

<p>1. Definitions</p> <p>1.1 "Seller/Lessor" shall mean Boxman (New Zealand) Limited and its successors and assigns.</p> <p>1.2 "Client" shall mean the Client or any person acting on behalf of and with the authority of the Client.</p> <p>1.3 "Guarantor" means that person (or persons), or entity that agrees herein to be liable for the debts of the Client on a principal debtor basis.</p> <p>1.4 "Goods" shall have the same meaning as in section 2 of the Sale of Goods Act 1908 and are goods supplied by the Seller/Lessor to the Client (and where the context so permits shall include any supply of Services as hereinafter defined).</p> <p>1.5 "Services" shall mean all services supplied by the Seller/Lessor to the Client and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).</p> <p>1.6 "Price" shall mean the cost of the Goods and/or Services as agreed between the Seller/Lessor and the Client subject to clause 4 of this contract.</p> <p>2. Acceptance</p> <p>2.1 Any instructions received by the Seller/Lessor from the Client for the supply of Goods and/or the Client's acceptance of Goods supplied by the Seller/Lessor shall constitute acceptance of the terms and conditions contained herein.</p> <p>2.2 Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments of the Price.</p> <p>2.3 Upon acceptance of these terms and conditions by the Client the terms and conditions are irrevocable and can only be rescinded in accordance with these terms and conditions or with the written consent of the manager of the Seller/Lessor.</p> <p>2.4 None of the Seller/Lessor's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of the Seller/Lessor in writing nor is the Seller/Lessor bound by any such unauthorised statements.</p> <p>3. Goods / Services</p> <p>3.1 The Goods and/or Services are as described on the invoices, quotation, work authorisation or any other contract forms as provided by the Seller/Lessor to the Client.</p> <p>4. Price And Payment</p> <p>4.1 At the Seller/Lessor's sole discretion the Price shall be either;</p> <p>(a) as indicated on invoices provided by the Seller/Lessor to the Client in respect of Goods supplied; or</p> <p>(b) the Seller/Lessor's current Price, at the date of delivery of the Goods, according to the Seller/Lessor's current Price list; or</p> <p>(c) Seller/Lessor's quoted Price (subject to clause 4.2) which shall be binding upon the Seller/Lessor provided that the Client shall accept in writing the Seller/Lessor's quotation within thirty (30) days.</p> <p>4.2 The Seller/Lessor may by giving notice to the Client (verbally or otherwise) at any time before delivery increase the Price of the Goods to reflect any variation from the plan of scheduled works or specifications beyond the reasonable control of the Seller/Lessor which increase the cost of the Goods/Services by more than 10% of the quoted Price.</p> <p>4.3 At the Seller/Lessor's sole discretion a deposit may be required. The deposit amount or percentage of the Price will be stipulated at the time of the order of the Goods and shall become immediately due and payable.</p> <p>4.4 Time for payment for the Goods shall be of the essence and will be stated on the invoice, quotation or any other order forms. If no time is stated then payment shall be on delivery of the Goods.</p> <p>4.5 The Seller/Lessor may withhold delivery of the Goods until the Client has paid for them, in which event payment shall be made before the delivery date.</p> <p>4.6 At the Seller/Lessor's sole discretion, payment for approved Clients shall be made by instalments in accordance with the Seller/Lessor's delivery/payment schedule.</p> <p>4.7 At the Seller/Lessor's sole discretion, payment for approved Client's shall be due on twenty (20) days following the end of the month in which a statement is posted to the Client's address or address for notices.</p> <p>4.8 At the Seller/Lessor's sole discretion, for certain approved Clients payment will be due seven (7) days following the date of the invoice.</p> <p>4.9 In the case of Container leases payment shall be monthly in advance.</p> <p>4.10 Container lease-to-purchase payments shall be increased by a 20% finance charge.</p> <p>4.11 Payment will be made by cash on delivery, or by cheque, or by bank cheque, or by credit card, or by direct credit, or by any other method as agreed to between the Client and the Seller/Lessor.</p> <p>4.12 The Price shall be increased by the amount of any GST and other taxes and duties which may be applicable, except to the extent that such taxes are expressly included in any quotation given by the Seller/Lessor.</p> <p>5. Delivery Of Goods</p> <p>5.1 Delivery of the Goods shall be made to the Client's address. The Client shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery, or delivery of the Goods shall be made to the Client at the Seller/Lessor's address.</p> <p>5.2 Delivery of the Goods to a carrier, either named by the Client or failing such naming to a carrier at the discretion of the Seller/Lessor for the purpose of transmission to the Client, is deemed to be a delivery of the Goods to the Client.</p> <p>5.3 The costs of carriage and any insurance which the Client reasonably directs the Seller/Lessor to incur, shall be reimbursed by the Client (without any set-off or other withholding whatever) and shall be due on the date for payment of the Price. The carrier shall be deemed to be the Client's agent.</p> <p>5.4 Where there is no agreement that the Seller/Lessor shall send the Goods to the Client, delivery to a carrier at limited carrier's risk at the expense of the Client is deemed to be delivery to the Client.</p> <p>5.5 Delivery of the Goods to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this agreement.</p> <p>5.6 The failure of the Seller/Lessor to deliver shall not entitle either party to treat this contract as repudiated.</p> <p>5.7 The Seller/Lessor shall not be liable for any loss or damage whatever due to failure by the Seller/Lessor to deliver the Goods (or any of them) promptly or at all.</p> <p>6. Risk</p> <p>6.1 If the Seller/Lessor retains title to the Goods nonetheless all risk for the Goods passes to the Client on delivery.</p> <p>6.2 If any of the Goods are damaged or destroyed prior to title to them passing to the Client, the Seller/Lessor is entitled, without prejudice to any of its other rights or remedies under these terms and conditions (including the right to receive payment of the balance of the Price for the Goods), to receive all insurance proceeds payable in respect of the Goods. This applies whether or not the Price has become payable under these terms and conditions. The production of these terms and conditions by the Seller/Lessor is sufficient evidence of the Seller/Lessor's rights to receive the insurance proceeds without the need for any person dealing with the Seller/Lessor to make further enquiries.</p> <p>7. Defects/Returns</p> <p>7.1 The Client shall inspect the Goods (whether they are for lease or purchase) on delivery and shall within two (2) days of delivery notify the Seller/Lessor of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford the Seller/Lessor an opportunity to inspect the Goods within a reasonable time following delivery if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions the Goods shall be conclusively presumed to be in accordance with the terms and conditions and free from any defect or damage.</p> <p>7.2 For defective Goods, which the Seller/Lessor has agreed in writing that the Client is entitled to reject, the Seller/Lessor's liability is limited to either (at the Seller/Lessor's discretion) replacing the Goods or repairing the Goods provided that:</p> <p>(a) the Client has complied with the provisions of clause 7.1;</p> <p>(b) the Goods are returned at the Client's cost within seven (7) days of the delivery date;</p> <p>(c) the Seller/Lessor will not be liable for Goods which have not been stored or used in a proper manner;</p> <p>(d) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.</p> <p>7.3 The Seller/Lessor may (in its discretion) accept the Goods for credit but this may incur a re-stocking fee.</p>	<p>8. No Warranty</p> <p>8.1 The Client acknowledges that he has had full opportunity to inspect the Goods and that he accepts the same with all faults and that no warranty is given by the Seller/Lessor as to the quality or suitability for any purpose and any implied warranty is expressly excluded. The Seller/Lessor shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.</p> <p>9. Client's Disclaimer</p> <p>9.1 The Client hereby disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any misrepresentation made to him by any servant or agent of the Seller/Lessor and the Client acknowledges that he buys the Goods/Services relying solely upon his own skill and judgement.</p> <p>10. Title</p> <p>10.1 It is the intention of the Seller/Lessor and agreed by the Client that property in the Goods shall not pass until:</p> <p>(a) The Client has paid all amounts owing for the particular Goods, and</p> <p>(b) The Client has met all other obligations due by the Client to the Seller/Lessor in respect of all contracts between the Seller/Lessor and the Client, and that the Goods, or proceeds of the sale of the Goods, shall be kept separate until the Seller/Lessor shall have received payment and all other obligations of the Client are met.</p> <p>10.2 Receipt by the Seller/Lessor 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 the Seller/Lessor's ownership of rights in respect of the Goods shall continue.</p> <p>10.3 In the case of Goods leased to the Client the Goods are and will at all times remain the absolute property of the Owner.</p> <p>10.4 It is further agreed that:</p> <p>(a) Until such time as ownership of the Goods shall pass from the Seller/Lessor to the Client the Seller/Lessor may give notice in writing to the Client to return the Goods or any of them to the Seller/Lessor. Upon such notice the rights of the Client to obtain ownership or any other interest in the Goods shall cease.</p> <p>(b) If the Client fails to return the Goods to the Seller/Lessor then the Seller/Lessor or the Seller/Lessor's agent may enter upon and into land and premises owned, occupied or used by the Client, or any premises as the invitee of the Client, where the Goods are situated and take possession of the Goods, without being responsible for any damage thereby caused.</p> <p>11. Personal Property Securities Act 1999</p> <p>11.1 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:</p> <p>(a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and</p> <p>(b) a security interest is taken in all Goods previously supplied by the Seller/Lessor to the Client (if any) and all Goods that will be supplied in the future by the Seller/Lessor to the Client during the continuance of the parties relationship.</p> <p>11.2 The Client undertakes to:</p> <p>(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 the Seller/Lessor may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;</p> <p>(b) indemnify, and upon demand reimburse, the Seller/Lessor for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby;</p> <p>(c) not register a financing change statement or a change demand without the prior written consent of the Seller/Lessor;</p> <p>(d) give the Seller/Lessor not less than fourteen (14) days prior written notice of any proposed change in the Client's name and/or any other change in the Client's details (including but not limited to, changes in the Client's address, facsimile number, or business practice); and</p> <p>(e) immediately advise the Seller/Lessor of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.</p> <p>11.3 The Seller/Lessor and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these Terms and Conditions.</p> <p>11.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.</p> <p>11.5 Unless otherwise agreed to in writing by the Seller/Lessor, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.</p> <p>11.6 The Client unconditionally ratifies any actions taken by the Seller/Lessor under clauses 11.1 to 11.5, under and by virtue of the power of attorney given by the Client to the Seller/Lessor.</p> <p>12. Security & Charge</p> <p>12.1 Despite anything to the contrary contained herein or any other rights which the Seller/Lessor may have hitherto:</p> <p>(a) Where the Client and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Client and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Seller/Lessor or the Seller/Lessor's nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Client and/or the Guarantor acknowledge and agree that the Seller/Lessor (or the Seller/Lessor's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.</p> <p>(b) Should the Seller/Lessor elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client and/or Guarantor shall indemnify the Seller/Lessor from and against all the Seller/Lessor's costs and disbursements including legal costs on a solicitor and own client basis.</p> <p>(c) To give effect to the provisions of clause [11, 12.1(a) to (b)] inclusive hereof the Client and/or the Guarantor (if any) do hereby irrevocably nominate constitute and appoint the Seller/Lessor or the Seller/Lessor's nominee as the Client's and/or Guarantor's true and lawful attorney to execute mortgages and charges (whether registrable or not) including such other terms and conditions as the Seller/Lessor and/or the Seller/Lessor's nominee shall think fit in his/her/its true and absolute discretion against the joint and/or several interest of the Client and/or the Guarantor in any land, realty or asset in favour of the Seller/Lessor and in the Client's and/or Guarantor's name as may be necessary to secure the said Client's and/or Guarantor's obligations and indebtedness to the Seller/Lessor and further to do and perform all necessary and other acts including instituting any necessary legal proceedings, and further to execute all or any documents in the Seller/Lessor's absolute discretion which may be necessary or advantageous to give effect to the provisions of this clause.</p> <p>13. Consumer Guarantees Act 1993</p> <p>13.1 This agreement is subject to the provisions of the Consumer Guarantees Act 1993 in all cases except where the Client is contracting within the terms of a trade/business (which cases are specifically excluded).</p> <p>14. Cancellation</p> <p>14.1 The Seller/Lessor may cancel these terms and conditions or cancel delivery of Goods and Services at any time before the Goods are delivered by giving written notice. On giving such notice the Seller/Lessor shall promptly repay to the Client any sums paid in respect of the Price for those Goods. The Seller/Lessor shall not be liable for any loss or damage whatsoever arising from such cancellation.</p> <p>14.2 At the Seller/Lessor's sole discretion the Client may cancel delivery of Goods and/or Services. In the event that the Client cancels delivery of Goods and/or Services the Client shall be liable for any costs incurred by the Seller/Lessor up to the time of cancellation.</p> <p>15. Privacy Act 1993</p> <p>15.1 The Client and the Guarantor/s (if separate to the Client) authorises the Seller/Lessor to:</p> <p>(a) collect, retain and use any information about the Client, for the purpose of assessing the Client's creditworthiness or marketing products and services; and</p> <p>(b) to disclose information about the Client, whether collected by the Seller/Lessor from the Client directly or obtained by the Seller/Lessor from any other source, to any other credit provider or any credit reporting</p>	<p>agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Client.</p> <p>15.2 Where the Client is a natural person the authorities under (clause 15.1) are authorities or consents for the purposes of the Privacy Act 1993.</p> <p>15.3 The Client shall have the right to request the Seller/Lessor for a copy of the information about the Client retained by the Seller/Lessor and the right to request the Seller/Lessor to correct any incorrect information about the Client held by the Seller/Lessor.</p> <p>16. Default & Consequences Of Default</p> <p>16.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% compounding per calendar month and shall accrue at such a rate after as well as before any judgement.</p> <p>16.2 If the Client defaults in payment of any invoice when due, the Client shall indemnify the Seller/Lessor from and against all of the Seller/Lessor's costs and disbursements including on a solicitor and own client basis and in addition all of the Seller/Lessor's nominees costs of collection.</p> <p>16.3 Without prejudice to any other remedies the Seller/Lessor may have, if at any time the Client is in breach of any obligation (including those relating to payment), the Seller/Lessor may suspend or terminate the supply of Goods to the Client and any of its other obligations under the terms and conditions. The Seller/Lessor will not be liable to the Client for any loss or damage the Client suffers because the Seller/Lessor exercised its rights under this clause.</p> <p>16.4 If any account remains unpaid at the end of the second month after supply of the Goods or Services the following shall apply: An immediate amount of the greater of \$200.00 or 10.00% of the amount overdue shall be levied for administration fees which sum shall become immediately due and payable in addition to the interest payable under clause 9.1 hereof.</p> <p>16.5 In the event that:</p> <p>(a) any money payable to the Seller/Lessor becomes overdue, or in the Seller/Lessor's opinion the Client will be unable to meet its payments as they fall due, or;</p> <p>(b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors, or;</p> <p>(c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client, then without prejudice to the Seller/Lessor's other remedies at law:</p> <p>(i) the Seller/Lessor shall be entitled to cancel all or any part of any order of the Client which remains unperformed in addition to and without prejudice to any other remedies; and</p> <p>(ii) all amounts owing to the Seller/Lessor shall, whether or not due for payment, immediately become due and payable.</p> <p>17. Contractual Remedies Act</p> <p>17.1 The provisions of the Contractual Remedies Act 1979 shall apply to this contract as if section 15(d) of the Contractual Remedies Act which states that nothing in the Contractual Remedies Act shall affect the Sale of Goods Act 1908, were omitted from the Contractual Remedies Act 1979.</p> <p>18. Unpaid Seller/Lessor's Rights</p> <p>18.1 Where the Buyer has left any property with the Seller/Lessor for storage in a container and the Seller/Lessor has not received or been tendered the whole of the Price, or the payment has been dishonoured, the Seller/Lessor shall have:</p> <p>(a) a lien on the property;</p> <p>(b) the right to retain the property for the Price while the Seller/Lessor is in possession of it;</p> <p>(c) a right of resale;</p> <p>(d) the foregoing right of disposal, provided that the lien of the Seller/Lessor shall continue despite the commencement of proceedings or judgement for the Price having been obtained.</p> <p>19. Container Leasing</p> <p>19.1 Containers leased to the Client by the Seller/Lessor shall at all times remain the property of Seller/Lessor and are returnable at the end of the agreed lease period. In the event that the Containers are not returned to Seller/Lessor in the condition in which they were delivered Seller/Lessor retains the right to charge the cost of repair or replacement of the Containers.</p> <p>19.2 A charge of \$25 will be applied for a lost key or \$50 for a missing key and locking unit for Containers that have a locking unit supplied with the Container.</p> <p>19.3 Container's must be returned to a site nominated by the Seller/Lessor. All return transport costs will be at the Client's expense.</p> <p>19.4 The Client shall;</p> <p>(a) keep the leased Containers in their own possession and control at the site notified to the Seller/Lessor at the commencement of the lease period, and shall not assign the benefit of the leased Containers nor be entitled to lien on the leased Containers;</p> <p>(b) notify the Seller/Lessor of any change of the Client's nominated site within 24 hours of such change;</p> <p>(c) not alter or make any additions to the leased Containers including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the leased Containers or in any other manner interfere with the leased Containers;</p> <p>(d) inform the Seller/Lessor in writing of any Dangerous Goods to be stored in the container and shall supply the Seller/Lessor with the relevant Dangerous Goods/IMDG codes and approval from regulatory bodies to store such Goods;</p> <p>(e) At all times comply with all regulations (including those related to Dangerous Goods) which are applicable to the use of the Container.</p> <p>(f) not repair, alter or overhaul the leased Containers without Seller/Lessor's consent;</p> <p>(g) operate the leased Containers safely, strictly in accordance with the law, only for their intended use, and in accordance with any manufacturers instruction whether supplied by Seller/Lessor or posted on the leased Containers.</p> <p>19.5 The Client accepts full responsibility for the safekeeping of the leased Containers and indemnifies Seller/Lessor for all loss theft or damage to the leased Containers or the Client's goods or property contained therein 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 Client. The Client also acknowledges and agrees that risk in the leased Containers (including, but not limited to, insurance risk) remains with the Client.</p> <p>20. General</p> <p>20.1 If any provision of these terms and conditions shall be invalid, void or illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.</p> <p>20.2 Failure by the Seller/Lessor to enforce any of these terms and conditions at any time does not extend any waiver of the Seller/Lessor's rights to the Client.</p> <p>20.3 All Goods and Services supplied by the Seller/Lessor are supplied subject to the laws of New Zealand and the Seller/Lessor takes no responsibility for changes in the law that affect the Goods or Services supplied.</p> <p>20.4 The Seller/Lessor shall be under no liability whatsoever to the Client for any indirect loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Seller/Lessor of these terms and conditions.</p> <p>20.5 In the event of any breach of this contract by the Seller/Lessor the remedies of the Client shall be limited to damages. Under no circumstances shall the liability of the Seller/Lessor exceed the Price of the Goods.</p> <p>20.6 Neither party shall be liable for any default due to any act of God, terrorism, war, strike, lock out, industrial action, flood, storm or other event beyond the reasonable control of either party.</p> <p>20.7 The Client shall not set off against the Price amounts due from the Seller/Lessor.</p> <p>20.8 The Seller/Lessor may license or sub-contract all or any part of its rights and obligations without the Client's consent.</p> <p>20.9 The Seller/Lessor reserves the right to review these terms and conditions at any time and from time to time. If, following any such review, there is to be any change in such terms and conditions, that change will take effect from the date on which the Seller/Lessor notifies the Client of such change.</p>
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