

CONTAINERPOOLS LIMITED

TERMS AND CONDITIONS

The terms and conditions set out below, together with any related sale agreement entered into by you, form the agreement between you and us relating to any goods and services to be provided by us. If you enter into any sale agreement with us or otherwise ask us to proceed with delivering any goods or services to you, you will be deemed to have accepted the terms and conditions below (regardless of whether they are signed by you).

1. **Sale agreement:** Unless expressly stated otherwise, any sale agreement provided to you is available for acceptance for a period of 3 days but may be withdrawn or amended by us at any time prior to acceptance by you. Clerical errors or omissions in any quotation or invoice, whether in computation or otherwise, shall be subject to correction. Prices quoted may be altered by us after execution of the sale agreement if anything beyond our control occurs which will affect our costs or ability to deliver the goods or services as proposed. If we unilaterally amend any sale agreement in any material respect after execution, you will have the right to terminate the relevant sale agreement and obtain a refund of the initial deposit.

2. **Additional goods or additional work and variations to goods or agreed scope of services:** We will deliver the goods and services as described in the sale agreement. You may request variations to the goods or services in writing or may request us to submit proposals for variation to the goods or services provided that no less than 5 working days' notice in advance is given to us for any such request for variations or proposals for variations. We do not have to agree to any proposed variation, and any additional goods or services required or costs incurred as a result of variations requested by you after execution of the sale agreement, or because of adverse conditions we could not reasonably foresee at the time of preparing the sale agreement, are subject to additional charges. If an agreed variation reduces the amount payable by you, we will refund the relevant portion or apply a credit accordingly. If after the date of the sale agreement, the cost of the goods or the cost or duration of the services alter because of changes or additions to any statute, regulation or by-law, or requirements of any authority which has jurisdiction over any of the goods or any part of the services, the related changes to the cost of the goods and the cost and duration of the services will be treated as a variation.

Additional charges: If we incur additional costs of obtaining additional goods or services from third parties which are reasonably required for us to deliver the goods and services (including but not limited to crane hire), the costs of obtaining such incidental goods or services shall be payable by you. We shall maintain records, which clearly identify expenses incurred.

No cancellation and/or refund: Subject only to cancellation and refund as a result of us unilaterally amending the sale agreement in any material respect after execution (as described in Clause 1):

- (a) Once the purchase price quote is accepted, the agreement between you and us cannot be cancelled by you; and
- (b) Any deposit or scheduled progress payments paid will not be refunded.

Payment:

- (a) You must pay the price as set out in the sale agreement in accordance with any payment times set out therein or otherwise in accordance with these terms and conditions and where not expressly agreed otherwise, we shall invoice you in advance and you agree to pay for the goods and services by direct debit as follows:

Initial deposit of 25% of the total quoted purchase price set out in the sale agreement upon execution of the sale agreement; and

Payments as per the schedule must be on time.

The final outstanding balance of the purchase price within 5 days of us advising you that the goods and services are ready for supply from us.

Failure to pay any scheduled progress payments when invoiced will be treated as a cancellation by you refer 4(b).

- (b) No payment shall be withheld, reduced, set off or deferred on account of any claim, counter-claim, set-off or otherwise.
- (c) In the event that your payment is dishonoured for any reason, you will be liable for any dishonour fees incurred by us.
- (d) Time is of the essence for all payments due to us. Late payment may result in delays in the delivery of the goods and services. In this case, we are entitled to charge commercial storage rates.

Goods and Services Tax ("GST"): All amounts are (except where expressly stated otherwise) inclusive of GST. Where any amounts are expressly stated to be exclusive of GST, you agree to pay us any applicable amounts of GST at the same time and on the same basis as the price set out in the sale agreement.

Our obligations: We agree to:

- (a) Deliver the goods and services with reasonable skill, care and diligence;
- (b) Ask you for any additional information to avoid any delay in the delivery of the goods and services;
- (c) Promptly notify you of any matter which may cause a delay in the delivery of the goods and services;
- (d) Promptly notify you of any matter which may affect the scope, price or timing of the delivery of the goods and services; and
- (e) Promptly notify you if we consider that an instruction given by you or any other matter is a variation, in which case Clause 2 shall apply.

