

LION CONTAINERS LIMITED

Conditions for Container Purchase (including buy-back and/or scrappage)

1. INTERPRETATION

1.1 Definitions:

"**Business Day**" means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

"**Buyer**" means Lion Containers Limited (company number 07944912).

"**Collection Date**" means the date specified in Schedule 1.

"**Collection Location**" means the address for collection specified in Schedule 1.

"**Container**" means the Container set out in Schedule 1.

"**Payment Date**" means the date for payment of the Price set out in Schedule 1.

"**Price**" means the price for the Container set out in Schedule 1.

"**Seller**" means the person or entity from whom the Buyer purchases the Container.

"**VAT**" means value added tax chargeable under the Value Added Tax Act 1994.

1.2 Interpretation:

1.2.1 A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

1.2.2 Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

1.2.3 A reference to **writing** or **written** includes emails.

2. SALE OF THE CONTAINER

The Seller sells and the Buyer buys the Container free from all liens, charges and encumbrances and with full title guarantee.

3. THE CONTAINER'S CONDITION

3.1 The Seller shall ensure that:

3.1.1 the Container corresponds with its description;

3.1.2 the Container is of satisfactory quality and fit for any purpose held out by the Seller, or made known to the Seller by the Buyer expressly or by implication;

3.1.3 the Container is empty, clean and safe (including without limitation the removal of any dangerous, hazardous, corrosive or waste substances);

3.1.4 the Container is wind-tight and water-tight;

3.1.5 to the extent that it was sold by the Buyer to the Seller as a refrigerated unit, meaning a Container containing equipment to regulate the temperature within the Container, the Seller shall provide full and complete service documentation in relation to such equipment with the Container itself, and shall ensure that such equipment is safe to operate upon collection;

3.1.6 any fixtures and fittings (including without limitation electrical items) are in a safe and operable condition;

3.1.7 the door gear and seals on the Container are fully operable; and

3.1.8 the Container is freely accessible and able to be collected, which shall include (without limitation) that the Container is not welded to anything, anchored or weighed into place, cemented into place or otherwise secured or fixed in such a way that the Buyer cannot simply lift and remove the Container with the cranes equipment on its delivery vehicle.

3.2 The Buyer may inspect and test the Container at any time before or after collection.

3.3 If following inspection or testing the Buyer considers that the Container does not conform or is unlikely to comply with the Seller's obligations under clause 3.1, then the Buyer may (at its absolute discretion) either:

3.3.1 make an equitable reduction to the Price (with clause 4.8 being applicable where the Price has already been paid by the Buyer) to reflect the non-conformance or non-compliance; or

3.3.2 avail itself of one or more of its remedies as set out in 7.1

4. PRICE AND PAYMENT

4.1 The Buyer shall (subject to clause 3.3 above) pay the Price on the later of the Payment Date and the date 90 days after receipt of a valid VAT invoice from the Seller. Payment shall be made in cleared funds to the bank account nominated in writing by the Seller.

4.2 The Price:

4.2.1 includes any amounts in respect of VAT which the Buyer is liable to pay the Seller at the prevailing rate; and

4.2.2 includes all costs of packaging, delivery, carriage, out-of-pocket expenses and insurance.

4.3 No extra amounts may be charged for the Container unless agreed in writing and signed by the Buyer.

4.4 The Seller shall issue the Buyer with an invoice for the Price plus VAT at the prevailing rate (if applicable) on signature of these Conditions. The Seller shall ensure that the invoice includes the date of the sale, the invoice number, the Seller's VAT registration number, and any supporting documentation that the Buyer may reasonably require.

4.5 If a party fails to make any payment due to the other under the agreement by the due date for payment, then the defaulting party shall pay interest on the overdue amount at the rate of 2% per annum above the Bank of England's base rate from time to time. Interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment.

4.6 The Buyer may withhold payment of any amount that the Buyer disputes in good faith.

4.7 The Buyer may at any time, without limiting any of its other rights or remedies, set off any liability of the Seller to the Buyer against any liability of the Buyer to the Seller, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the agreement. If the liabilities to be set off are expressed in different currencies, the Buyer may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by the Buyer of its rights under this clause shall not limit or affect any other rights or remedies available to it under these Conditions or otherwise.

