

# EMPTY CONTAINER DEPOT CONDITIONS OF BUSINESS

## 1 Application

1.1 These Terms apply to the provision of storage, inspection, cleaning and/or repair services at a Depot for empty containers ("Services"). By requesting (or being deemed to request) or using any Services, the Customer accepts these terms.

1.2 In these Terms, a "container" is any empty container (including any reefer containers) of 10 feet, 20 feet, 40 feet or 45 feet in length, operated by the Customer, constructed to the specifications of the International Standards Organisation and having standard ISO means of top cornering. Additional Charges may apply, at the rate specified by the Company, to any out-of-gauge containers (or other equipment which is not a "container" as defined here) which the Customer has presented, and the Company has accepted, for Services under these Terms.

1.3 The Company shall not be required to provide any Services under these Terms in relation to any cargo, except to the extent and on terms expressly agreed in writing. The Company shall have no liability whatsoever for any loss or damage to cargo or any other contents of a container presented for Services, howsoever caused (including as a result of breach or negligence by the Company, its employees, agents or subcontractors) unless the Company has agreed in writing to provide Services in relation to such cargo.

1.4 The Company may refuse to provide Services for containers where, in the Company's opinion:

- (a) any containers (or the Customer) are not in compliance with these Terms;
- (b) such Services, using the Company's (or its contractors) usual processes, procedures, facilities or equipment, are or would be dangerous, hazardous, illegal or unsafe due to size, weight, dimension or any other reason

The Customer shall, at the Customer's own expense and risk and in the manner directed by the Company, remove or otherwise deal with any containers for which the Company has refused to provide Services.

1.5 The Services do not include, and these terms do not apply to, the handling of containers at Lyttelton Port.

## 2 Request for Services

2.1 The Customer will provide the Company with the booking information for Services, in the manner and within the timeframes, stipulated by the Company from time to time.

2.2 Bookings for Services may only be cancelled or varied by the Customer with written notice prior to any cut-off time stipulated by the Company. Any purported cancellation or variation after this time may be rejected and Charges rendered on the basis of the original booking.

2.3 The Company may accept or reject, in whole or in part, any booking or other request for Services.

## 3 Performance of Services

3.1 The Company shall perform the Services in an efficient and prudent manner, in accordance with good industry practices and all applicable laws, during the Company's normal hours of operation (as published on the Company's website).

3.2 Upon receipt of any containers from the Customer, the following process shall apply:

- (a) The Company shall examine and inspect the containers for any visible damage (including wear and tear), contamination or defects;
- (b) The Company shall record identified damage, contamination and defects, together with the estimated cost of repair, in an equipment interchange report ("EIR"). The Company shall endeavour to provide the EIR to the Customer as soon as reasonably practicable after each container's arrival at a Depot.
- (c) Promptly following receipt of an EIR containing a repair estimate, the Customer (or its designated agent) will confirm in writing whether or not it wishes the Company to carry out the repairs. Repair of containers will only be performed at the request of the Customer.

3.3 The Company does not provide any inspection or repair services in respect of reefer container machinery, including any pre-trip inspection (PTI) service. The Company may, on request:

- (a) subject to clause 6 and payment of a PTI facility fee at the Company's prevailing rate, permit the Customer's nominated contractor or representative (if acceptable to and approved by the Company) to carry out such services from the Depot; and
- (b) set the temperature of reefer containers in accordance with the Customer's instructions prior to release of the container, provided that the Company does not verify the appropriateness of such temperature setting nor that any desired temperature has been achieved. The Company will not be liable to the Customer or any other person, in any manner whatsoever, for any loss, damage, liability, cost, claim or expense arising out of the temperature of reefer containers.

3.4 The Company shall release containers from the Depot only upon the receipt of release instructions from the Customer in the form required by the Company from time to time.