Your obligations: You agree to:

- (a) **Pay:** Pay us for the goods and services according to the sale agreement and these terms and conditions;
- (b) **Provide clear access:** Provide us and our contractors with all reasonably required access needed to deliver the goods and services, including through safe physical access at reasonable times to the relevant premises and your ensuring that the Site is suitable and ready for delivery and installation of the goods and services, as per our directions. This includes removal or trimming of trees that may cause damage during installation. We are not liable for any loss or damage suffered by you if you fail to comply with this Clause 8(b);
- (c) **Provide related utilities and amenities:** Arrange and provide (at your own cost) all other services and amenities (e.g. electricity, lighting, water) we reasonably need at your premises in order to provide our goods and services (other than anything we have expressly agreed in the sale agreement to arrange/provide), and take all reasonable steps to ensure that we are not affected by any failure to have such amenities available at all relevant times;
- (d) **Provide accurate information:** Give us all relevant specifications and other relevant and accurate information and plans, as and when we need

it to provide the goods and services, noting that you assume responsibility for the accuracy of all information you provide to us. While we take all reasonable care in delivering the goods and services, errors and omissions occasionally occur. Accordingly, we rely upon you to check the accuracy of all information provided. We assume no liability for errors and mistakes in the delivery of the goods and services if you fail to comply with this Clause 8(d);

- (e) **Comply with sale agreement:** Comply with any obligations placed on you in the sale agreement;
- (f) **Not delay nor cause interruptions:** Not unreasonably withhold or delay your approval (where we seek that for any reason), nor cause or allow any unreasonable disruption or obstruction to us and our personnel in the delivery of the goods and services.
- (g) **Notify us of changes:** Notify us in writing as soon as you become aware of any matter which may materially affect the scope, price or timing of the delivery of the goods and services;
- (h) **Obtain approvals and consents:** Obtain and pay for all consents, certificates, approvals, authorities, licences and permits required (if any) for your purposes, other than those expressly agreed as being obtained by us (at your cost) as part of the services;
- (i) **Comply with Health and Safety obligations:** Notify us of all applicable health and safety procedures and requirements relating to your premises, and ensure you comply with all of your obligations under all applicable Health and Safety legislation and regulations;
- (j) **Be present during installation:** Ensure that you or your agent/representative is present during the installation of the goods;
- (k) **Use and maintenance:** Follow any instructions provided by us and/or the manufacturer of the relevant goods and carry out all maintenance (by suitably qualified technicians) as required/instructed by us (including but not limited to using the relevant goods strictly in accordance with any operations manual provided to you), and notify us as soon as possible of any material fault, defect, misuse or unauthorised use of any of the goods or services. Without limiting the generality of the foregoing, you must ensure that your electrician follows our instructions regarding wiring in the goods. Any electrical wiring which has not been installed in accordance with our instructions will void any warranty applicable to the goods. If any third party, such as, but not limited to, builders, plumbers, makes any modifications to the goods, without prior approval by us, this will void applicable warranties.
- (l) **Testing and maintaining pH level of water:** Maintain the correct pH level of water used with the goods (as instructed by us or as set out in any operations manual provided to you), and testing the pH level of water weekly and recording the results of each test. You agree to provide us with such test records when requested by us.
- (m) Comply with the New Zealand Building Act 2004 and the New Zealand Building Code to ensure your fencing and balustrading meets requirements; and also any Local Body Regulatory requirements in regards to this.

Use, delivery and acceptance of the goods and services, and passing of risk:

- (a) Goods and services delivered by us should be used solely for the purposes intended or obvious at the time of delivery (or otherwise as directed/instructed by us).
- (b) You agree to accept delivery of the goods and services by instalments if required to do so by us. If a delivery date is specified by you and agreed to by us, delivery is subject to us receiving full payment for the goods and services (as set out in Clause 5) and we will in no circumstances be liable for any loss or damage of any kind whatsoever suffered or incurred by you as a consequence of part, or late delivery of any goods or services. Any delay in delivery will not constitute a breach by us of any of these terms and conditions or constitute grounds for you to cancel the order for the goods and services or this agreement. In the event of a default by you, for whatever reason, we are entitled to dispose of 'the pool' to recover all and any monies owing to us, including, but not limited to,

accounting, related recovery and/or legal expenses, interest, transport, storage charges etc

- (c) The risk in (and insurance responsibility for) the goods passes to you upon delivery. Delivery takes place on the date on which the goods are delivered to your nominated address or picked up by your or your agent.
- (d) You will make all arrangements necessary to take delivery of the goods whenever they are tendered for delivery (including without limitation by ensuring that the Site will suitable and ready for delivery and installation of the goods and services). If you are unable to take delivery as arranged (for whatever reason), we will be entitled to charge you:
 - a reasonable fee for transporting the goods back to our warehouse (or yard or depot), redelivery and storage; and
 - all costs and expenses incurred by us as a result of having to store and/or redeliver the goods to you.
- (e) If you are arranging your own transport and pickup from the factory, you are responsible for the safe uplift, transport and delivery of the goods, using a suitable vehicle. If you are DIY installation of the goods, you are responsible for the correct lift, placement, installation of the goods.

Defects, returns and disputes: Subject to the provisions of the Consumers Guarantees Act 1993:

- (a) Any dispute in relation to the goods and services delivered by us will not be considered except if brought in writing to our attention within 5 working days of the relevant issue becoming apparent. Any warranty may be voided by unreasonable use, handling, storage, or transport and we are not responsible or liable for any damage or defects which arise as a result of any failure by you or any other party to follow our instructions or directions relating to the goods and services, or for any damage or defects which arise as a result of you or any other party altering or tampering with the goods and services; and
- (b) Where goods are accepted for return, you may be responsible for returning them to us or to the relevant manufacturer, and may be responsible for additional costs including but not limited to freight.

Warranties: The goods and services are subject to the warranty terms expressly contained in the attached warranty card ("**Warranty Card**"), which shall be presented (together with proof of purchase) to the relevant Containerpools series distributor for all warranty claims. Subject to the Consumer Guarantees Act 1993, all representations, descriptions, warranties or terms not expressly included in the Warranty Card are hereby excluded (to the maximum extent permitted by law).

Limitation of liability: Subject to the provisions of the Consumers Guarantees Act 1993, notwithstanding anything to the contrary in these terms and conditions, the Warranty Card or the sale agreement, you acknowledge that:

Duty of care: The goods and services are delivered to you only and we have no duty of care or obligations to any other party;

Exclusion and limitation of liability factored into costings: It is commercially necessary and reasonable for us to limit our maximum potential liability and exclude certain types of liability, and that our purchase price quote set out in the sale agreement has been prepared in reliance on the ability to do so;

Excluded liability: We will not be liable to you for any claims, losses or damages:

Which are indirect or consequential in nature (including without limitation loss of profits) arising in relation to our goods or services (including by reason of any delay in the delivery of the goods and services);

To the extent that you have caused or contributed to those claims, losses or damages;

Which are not notified to us in writing within 2 years of the relevant goods and services being delivered by us;

Which arise in relation to decisions made by any City, District or Regional Council or other statutory or quasi-judicial body in New Zealand in relation to the granting or refusal of any consent application, permit or approval, and for the placement and terms of conditions of such consent in relation to any activity under the Resource Management Act 1991 or under any other applicable New Zealand statute;

Which arise from any termination of this agreement by us due to your fault;

Which is caused by any factor beyond our control, including but not limited to:

a Force Majeure (as defined in Clause 20 of these terms and conditions);

any loss of supply of electricity, water or any other service or amenity not provided by us that the goods or services may rely on to work properly; and

any changes (not approved by us in advance) which you or a third party make to your systems or the environment to which our goods or services are provided;

