theft, burglary, leakage or overflow of water, heat, spillage of material from any other container, the removal or delivery of the Goods, pest or vermin or any other reason whatsoever, including acts or omissions of Boxman or persons under its control, and all other usual risks) and deterioration.

**22. Use of the Container(s)**

- 22.1 The Customer acknowledges and agrees to comply with all relevant laws, including Acts, Ordinances, Regulations, By-laws and Orders, as are or may be applicable to the use of the Container(s); this includes laws relating to the Goods which are stored, and the manner in which they are stored. The liability for any (and all) breach of such laws rests absolutely with the Customer, and includes any (and all) costs resulting from such breach. If Boxman has reason to believe that the Customer is not complying with all relevant laws, it may take any action it believes to be necessary to so comply, including the action outlined in clauses 24.4 and 25, and/or immediately dispose of, or remove, the Goods at the Customer's expense, and/or submit the Goods to the relevant authorities. The Customer agrees that Boxman may take such action at any time, even though it could have acted earlier.
- 22.2 The Customer shall:
- (a) not store, or use, in the Container(s), any Goods that are inflammable, hazardous, illegal or prohibited, stolen, explosive, corrosive, environmentally harmful, perishable, dangerous or that are a risk to the property of any person, and ensure the Goods are dry, clean, free from vermin and food scraps; and
  - (b) not alter or make any additions to the Container(s), including, but without limitation, defacing or erasing any identifying mark, plate or serial number on, or in, the Container(s), attaching nails, screws, etc., or in any other manner interfere with the Container(s) without the express prior written consent of Boxman. In the event the Customer fails to adhere to this clause, Boxman shall be entitled to charge the Customer for any repairs required; and
  - (c) not use the Container for any illegal or immoral purpose, accommodation or to work or carry out any business or recreational activity;
  - (d) be responsible for notifying Boxman of any breakdown of refrigerated Container(s);
  - (e) ensure that the Container(s) are left locked and secured when unattended by the Customer;
  - (f) not exceed the recommended or legal load and capacity limits of the Container(s); and
  - (g) not, unless specifically covered by the Customer's insurance policy (if any), store Goods which are irreplaceable, such as currency, jewellery, furs, deeds, paintings, curios, works of art and items of personal sentimental value.
- 22.3 The Customer agrees to use the Container(s) at their own risk and releases (to the full extent permitted by law) Boxman, its employees and agents from all actions, proceedings, claims, demands, damages, costs and expenses of any kind, and from all liability, which may arise in respect of any accident, damage or injury occurring to any person or property, or otherwise, arising out of the use of the Container(s) during the hire period, and whether or not arising from any negligence, failure or omission of the Customer or any other party.

**23. Container(s) Stored at the Customer's Nominated Site**

- 23.1 The Customer accepts full responsibility for the safekeeping of the Container(s) and indemnifies Boxman for all loss, theft, or damage to the Container(s), howsoever caused, and without limiting the generality of the foregoing, whether or not such loss, theft, or damage is attributable to any negligence, failure, or omission of the Customer; and
- 23.2 The Customer will insure, or self-insure, Boxman's interest in the Container(s) against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will effect adequate Public Liability Insurance covering any loss, damage or injury to property arising out of the Container(s). Furthermore, the Customer will not use the Container(s), nor permit them to be used, in such a manner as would permit an insurer to decline any claim.
- 23.3 The Customer is not authorised to pledge Boxman's credit for repairs to the Container(s), or to create a lien over the Container(s) in respect of any repairs.
- 23.4 The Customer shall:
- (a) inspect the Container(s) on Delivery, to satisfy itself as to the condition, specifications, quality and fitness of the Container(s) for its intended purpose;
  - (b) use, maintain, move and store the Container(s) with due care and diligence, and in compliance with the instructions and recommendations of the manufacturer of the Container(s) as to the use, maintenance and storage of thereof, or in accordance with any specific instructions of Boxman, and:
    - (i) ensure that all persons use, maintain, move or store the Container(s) safely, strictly in accordance with the law (including all statutes, regulations and bylaws of government, local and other public authorities and WorkSafe health and safety laws), only for their intended purpose, and in accordance with any manufacturer's instruction whether supplied by Boxman or posted on the Container(s);
    - (ii) at their own expense, keep and maintain the Container(s) in proper working order and good and substantial repair;
  - (c) notify Boxman immediately by telephone of the full circumstances of any accident (including where resulting in the injury to persons or damage to the Container(s), Goods or other property). The Customer is not absolved from the requirements to safeguard the Container(s) by giving such notification, and must cease use of the Container(s) if such use would in any way aggravate the damage or otherwise prejudicially affect the Container(s);
  - (d) not permit the Container(s), or any part thereof, to be used by any other party for any other purpose, without the express written approval of Boxman;
  - (e) keep the Container(s) in their own possession and control and shall not assign the benefit of this Contract, nor be entitled to lien over the Container(s);
  - (f) not fix the Container(s) in such a manner as to make them legally a fixture forming part of any freehold;
  - (g) not move the Container(s) from the nominated site without the express written approval of Boxman;
  - (h) grant Boxman the right to enter the nominated site where the Container(s) are stored at all reasonable times to view the state thereof;
  - (i) on termination of the Hire Period, return (or deliver up) the Container(s) to Boxman (complete with all parts and accessories), clean and in good, serviceable condition as delivered (including the removal of holes, rust and graffiti, etc.), fair wear and tear accepted.
- 23.5 Immediately on request by Boxman, the Customer will pay:
- (a) the new list price of any Container(s) that are for whatever reason destroyed, written off, or not returned to Boxman;
  - (b) all costs incurred in cleaning the Container(s), if required;
  - (c) all costs of repairing any damage caused by:
    - (i) the ordinary use of the Container(s) up to an amount equal to ten percent (10%) of the new list price of the Container(s);



- (ii) the negligence of the Customer or the Customer's agent;
- (iii) vandalism, or (in Boxman's reasonable opinion) in any way whatsoever other than by the ordinary use of the Container(s) by the Customer;
- (d) any costs incurred by Boxman in collecting and returning the Container(s) to Boxman's premises;
- (e) any Charges Boxman would have otherwise been entitled to for the Container(s), under this, or any other contract;
- (f) any insurance excess payable in relation to a claim made by either the Customer or Boxman in relation to any damage caused by, or to, the Container(s) whilst the same is hired by the Customer, and irrespective of whether charged by the Customer's insurers or Boxman's.

**24. Container(s) Stored at Boxman's Premises**

- 24.1 Boxman is not a bailee or warehouseman of the Goods, and the Customer acknowledges that Boxman does not take possession of the Goods (subject to clauses (b) and (b)).
- 24.2 The Customer:
- (a) expressly warrants to Boxman that the Customer is either the owner (or the authorised agent of the owner) of the Goods which are to be stored in the Container(s), and by entering into this Contract the Customer accepts these terms and conditions for all other persons on whose behalf the Customer is acting;
  - (b) acknowledges and agrees that this Contract does not create an interest in land and the Customer has merely the right to store the Goods in the Container(s) allocated to the Customer by Boxman for the Hire Period;
  - (c) acknowledges that Boxman shall be entitled to open the Container(s) at any time, and by any method, where required to by law or by any legal authority;
  - (d) shall not:
    - (i) use the Container(s) for any purpose other than storage of the Goods, including carrying on business or other activity (illegal, immoral or otherwise) at Boxman's premises;
    - (ii) obstruct or interfere with the use of Boxman's premises by Boxman or its other customers.
- 24.3 Access to, and additions and removals of Goods from, the Container(s) will only be permitted by agreement between the parties, but shall not be permitted by any person other than the Customer (and any authorised person(s) as specified in writing by the Customer to Boxman), unless the Customer gives personal or telephone instruction to Boxman.
- 24.4 The Customer consents to access and inspection of the Container(s) by Boxman, provided that Boxman gives the Customer five (5) days written notice. In the event of an emergency (that is where property, the environment or human life is, in Boxman's opinion, threatened), Boxman may enter the Container(s) using all necessary force without the written consent of the Customer; but Boxman shall notify the Customer as soon as practicable.
- 24.5 Boxman shall be entitled to terminate this Contract without giving prior notice (but will send notice to the Customer in writing within seven (7) days) if Boxman enters the Container(s) under clause 24.4 and there are no Goods stored therein.

**25. Expiry/Termination**

- 25.1 Upon expiry/termination of the Contract, the Customer must:
- (a) remove all Goods from the Container(s) and leave it, or deliver it up to Boxman, in a clean condition, and in a good state of repair, to Boxman's satisfaction; and
  - (b) pay any outstanding Charges and any other monies owed to Boxman under the Contract, up to the date of termination, or clause (b) may apply.

**PART III - SALE OF CONTAINER(S) ONLY**

**26. Risk**

- 26.1 Risk of damage to or loss of the Container(s) passes to the Customer on Delivery, and the Customer must insure the Container(s) on, or before, Delivery.
- 26.2 If any Container(s) are damaged or destroyed following Delivery, but prior to ownership passing to the Customer, Boxman is entitled to receive all insurance proceeds payable for the Container(s). The production of these terms and conditions by Boxman is sufficient evidence of Boxman's rights to receive the insurance proceeds without the need for any person dealing with Boxman to make further enquiries.
- 26.3 If the Customer requests Boxman to leave Container(s) outside Boxman's premises for collection, or to deliver the Container(s) to an unattended site, then such Container(s) shall be left at the Customer's sole risk.

**27. Warranty**

- 27.1 In the case of brand new Container(s), the warranty shall be the current warranty provided by the manufacturer thereof. Boxman shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Container(s).
- 27.2 In the case of second-hand/used Container(s), the Customer acknowledges that it has had full opportunity to inspect the Container(s) prior to Delivery and accepts them with all faults and that to the extent permitted by law no warranty is given by Boxman 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 Boxman has agreed to provide the Customer with the Container(s), and calculated the Charges thereof, in reliance of this clause 27.