4.8 For the avoidance of doubt, where the Buyer has paid the Price (in whole or in part) to the Seller and subsequently discovers that the Seller has incurred a liability to the Buyer (whether under these Conditions or otherwise) or that the Buyer is entitled to reduce the Price in accordance with clause 3.3.1, then the Buyer shall be entitled at any time after such discovery to issue an invoice to the Seller for any such sums. Such invoice(s) shall be due and payable immediately upon receipt by the Seller.

5. COLLECTION

5.1 The Seller shall ensure that the Container has either undamaged corner castings, or undamaged and load tested lifting eyes upon collection. The Seller shall further ensure that the Container has no damage, defect or other issue which renders it unsafe to lift and/or transport by road.

5.2 The Seller shall make the Container available for collection by the Buyer from the Collection Location throughout the Collection Date (subject to the Seller's usual business hours where these have been notified to the Buyer in writing). The Seller acknowledges that, for a number of reasons (including traffic), the Buyer is unable to specify any particular time for collection on the Collection Date.

5.3 Collection of the Container is completed on the completion of loading of the Container at the Collection Location.

5.4 It shall be the Seller's obligation to ensure that the Buyer's delivery contractor is able to gain access to the Collection Location to make the collection. The Seller is aware that the vehicle used to collect the Container may be up to 68 feet long and up to 10 feet wide, regardless of the size of the Container (and, in the event that the Buyer originally sold the Container to the Seller, the size and type of vehicle used to deliver it under that previous contract is irrelevant); the Seller must take this into account when specifying the Collection Location. Furthermore, the Seller warrants that collection at the Collection Location shall not require the delivery vehicle to traverse, unload or park on mud, grass or other unsuitable or unstable surface (the determination of both vehicle routing and Container on-load shall be at the sole discretion of the

delivery vehicle driver or crane operator). Where damage is caused to the delivery vehicle, the Container or any aspect of the Collection Location, this shall be for the Seller's account and the Seller shall indemnify the Buyer for any costs and expenses arising therefrom.

- 5.5 The Seller must ensure that there is a level, hard-standing area from which the Container can be loaded at the Collection Location. This area must be immediately parallel with the area in which the delivery vehicle parks and there must be no requirement to lift the Container over any obstacles.
- 5.6 A period of 30 minutes is allocated for collection, based on a "standard" on-load where the Seller has complied with clauses 5.4 and 5.5. Where for any reason not attributable to the Buyer's breach of these Conditions the time required to effect collection is in excess of 30 minutes, the Seller shall be liable for additional charges under this clause 5.6. Such additional time shall be charged at the rate of £65 plus VAT per hour, with part-hours being charged as a full hour. In addition, in such circumstances the Seller shall upon invoice pay any additional fees, costs or expenses incurred by the Buyer as a result thereof, including fees due to the delivery contractor, gate fees, depot fees, lift fees, hire fees and any other fee, cost or expense whatsoever.
- 5.7 The Seller shall obtain and maintain all necessary licences, permissions and consents which may be required in relation to the collection of the Container before the Collection Date.
- 5.8 The Seller warrants that the Collection Location stated in Schedule 1 is the actual location at which collection shall take place, and acknowledges that where it or its representative seeks to meet the Buyer's delivery contractor at the stated Collection Location to request that collection take place elsewhere (whether nearby or otherwise), then this may not be possible and is likely to give rise to additional charges being made in accordance with clause 5.9.
- 5.9 If
- 5.9.1 the Seller fails to make the Container available for collection on the Collection Date; or
 - 5.9.2 collection cannot be made as a result of a breach of these Conditions by the Seller; or
 - 5.9.3 collection does occur but the Seller becomes liable for additional costs, fees or charges as set out anywhere in these Conditions;
- then, except where such failure or delay is caused by the Buyer's failure to comply with its obligations under these Conditions which relate to the Container, the Buyer shall be entitled to charge the Seller for all costs and expenses it incurs (including additional transport costs, insurance, gate fees, depot fees, lift fees, hire fees and any other cost or expense whatsoever) plus an administrative fee of 10% thereof.