Which is caused by damage from your misuse, unauthorised modifications, accident, neglect or improper testing, operation, storage or maintenance of the goods and services (including but not limited to inadequate maintenance, or maintenance conducted by non-qualified technicians);

To any of your chattels left within our possession or control for purposes of delivery of the goods or services (whether such loss or damage results from our negligence or default or otherwise howsoever caused);

Which is caused by a deterioration of the goods as a result of improper exposure to the elements, after delivery;

Which is caused by any act or omission by you (or any third party), including but not limited to maintenance, installation, modification or adjustments to the goods or services, or any fencing or balustrading or landscaping works (or requirements for the same); or

Which is related to the goods or services that have been tampered with or modified by you.

Limited Liability: In the event that we are held liable to you for any reason(s) whatsoever, our total liability shall be limited to a maximum cumulative amount equivalent to the price you have paid us for the relevant goods and services (exclusive of GST and disbursements).

Indemnity for your breaches: You shall indemnify and hold us harmless, and will continue to indemnify and hold us harmless, from and against any liability incurred by us in respect of any action, suit, claim, demand, cost or expense (including legal fees) arising from, as a direct or indirect result of, or in any way connected to, any breach of your obligations to us.

Intellectual property: We shall retain all intellectual property rights in all drawings, specifications and other documents related to the goods and services. Materials owned or provided by us may not be (or allowed or caused to be) copied, reproduced, distributed, modified, published, uploaded, posted, or transmitted in any way without our prior written consent. You agree not to modify the name, logo, or otherwise re-brand the goods or services. The brand will include any trade mark,

brand name or trade name which we advertise, sell and market the goods and services and any improvements thereon.

Privacy: You authorise us to:

- (a) Collect, enquire, retain and use information about you for the purpose of:
 - Marketing goods and services to you from time to time; and
 - Establishing and maintaining the relationship between you and us; and
- (b) Disclose information about you to any other credit provider or credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection services, or notifying a default by you.

We will comply with our obligations under the Privacy Act 1993 at all times, and you will have the right to request a copy of the information about you held by us and to request the correction of any incorrect information we hold.

Term and Termination: This agreement will begin on the date you execute the sale agreement, and will continue in force until the earlier of:

- (a) The expiry of all warranties to which the goods and services are subject, as set out in the Warranty Card; and
- (b) Any other date on which we mutually agree in writing this agreement will terminate.

Consequences of termination:

- (a) Termination of this agreement will not prejudice or affect the rights, remedies and claims and/or any obligations or liabilities of the parties that accrued prior to termination.
- (b) Upon termination of this agreement you will be liable to pay us for any reasonable costs that we have incurred as a result of the early termination, including but not limited to any costs that we have incurred in relation to obtaining additional goods or services from third parties which are reasonably required for us to deliver the goods and services to you.
- (c) Any other provisions of our terms and conditions and the sale agreement which are capable of surviving termination and which may reasonably be considered to have been intended to do so (including without limitation any liability limitation or indemnity provisions), will survive termination.

Marketing and Publicity: You agree that we may refer to and publicise our involvement with you in our advertising or marketing without prior written approval from you, and that without limitation we may take and utilise photos and videos depicting the goods on your premises on our website and in our other marketing, provided that any such photos and videos do not capture and/or reveal:

- (a) the specific address or location of your premises; and
- (b) any personal information (as defined in the Privacy Act 1993) relating to you.

Health and safety: We do not assume any obligation of yours under any applicable health and safety legislation or regulations (including without limitation the Health & Safety in Employment Act 2015), and for the purposes of any such legislation and regulations (if applicable), you will at all times remain the party who controls the place of work.

General:

- (a) **Currency:** All amounts are payable in New Zealand dollars.
- (b) **Amendment:** These terms and conditions and all sale agreements may only be amended with our prior written consent.
- (c) **Subcontracting and assignment:** We may assign, license or subcontract all or any part of our rights and obligations under these terms and

conditions. You shall not assign your rights without our prior written consent.

No payment shall be withheld, reduced, set off or deferred on account of any claim, counter-claim, set-off or otherwise

- (d) **Although we may recommend third parties to undertake work for you**, e.g but not limited to, engineers, landscapers, then unless we are specifically contracted as project managers, we are not responsible or liable for work undertaken by these third parties.
- (e) **No waiver:** Any delay or failure by us in exercising any rights available to us will not constitute a waiver of such rights on that or any subsequent occasion. We shall not be taken to have waived any rights unless such waiver is in writing. Any such waiver will be restricted to the particular matter in respect of which it is specifically expressed to be given. All of our rights, powers, exemptions and remedies will remain in full force and effect notwithstanding any neglect, forbearance or delay in their enforcement.
- (f) **Relationship between parties:** You agree that we are an independent contractor and nothing in any arrangements between you and us shall constitute either you or us as the employer, partner or joint venturer of the other party.
- (g) **Force majeure:** We will not be liable for any default or delay due to any force majeure or cause beyond our reasonable control, and any timeframes applying to our obligations will be extended as reasonably necessary. "**Force majeure**" means any act of God, fire, earthquake, storm, flood, or landslide, strike, lockout, work stoppage or other labour hindrance, explosion or public mains electrical supply failure, sabotage, riot, civil disturbance, insurrection, epidemic, pandemic, national emergency (whether in fact or law) or act of war (whether declared or not), requirement or restriction of, or failure to act by, any government semi-governmental or judicial entity, any unavoidable accident or any other similar cause beyond the reasonable control of the party claiming the benefit of this Clause 20 and which that party is unable to overcome by the exercise of reasonable diligence and at a reasonable cost, but does not include any event which the party affected could have prevented or overcome by exercising a standard of reasonable care, or a lack of funds for any reason.
- (h) **Entire agreement:** The sale agreement and these terms and conditions together set out the entire agreement and understanding between you and us in relation to the goods and services to be delivered by us, and supersede any and all prior discussions, agreements, representations and warranties. Each of you and us acknowledge that, in entering into this agreement, you/we do not rely on any statement, representation, assurance or warranty ("**Representation**") of any person (whether a party to this agreement or not) other than as expressly set out in the sale agreement or these terms and conditions.
- (i) **Severability:** If any provision in these terms and conditions is held invalid, void, illegal or unenforceable, the validity, existence, legality and enforceability of the remaining provisions will not be affected, prejudiced or impaired. If any invalid, unenforceable or illegal provision would be valid, enforceable and legal if some part of it were deleted, the parties shall negotiate in good faith to amend such provision such that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the parties' original commercial intention.
- (j) **Disputes:** Neither party shall disparage the reputation of the other party and the parties agree to use all reasonable endeavours to discuss and resolve in good faith any disputes or differences which may arise between them, and that if such disputes or differences cannot be resolved by the parties themselves within a reasonable period, the parties will then seek to resolve any differences through mediation. Any party who claims that a dispute has arisen must give written notice to the other party specifying the nature of the dispute. On receipt of such notice, the parties must:

Co-operate and use reasonable endeavours to resolve the dispute quickly; and

If the dispute is not resolved within 14 days of receiving the notice (or any further period as the parties may agree in writing), refer the dispute to mediation ("**mediation**").

- (k) **Governing law and jurisdiction:** These terms and conditions (and the sale agreement) are governed by New Zealand law and the New Zealand courts shall have jurisdiction.

The mediation shall be conducted in accordance with the LEADR New Zealand Incorporated Standard Mediation Agreement. The mediation shall be conducted by a mediator and at a fee agreed by the parties, failing agreement between the parties, the mediator shall be selected, and the mediator's fee shall be decided, by the Chair for the time being of LEADR New Zealand Incorporated. Nothing in these terms and conditions shall prevent any party from seeking urgent injunctive relief through the courts.