3.5 The Company is entitled to rely on, and is not responsible for verifying the authenticity of, any information, documentation or EDI message received by the Company with appears to have originated from the Customer (or any employee, agent, or subcontractor of the Customer) in respect of containers or Services.

3.6 The Company will endeavour to ensure that all movements of containers in and out of the Depot shall be on a "first-in/first-out" (once available) basis, unless otherwise agreed by the Company or unless the Customer designates a specific container for release in its release instructions (in which case additional Charges may apply at the Company's standard container lift rate).

## 4 Charges and payment

4.1 The charges payable by the Customer for the Services are the Company's prevailing rates for such Services as set out in its standard pricing schedule for such Services published on the Company's website (<http://www.lpc.co.nz/>) from time to time or as otherwise agreed in writing (the "Charges").

4.2 The Charges do not include goods and services tax chargeable under the Goods and Services Tax Act 1985 ("GST"), unless otherwise expressly stated. GST is payable by the Customer to the Company in addition to, and at the same time, as the applicable Charges.

4.3 The Company may amend its Charges or introduce new charges or Services from time to time. Any such changes will be effective as and when notified by the Company (including by publishing on its website). By requesting or continuing to request (or being deemed to request) any Services after the effective date, the Customer accepts and agrees to be bound by such changes.

4.4 The Customer will pay each Company invoice in full, without any set-off, counterclaim, deduction or withholding whatsoever, by the 20th day of the month following the date of the invoice.

4.5 If any amount is not paid when due, interest may be charged by the Company and is payable by the Customer on the overdue amount from the due date for payment until payment in full at a rate of 1.5% per month.

4.6 The Customer shall pay or reimburse the Company for all costs and/or expenses incurred by the Company in recovering any amount due for payment (or otherwise enforcing those terms and its obligations under these Terms) and such costs and expenses shall bear interest as provided in clause 4.5 from the date upon which they are paid or incurred by the Company up to and including the date upon which the Customer pays or reimburses the Company.

## 5 Lien

5.1 Where the Services are subject to a common law or statutory lien, that lien shall take precedence over the remainder of this clause 5 which shall have no effect.

5.2 Subject to clause 5.1, the Company shall have a first and paramount lien on all containers and all other property of the Customer in its possession for all sums owing by the Customer to the Company pursuant to these Terms however arising, including all Charges, debts and liabilities in connection with the Services, together with charges,

debts and liabilities owing by the Customer to the Company in respect of any other services.

- 5.3 If the Customer does not pay, in full, any amounts owing to the Company on or before their due date, the Company may exercise all or any of the following rights and remedies on 14 days' written notice to the Customer:
- (a) Hold and store any containers or other property of the Customer in such place and manner as the Company thinks proper and at the Customer's risk and expense. Storage charges at the Company's prevailing rates will continue to accrue to the Customer's account for so long as any containers or other property are held and stored pursuant to the Company's rights under this clause.
  - (b) Dispose or sell any containers or other property of the Customer in its possession, at one time or from time to time, by private sale or public auction and on such terms and conditions and at such price(s) as the Company thinks fit.
  - (c) Apply the proceeds of sale of the Customer's containers or other property (after deduction of the Company's costs of sale and an administration fee) towards the satisfaction of all amounts owed by the Customer to the Company.

## 6 Health, safety, security and environmental

6.1 The Customer will, in relation to its activities (and those of its officers, employees, agents and contractors (including carriers)) ("**Personnel**"), at the Company's premises:

- (a) Comply with all applicable laws and legal requirements, including the Health and Safety at Work Act 2015 and associated legislative instruments;
- (b) comply with all Company directions and instructions (including access routes) and all notifications, signage and other operational, security, health & safety or environmental processes, procedures, plans, policies, protocols, rules and requirements notified or otherwise published by the Company from time to time (each of which will be deemed to be incorporated into these Terms);
- (c) ensure that all of its Personnel who enter a Depot have completed a site induction in accordance with the Company's requirements prior to, or immediately upon, arrival;
- (d) establish its own health and safety management system which is fit for purpose in relation to the Customer's activities at the Depot and manage, monitor and ensure that its Personnel comply with that health and safety management system;
- (e) so far as is reasonably practicable, consult, cooperate with, and coordinate activities with the Company and with other persons conducting a business or undertaking (as defined in the Health and Safety at Work Act 2015) who are accessing the Depot, in order to ensure the health and safety of all Personnel and all other Workers whose activities are influenced or directed by the Customer in relation to its activities at the Depot;
- (f) immediately notify the Company of any notifiable events (as defined in the Health and Safety at Work Act 2015) which occur at the Depot affecting any of the Customer's Personnel or arising from the Customer's activities and promptly provide such information as the Company may require in relation to such events.

6.2 The Customer will, on request, provide the Company with evidence that the Customer and its Personnel are complying with its obligations under these Terms, including clause 6.1.

6.3 The Company may prohibit particular Personnel from accessing part of or all of the Depot or require any activity carried out by the Customer to be suspended if the Company considers that person or activity presents a health and safety or security risk to themselves or others (or otherwise fails to comply with the Customer's obligations under these Terms).

## 7 Liability

7.1 Subject to the limitations set out or referred to in these terms, the Company shall only be liable for physical loss or damage to containers which occurs while those containers are under the Company's control under these terms (from the time of receipt and acceptance of the containers by the Company at a Depot up to the time they are uplifted

by or on behalf of the Customer from a Depot or released by the Company at a Depot to a third party in accordance with the Customer's instructions) and is caused by the Company's negligence. All other liability (whether arising in contract, tort (including negligence), statute or otherwise) to the Customer or any other person is excluded to the maximum extent permitted by applicable law.

- 7.2 In the event that it is agreed or determined that the repairs carried out by the Company are defective, the Company's liability is limited to:
- (a) the cost of rectifying the repairs at the Depot, wherever practicable; or
  - (b) all costs and expenses properly and reasonably incurred by the Customer in rectifying the repairs at another facility where applicable, provided that the Company's liability is limited to the costs and expenses which the Company would have itself incurred to repair the defect on site at its Depot.

7.3 Without limiting any other provision of this clause, the maximum liability of the Company to the Customer or any other person for loss or damage to containers or otherwise arising out of or in connection with these Terms and the Services shall be otherwise determined in accordance with, and subject to the limitations and exclusions set out in, the Company's standard conditions of business (as published on the Company's website from time to time).

7.4 Any timeframe provided by the Company for Services is an estimate only. In no circumstances shall the Company be liable to the Customer for any delay, any indirect, special, consequential, or exemplary damages or losses of any kind, or any loss of profit, loss of goodwill or loss of opportunity (whether direct or indirect), regardless of whether such loss or damage was reasonably foreseeable or either party was actually told of the possibility of such loss.

7.5 The Company will not be liable for any complete or partial failure to perform, delay in performing, incorrect performance or any damage or loss, to the extent caused by:

- (a) the Customer's failure to comply with these Terms; or
- (b) strikes, lockouts, stoppages, restraints of labour or other industrial action, acts of God, storm, wind, flood, fire, explosion, earthquake, failure of electrical or water supply, breakdown or failure of any equipment or facility, riots, civil commotions, environmental action, war, terrorism or hostilities of any kind, epidemics or pandemics, inherent vice or condition or quality of containers or other property, seizure under legal process, saving or attempting to save life or property in peril or for any other event or circumstance beyond the reasonable control of the Company.

7.6 The parties agree that the Services are supplied and acquired in trade, that both parties are in trade and that none of the rights and remedies under the Consumer Guarantees Act 1993 will apply.

7.7 Written notice of any claim against the Company under these terms (including all details necessary to enable the Company to investigate the claim) must be received by the Company within 14 days from the date the relevant container is (or ought to have been) collected by or on behalf of the Customer. If a claim is not settled, action against the Company must be commenced within 6 months of the collection date referred to above. The Company will have no liability for claims not received, and/or actions not commenced, in the timeframe referred to in this clause.

7.8 The Customer will use its reasonable endeavours to avoid or mitigate any loss, damage or liability that might give rise to any claim under these terms, including by fully exercising any liability limitation or exclusion to which the Customer is entitled by contract or applicable law (including any treaty or convention) against any third party. The Company will not be liable for any loss or damage that could have been avoided by the Customer.

7.9 The Customer shall be liable for and indemnifies the Company, its employees, officers, agents and contractors from and against any loss, cost, liability, claim or expense (including legal costs on a solicitor-client basis) suffered or incurred by any such person in connection with any property damage caused by any act or omission of the Customer; the presentation by the Customer of a container which does not comply with these Terms or is otherwise dangerous or hazardous; and any breach of these Terms by the Customer.

## 8 Termination

8.1 In the event that a party:

- (a) breaches any of its material obligations under this agreement, and fails to remedy that breach within 14 days after receiving written notice from the non-defaulting party requiring remedy; or
- (b) suffers any insolvency event (including, without limitation, the appointment of any receiver, liquidator, administrator or statutory manager, the entry into any assignment, arrangement or composition for the benefit of creditors generally, an inability to pay debts as they fall due, or any analogous event under the laws of any relevant jurisdiction),

the other party may immediately terminate this agreement (and/or the Company may suspend all or any of the Services) by written notice.

8.2 Without limiting clause 8.1, the Company may terminate this agreement by giving at least 3 months' notice in writing.

8.3 In the event of any suspension or termination:

- (a) that suspension or termination will not prejudice either party's rights or obligations accrued up to the date of suspension or termination or any provision of this agreement which expressly or impliedly survives suspension or termination;
- (b) any amounts owed by the Customer to the Company will be immediately due and payable.

## 9 Dispute resolution

9.1 If any dispute or difference of any kind whatsoever shall arise between the Customer and the Company under or in connection with the Services or these Terms (a "**Dispute**"), the parties will enter into negotiations in good faith to resolve the Dispute promptly following either party invoking this clause in writing.

9.2 If the Dispute is not resolved within 14 days of the commencement of negotiations (or within such longer period as the parties may agree), the Dispute may be referred by either party to arbitration, in Christchurch, before a single independent arbitrator subject to and in accordance with the provisions of the Arbitration Act 1996. If the parties are unable to agree on an arbitrator within 14 days of referral of the Dispute to arbitration, one shall be appointed by the President of the New Zealand Law Society (or his or her nominee) upon application by either party. The arbitrator's decision shall be final and binding on the parties (subject to manifest error).

9.3 Nothing in this clause 9 shall prevent either party from seeking or obtaining any injunctive or interim relief in any court of competent jurisdiction.

## 10 General

10.1 These Terms (together with any document referred to in these terms and any agreement between the parties which incorporates these terms) contains the entire agreement between the parties on the provision of the Services and replaces all earlier negotiations, representations, warranties, understandings and agreements, whether oral or written and including any Customer terms and conditions, between the parties relating to the Services. To avoid doubt, other terms may continue to apply to other services provided by the Company to the Customer.

10.2 The Customer shall not assign or otherwise transfer or deal with its rights or obligations under these terms. The Company may at any time assign or transfer any of its rights or obligations under this Agreement.

10.3 If any provision of these Terms is held by any court or other competent authority to be void or unenforceable in whole or part, these Terms shall continue to be valid as to the other provisions and the remainder of the affected provision.

10.4 These terms are governed by New Zealand law. Subject to clause 9, the courts of New Zealand have exclusive jurisdiction to bear and determine each suit, action or proceeding, and to settle disputes, which may arise out of or in connection with these Terms and for those purposes the parties irrevocably submit to the exclusive jurisdiction of the New Zealand courts