6. TITLE AND RISK

- 6.1 Title in the Container shall pass to the Buyer on completion of collection.
- 6.2 Risk of damage to or loss of the Container shall pass to the Buyer on completion of collection.

7. BUYER REMEDIES

- 7.1 If the Container is not made available by the Seller for collection on the Collection Date in accordance with clause 5, or does not comply with the undertakings set out in clause 2 then, without limiting any of its other rights or remedies, and whether or not it has accepted the Container, the Buyer may exercise any one or more of the following remedies:
- 7.1.1 to terminate the agreement;
 - 7.1.2 to reject the Container (in whole or in part) and (if already collected) require the Seller to collect the Container from the location nominated by the Buyer, at the Seller's own risk and expense;
 - 7.1.3 to require the Seller to repair or replace the rejected Container, or to provide a full refund of the Price;
 - 7.1.4 to recover from the Seller any costs incurred by the Buyer in obtaining substitute Container from a third party; and
 - 7.1.5 to claim damages for any other costs, loss or expenses incurred by the Buyer which are in any way attributable to the Seller's failure to carry out its obligations under the agreement (including without limitation as set out in clause 5).
- 7.2 The Seller must collect rejected Container within a reasonable period after notification of rejection, failing which the Buyer may charge the Seller storage costs and sell or dispose of the rejected Container. The Buyer will account to the Seller for the proceeds of sale after deducting the Price paid for the Container (if any), storage costs and its reasonable costs and expenses in connection with the sale.

8. INDEMNITY

- 8.1 The Seller shall keep the Buyer indemnified against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Buyer as a result of or in connection with any claim made against the Buyer arising out of or in connection with the supply or use of the Container, to the extent that the claim is attributable to the acts or omissions of the Seller, its employees, agents or subcontractors.
- 8.2 This clause 8 shall survive termination of these Conditions.

9. GENERAL

- 9.1 **Entire agreement.** These Conditions constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 9.2 **Variation.** No variation of these Conditions shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 9.3 **Waiver.** A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not:
- 9.3.1 waive that or any other right or remedy; or
 - 9.3.2 prevent or restrict the further exercise of that or any other right or remedy.
- 9.4 **Severance.** If any provision or part-provision of the agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the agreement.
- 9.5 **Further assurance.** Each party shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may reasonably be required for the purpose of giving full effect to these Conditions.
- 9.6 **Notices.**
- 9.6.1 Any notice or other communication given to a party under or in connection with these Conditions shall be in writing, addressed to that party at its registered office or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be sent by pre-paid first class post or other next working day delivery service, or email.
 - 9.6.2 A notice or other communication shall be deemed to have been received: if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or, if sent by email, at 9.00 am on the Business Day after transmission.
 - 9.6.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
- 9.7 **Third party rights.** No one other than a party to these Conditions shall have any right to enforce any of its terms.
- 9.8 **Governing law.** The agreement, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by, and construed in accordance with the law of England and Wales.
- 9.9 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with these Conditions or its subject matter or formation.

These Conditions has been entered into on the date stated at the beginning of it.

SCHEDULE 1
Container, price and delivery

- 1. CONTAINER DESCRIPTION**
1.1 [DETAILS OF CONTAINER]
- 2. PRICE**
2.1 [PRICE]
- 3. PAYMENT DATE**
3.1 [PAYMENT DATE]
- 4. COLLECTION DATE**
4.1 [COLLECTION DATE]
- 5. COLLECTION LOCATION**
5.1 [COLLECTION LOCATION]
- 6. CUSTOMER NAME**
6.1 [CUSTOMER NAME]
- 7. SITE CONTACT NAME AND TELEPHONE NUMBER**
7.1 [NAME AND NUMBER]

SIGNED ON BEHALF OF THE BUYER:

NAME:

POSITION:

DATE: