

Your Number One Shipping Container Solutions & Services Provider

GENERAL TERMS & CONDITIONS

1. Definitions

- 1.1 "ERS" means ERS Johnson Pty Ltd T/A Western Container Services or Containers First, its successors and assigns or any person acting on behalf of and with the authority of L C and N Johnson Pty Ltd T/A Western Container Services or Containers First.
- 1.2 "Sub-Contractor" means and includes:
- railways or airways operated by the Commonwealth or any state or any other country or by any corporation; or
 - any other person or entity with whom ERS may arrange for the carriage or storage of any Goods the subject of the contract; or
 - any person who is now or hereafter a servant, agent, employee or sub-contractor of any of the persons referred to in sub-clauses (a) and (b).
- 1.3 "Customer" means the person/s requesting ERS to provide the Services as specified in any invoice, document or order, and if there more than one person requesting the Services is a reference to each person jointly and severally.
- 1.4 "Consignee" means the person to whom the Goods are to be delivered by way of the Services.
- 1.5 "Goods" means any cargo, together with any container other than those defined as Container, packaging, or pallet(s), to be moved from one place to another by way of the Services.
- 1.6 "Services" means all services provided by ERS to the Customer including, but not limited to, anything done or to be done in relation to the Goods/Container, or the provision of any services ancillary to the Goods/Container such as moving, storing or leaving the Goods/Container at any warehouse, yard, terminal, wharf or other place or area, loading or unloading the Goods/Container from any vehicle, vessel or other conveyance, stowing or packing the Goods, or fumigating, transshipping, decanting liquids into other tankers, heating or washing tankers, or otherwise handling the Goods/Container, remodelling, renovating, or re-purposing the Container, or anything else done in relation thereto, including the offering of any advice or recommendations.
- 1.7 "Container" means any container or tanker supplied either on a sale or hire basis by ERS 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 ERS).
- 1.8 "Damage Waiver Fee" means the amount calculated as the Damage Waiver Fee to be paid by the Client if evidence of insurance is not provided to ERS as provided in clause 20.
- 1.9 "Damage Waiver Limit" shall mean the limit of liability agreed to by both parties.
- 1.10 "Charges" shall mean the cost of the Services (plus any GST where applicable), as agreed between ERS and the Customer, subject to clause 6 of this contract.
- 1.11 "GST" means Goods and Services Tax as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).

2. Acceptance

- 2.1 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, Services provided by ERS.
- 2.2 These terms and conditions may only be amended with the consent of both parties in writing, and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and ERS.
- 2.3 These terms and conditions are to be read in conjunction with ERS's quotation, consignment note, agreement, airway bills, manifests, or any other forms as provided by ERS to the Customer. If there are any inconsistencies between these documents then the terms and conditions contained in this document shall prevail.
- 2.4 These terms and conditions may be meant to be read in conjunction with ERS's Hire/Storage Contract or Purchase Contract, and:
- where the context so permits, the terms 'Goods' or 'Services' shall include any supply of Containers, as defined therein; and
 - if there are any inconsistencies between the two documents then the terms and conditions contained therein shall prevail.

3. Electronic Transactions Act 2000

- 3.1 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.

4. Change in Control

- 4.1 The Customer shall give ERS 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 ERS as a result of the Customer's failure to comply with this clause.

5. Customer's Financial Information

- 5.1 ERS will:
- keep the Customer's personal details, including credit card or bank account details for only as long as is deemed necessary by ERS;
 - not disclose the Customer's credit card or bank account details to any third party;
 - not unnecessarily disclose any of the Customer's personal information, except in accordance with the Privacy Act (clause 16) or where required by law.
- 5.2 The Customer expressly agrees that, if pursuant to this Agreement, there are:
- any unpaid Charges;
 - other amounts due and outstanding by the Customer;
 - any Goods (or any part of them) supplied on hire that are lost or damaged;
 - any other additional charges are due from the Customer which were not known at the time of the return of the Goods,

ERS is entitled to immediately charge the Customer's nominated credit card for these amounts, and is irrevocably authorised to complete any documentation and take any action to recover from the credit card issuer any and all amounts which may be due by the Customer pursuant to the terms of this Agreement.

6. Charges and Payment

- 6.1 At ERS's sole discretion the Charges shall be either:
- ERS's estimated Charges (subject to clause 6.2) which shall not be deemed binding upon ERS as the actual Charges can only be determined upon Delivery. ERS will use its skill and experience in

estimating the Charges and undertakes to keep the Customer informed should the actual Charges look likely to exceed the original estimate. Variances in the estimated Charges of more than ten percent (10%) will be subject to the Customer's approval before proceeding with the Customer's order; or

- ERS'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 fourteen (14) days.
- 6.2 ERS reserves the right to change the Charges:
- if a variation to the Container which are to be supplied is requested (including, but not limited to, the quantity, specifications, Hire Period, date of Delivery, etc. or any variation as a result of non-disclosure of relevant matters by the Customer, delays caused by the Customer or any other party, prerequisite work by any third party not being completed, obscured mechanical and/or electrical faults for repair); or
 - as a result of an increase in ERS's costs due to changes in statutory, government, or local body charges, taxes, levies, etc. with respect to the Container, which are outside the control of ERS (including, without limitation, increases in the cost of labour or materials, foreign exchange fluctuations, or increases in transport costs, taxes, customs duties or insurance premiums, etc.); or
 - annually for any long term hire of twelve (12) months or more, upon one (1) month's written notice to the Customer, to reflect any increase in the Consumer Price Index (CPI).
- 6.3 Variations will be charged for on the basis of ERS's quotation, and will be detailed in writing, and shown as variations on ERS's invoice. The Customer shall be required to respond to any variation submitted by ERS within ten (10) working days. Failure to do so will entitle ERS to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 6.4 Unless specified in writing by ERS, the Charges does not include the relocation or removal of the Container, the cost of locating (including the removal or deposit of soil), diverting or sealing of existing services, creation of temporary access roads, obtaining licences, permits or consents from the relevant local authority or other competent authority, etc.
- 6.5 ERS may charge freight by weight, measurement or value, and may at any time re-weigh, or re-value or re-measure or require the Goods to be re-weighed, or re-valued or re-measured and charge proportional additional freight accordingly.
- 6.6 At ERS's sole discretion, deposit may be required.
- 6.7 Time for payment for the Services being of the essence, the Charges will be payable by the Customer on the date/s determined by ERS, which may be:
- on delivery of the Goods/Containers;
 - before delivery of the Goods/Containers;
 - by way of instalments in accordance with ERS's payment schedule;
 - the date specified on any invoice or other form as being the date for payment; or
 - failing any notice to the contrary, the date which is thirty (30) days following the date of any invoice given to the Customer by ERS.
- 6.8 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Customer and ERS.
- 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 ERS nor to withhold payment of any invoice because part of that invoice is in dispute.
- 6.10 Unless otherwise stated the Charges does not include GST. In addition to the Charges, the Customer must pay to ERS an amount equal to any GST ERS must pay for any provision of Services by ERS 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.
- 6.11 Receipt by ERS 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 ERS's rights and ownership in relation to the Container, and this contract, shall continue.
7. **ERS not a Common Carrier**
- 7.1 ERS is not a Common Carrier and will accept no liability as such. All Goods are carried or transported, and all storage and other services are performed, by ERS subject only to these terms and conditions and ERS reserves the right to refuse the carriage or transport of Goods for any person, corporation or body, and the carriage or transport of any class of Goods, at its discretion.
8. **Customer-Packed Containers**
- 8.1 If a container has not been stowed by or on behalf of ERS ERS shall not be liable for loss of or damage to the Goods caused by:
- the manner in which the container has been stowed; or
 - the unsuitability of the Goods for carriage or storage in containers; or
 - the unsuitability or defective condition of the container.
9. **Nomination of Sub-Contractor**
- 9.1 The Customer hereby authorises ERS (if it should think fit to do so) to arrange with a Sub-Contractor for the carriage of any Goods that are the subject of the contract. Any such arrangement shall be deemed to be ratified by the Customer upon delivery of the said Goods to such Sub-Contractor, who shall thereupon be entitled to the full benefit of these terms and conditions to the same extent as ERS. In so far as it may be necessary to ensure that such Sub-Contractor shall be so entitled ERS shall be deemed to enter into this contract for its own benefit and also as agent for the Sub-Contractor.
10. **ERS's Servants or Agents**
- 10.1 The Customer undertakes that no claim or allegation shall be made against any servant or agent of ERS which attempts to impose upon any of them any liability whatsoever in connection with the Goods and, if any such claim or allegation should nevertheless be made, to indemnify ERS and any such servant or agent against all consequences thereof.
11. **Method of Transport**
- 11.1 If the Customer instructs ERS to use a particular method of carriage whether by road, rail, sea or air ERS will give priority to the method designated but if that method cannot conveniently be adopted by ERS the Customer shall be deemed to authorise ERS to carry or have the Goods carried by another method or methods.
12. **Route Deviation**
- 12.1 The Customer shall be deemed to authorise any deviation from the usual route or manner of carriage of Goods that may in the absolute discretion of ERS be deemed reasonable or necessary in the circumstances.

13. **Charges Earned**
 13.1 ERS's charges shall be considered earned in the case of Goods for carriage as soon as the Goods are loaded and dispatched from the Customer's premises.
14. **Demurrage**
 14.1 The Customer will be and shall remain responsible to ERS for all its proper charges incurred for any reason. A charge may be made by ERS in respect of any delay in excess of thirty (30) minutes in loading or unloading occurring other than from the default of ERS. Such permissible delay period shall commence upon ERS reporting for loading or unloading. Labour to load or unload the vehicle shall be the responsibility and expense of the Customer or Consignee.
15. **Consignment Note**
 15.1 It is agreed that the person delivering any Goods to ERS for carriage or forwarding is authorised to sign the consignment note for the Customer.
16. **Customer's Responsibility**
 16.1 The Customer expressly warrants to ERS that the Customer is either the owner or the authorised agent of the owner of any Goods or property that is the subject matter of this contract of cartage and/or storage and by entering into this contract the Customer accepts these conditions of contract for the Consignee as well as for all other persons on whose behalf the Customer is acting.
 16.2 The Customer shall maintain a public liability insurance policy for a minimum of twenty million dollars (\$20m) in respect of the location site of where ERS's Equipment of the Customer's property is located.
17. **Delivery**
 17.1 ERS is authorised to deliver the Goods at the address given to ERS by the Customer for that purpose and it is expressly agreed that ERS shall be taken to have delivered the Goods in accordance with this contract if at that address ERS obtains from any person a receipt or a signed delivery docket for the Goods.
 17.2 ERS may deliver the Goods by separate instalments (in accordance with the agreed delivery schedule). Each separate instalment shall be invoiced and paid for in accordance with the provisions in this contract.
 17.3 Delivery of the Goods to a third party nominated by the Customer is deemed to be delivery for the purposes of this agreement.
 17.4 It is the Customer's sole responsibility to address adequately each consignment and to provide written delivery instructions to enable effective delivery.
 17.5 Any time specified by ERS for the delivery of Goods is an estimate only and ERS will not be liable for any loss or damage incurred by the Customer as a result of delivery being late. However both parties agree that they shall make every endeavour to enable the Goods to be delivered at the time and place as was arranged between both parties. In the event that ERS is unable to deliver the Goods as agreed solely due to any action or inaction of the Customer then ERS shall be entitled to charge the Customer any additional costs incurred by ERS as a direct consequence of any resultant delay or rescheduling of the delivery.
18. **Loss or Damage**
 18.1 Subject to any statutory provisions imposing liability in respect of the loss of or damage to the Goods (including but not limited to chilled, frozen, refrigerated or perishable Goods):
 (a) ERS shall not be under any liability for any damage to, loss, deterioration, misdelivery, delay in delivery or non-delivery of the Goods (whether the Goods are or have been in the possession of ERS or not) nor for any instructions, advice, information or service given or provided to any person, whether in respect of the Goods or any other thing or matter, nor for any consequential or indirect loss, loss of market or consequences of delay; and
 (b) the Customer will indemnify ERS against all claims of any kind whatsoever, howsoever caused or arising brought by any person in connection with any matter or thing done, said or omitted by ERS in connection with the Goods.
19. **Insurance**
 19.1 The Customer acknowledges that:
 (a) the Goods are carried and stored at the Customer's sole risk and not at the risk of ERS; and
 (b) ERS is under no obligation to arrange insurance of the Goods and it remains the Customer's responsibility to ensure that the Goods are insured adequately or at all; and
 (c) under no circumstances will ERS be under any liability with respect to the arranging of any such insurance and no claim will be made against ERS for failure to arrange or ensure that the Goods are insured adequately or at all.
20. **Damage Waiver Fee**
 20.1 In the case of a Hire/Storage Contract in respect of ERS's Equipment, the Client must pay an optional Damage Waiver Fee unless the Client provides ERS with a certificate of currency in respect of an insurance policy covering the Equipment and public liability insurance as per clause 16.2, and ERS approves the said insurance.
 20.2 The Client acknowledges that the Damage Waiver Fee is not insurance and that payment of the Damage Waiver Fee relieves the Client of any liability in excess of the Damage Waiver Limit for loss or damage caused to the Equipment for loss or damage caused to the Equipment by graffiti, theft, forced or attempted forced entry, earthquake, hail, windstorm, hurricane and tornado. The Damage Waiver Fee will not limit the Client's liability unless the Client:
 (a) takes reasonable precautions against theft and forced entry;
 (b) notifies ERS of loss or damage to the Equipment within five (5) days of discovery of such an event;
 (c) deliver to ERS satisfactory proof of the loss or damage and the police report in the events of theft and forced entry within thirty (30) days of discovery of such an event; and
 (d) the Client complies with the terms of ERS's Hire/Storage Contract.
 20.3 The Client authorises ERS to pay the Damage Waiver Fee in the manner provided in clause 5 at the beginning of each monthly period during the hire/storage period provided the Damage Waiver Fee is payable under this clause.
 20.4 Subject to the Damage Waiver Fee provisions under clauses 20.1 to 20.3, the Client shall be liable for and shall indemnify ERS in respect of any claim made against ERS and all damages, costs, and expenses suffered or incurred by ERS on a full indemnity basis in the respect of:
 (a) personal injury;
 (b) damage to property;
 (c) a claim by a third party;
 arising from the state, condition or use of the Equipment in any way whatsoever from the hire or store of the Equipment under ERS's Hire/Storage Contract. The Client's liability under this indemnity is diminished to the extent that ERS's breach of the Hire/Storage Contract or ERS's negligence caused the liability claims, damage, loss, costs or expenses.
 20.5 It shall be the Client's responsibility to insure any stored goods and the Client's own equipment.
 20.6 ERS are not liable for any consequential loss (including loss or profit and/or contract) or damage to the stored property or the client's own equipment or otherwise arising from any failure in the Equipment or non-arrival or late delivery of the Equipment or any breach of the Hire/Storage Contract whatever by ERS or the Client for any cause whatsoever, including negligence on ERS's part of that of ERS's employees, servants, agents and/or contractors.
21. **The Commonwealth Competition and Consumer Act 2010, Fair Trading Acts**
 21.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Fair Trading Acts in each of the States and Territories of Australia (including any substitute to those Acts or re-enactment thereof), except to the extent permitted by those Acts where applicable.
 21.2 Where the Customer purchases the Services as a consumer these terms and conditions shall be subject to any laws or legislation governing the rights of consumers and shall not affect the consumer's statutory rights.
 21.3 Liability of ERS arising out of any one incident whether or not there has been any declaration of value of the Goods, for breach of warranty implied into these terms and conditions by the Competition and Consumer Act 2010 or howsoever arising, is limited to any of the following as determined by ERS:
 (a) the supplying of the Services again; or
 (b) the payment of the cost of having the Services supplied again; or
 (c) where the Customer is a consumer as defined in the Competition and Consumer Act 2010 then the Customer shall also be entitled to a refund.
22. **Claims**
 22.1 Notwithstanding clauses 18 and 19 in the event that the Customer believes that they have any claim against ERS then they must lodge any notice of claim for consideration and determination by ERS within seven (7) days of the date of delivery, or for non delivery within seven (7) days of the anticipated date of delivery or the removal or destruction of the Goods.
 22.2 The failure to notify a claim within the time limits under clause 22.1 is evidence of satisfactory performance by ERS of its obligations.
23. **Tank Wash Facilities**
 23.1 The Customer or the Customer's employees or agents acknowledge and accepts that the tank wash facilities operate under the regulations of the Environmental Protection Authority and therefore the Customer or the Customer's employees shall follow all applicable procedures and requirements.
 23.2 The Customer shall follow instructions issued by ERS whilst ERS is providing the services of heating or washing of tankers or containers
 23.3 The Customer acknowledges that tankers or containers are washed at the discretion of ERS and its employees. This discretion includes, but it not limited to, the hours of operation and operational capability.
 23.4 The Customer is responsible for declaring the tanker contents correctly and shall accept responsibility for any damages caused by such declaration being incorrect.
 23.5 The Customer accepts that charges for the tank wash facility may vary and additional charges apply depending on:
 (a) the classification of the wash required; and
 (b) for any washes performed outside ERS's normal hours of operation; and/or
 (c) for any wash completed outside of ERS's operational hours.
24. **Default and Consequences of Default**
 24.1 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 one half percent (2.5%) per calendar month (and at ERS's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
 24.2 If the Customer owes ERS any money the Customer shall indemnify ERS from and against all costs and disbursements incurred by ERS in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, ERS's contract default fees, and bank dishonour fees).
 24.3 Further to any other rights or remedies ERS may have under this contract, if the Customer has made payment to ERS 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 ERS under this clause 24 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this Contract.
 24.4 Without prejudice to any other remedies ERS may have, if at any time the Customer is in breach of any obligation (including those relating to payment) ERS may suspend or terminate the provision of Services to the Customer and any of its other obligations under the terms and conditions. ERS will not be liable to the Customer for any loss or damage the Customer suffers because ERS exercised its rights under this clause.
 24.5 Without prejudice to ERS's other remedies at law ERS shall be entitled to cancel all or any part of any order of the Customer which remains unperformed in addition to and without prejudice to any other remedies and all amounts owing to ERS shall, whether or not due for payment, become immediately payable in the event that:
 (a) any money payable to ERS becomes overdue, or in ERS's opinion the Customer will be unable to meet its payments as they fall due; or
 (b) the Customer has exceeded any applicable credit limit provided by ERS;
 (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; or
 (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.
25. **Carrier's Lien**
 25.1 ERS shall have a right to take a particular and general lien on any Goods the property of the Customer or a third party owner which are in the possession or control of ERS (and any documents relating to those Goods) for all sums owed at any time by the Customer or a third party owner to ERS (whether those sums are due from the Customer on those Goods or documents, or on any other Goods or documents), and ERS shall have the right to sell such Goods or cargo by public auction or private treaty after giving notice to the Customer as per the requirements of the Storage Liens Act 1935 No. 19 or any subsequent amendments. ERS shall be entitled to retain the sums due to it, in addition to the charges incurred in detention and sale of such Goods or cargo, from the proceeds of sale and shall render any surplus to the entitled person.
 25.2 Notwithstanding clause 25.1 nothing shall prejudice ERS's rights to use any of ERS's other rights and remedies contained in this agreement to recover any outstanding charges or fees payable in respect of the Goods that were not recovered out the sale of the Goods in accordance with clause 25.1 and no exception shall be taken upon the grounds that the Charges realised is less than the full market value of the Goods.
26. **Personal Property Securities Act 2009 ("PPSA")**
 26.1 In this clause:
 (a) financing statement has the meaning given to it by the PPSA;
 (b) financing change statement has the meaning given to it by the PPSA;
 (c) security agreement means the security agreement under the PPSA created between the Customer and ERS by these terms and conditions; and
 (d) security interest has the meaning given to it by the PPSA.
 26.2 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 Goods being transported, carried or handled by ERS, over which ERS invokes a lien; and
 (b) all the Customer's present and after acquired property being a charge, including anything in respect of which the Customer has at any time a sufficient right, interest or power to grant a security interest in for the purposes of securing repayment of all monetary obligations of the Customer to ERS for Services – that have previously been provided and that will be provided in the future by ERS to the Customer.
 26.3 The Customer undertakes to:
 (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which ERS may reasonably require to:
 (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 (ii) register any other document required to be registered by the PPSA; or
 (iii) correct a defect in a statement referred to in clause 26.3(a)(i) or 26.3(a)(ii);
 (b) indemnify, and upon demand reimburse, ERS for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any registration made thereby;
 (c) not register a financing change statement in respect of a security interest without the prior written consent of ERS;
 (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of ERS.
 26.4 ERS and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
 26.5 The Customer hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d)

- and 132(4) of the PPSA.
- 26.6 The Customer waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 26.7 Unless otherwise agreed to in writing by ERS, the Customer waives its right to receive a verification statement in accordance with section 157 of the PPSA.
- 26.8 The Customer shall unconditionally ratify any actions taken by ERS under clauses 26.3 to 26.5.

27. Security and Charge

- 27.1 In consideration of ERS agreeing to supply Services, 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).
- 27.2 The Customer indemnifies ERS from and against all ERS's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising ERS's rights under this clause.
- 27.3 The Customer irrevocably appoints ERS and each director of ERS as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 27 including, but not limited to, signing any document on the Customer's behalf.

28. Privacy Act 1988

- 28.1 The Customer agrees for ERS to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Customer in relation to credit provided by ERS.
- 28.2 The Customer agrees that ERS may exchange information about the Customer with those credit providers and with related body corporates for the following purposes:
- to assess an application by the Customer; and/or
 - to notify other credit providers of a default by the Customer; and/or
 - to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
 - to assess the creditworthiness of the Customer including the Customer's repayment history in the preceding two (2) years.
- 28.3 The Customer consents to ERS being given a consumer credit report to collect overdue payment on commercial credit.
- 28.4 The Customer agrees that personal credit information provided may be used and retained by ERS for the following purposes (and for other agreed purposes or required by):
- the provision of Services; and/or
 - analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Services; and/or
 - processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
 - enabling the collection of amounts outstanding in relation to the Services.
- 28.5 ERS may give information about the Customer to a CRB for the following purposes:
- to obtain a consumer credit report;
 - allow the CRB to create or maintain a credit information file about the Customer including credit history.
- 28.6 The information given to the CRB may include:
- personal information as outlined in 28.1 above;
 - name of the credit provider and that ERS is a current credit provider to the Customer;
 - whether the credit provider is a licensee;
 - type of consumer credit;
 - details concerning the Customer's application for credit or commercial credit (e.g. date of commencement/ termination of the credit account and the amount requested);
 - advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Customer no longer has any overdue accounts and ERS has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
 - information that, in the opinion of ERS, the Customer has committed a serious credit infringement;
 - advice that the amount of the Customer's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 28.7 The Customer shall have the right to request (by e-mail) from ERS:
- a copy of the information about the Customer retained by ERS and the right to request that ERS correct any incorrect information; and
 - that ERS does not disclose any personal information about the Customer for the purpose of direct marketing.
- 28.8 ERS will destroy personal information upon the Customer's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this agreement or is required to be maintained and/or stored in accordance with the law.
- 28.9 The Customer can make a privacy complaint by contacting ERS via e-mail. ERS will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Information Commissioner at www.oaic.gov.au.

29. Cancellation

- 29.1 Without prejudice to any other remedies ERS may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions ERS may suspend or terminate the supply of Goods to the Customer. ERS will not be liable to the Customer for any loss or damage the Customer suffers because ERS has exercised its rights under this clause.
- 29.2 ERS may cancel any contract to which these terms and conditions apply, or cancel delivery of Goods at any time before the Goods are delivered, by giving written notice to the Customer. On giving such notice the Customer shall repay to the Customer any sums paid in respect of the Charges. ERS shall not be liable for any loss or damage whatever arising from such cancellation.
- 29.3 In the event that the Customer cancels the delivery of Goods, or the provision of any Services, then the Customer shall be liable for any loss incurred by ERS (including, but not limited to, any loss of profits) up to the time of cancellation, or as a direct result of the cancellation.

30. Service of Notices

- 30.1 Any written notice given under this contract shall be deemed to have been given and received:
- by handing the notice to the other party, in person;
 - by leaving it at the address of the other party as stated in this contract;
 - by sending it by registered post to the address of the other party as stated in this contract;
 - 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;
 - if sent by email to the other party's last known email address.
- 30.2 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.

31. General

- 31.1 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.
- 31.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales in which ERS has its principal place of business, and are subject to the jurisdiction of the Burwood Local Court, New South Wales.
- 31.3 Subject to clause 21, ERS 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 ERS of these terms and conditions (alternatively ERS's liability shall be limited to damages which under no circumstances shall exceed the Charges).

- 31.4 Neither party to this contract may assign this contract, any payment or any other right, benefit or interest under this contract without the written consent of the other party (which shall not be unreasonably withheld). ERS may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this contract by so doing. Furthermore, the Customer agrees and understands that they have no authority to give any instruction to any of ERS's sub-contractors without the authority of ERS.
- 31.5 The Customer agrees that ERS may amend these terms and conditions by notifying 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 ERS to provide Goods to the Customer.
- 31.6 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.
- 31.7 Both parties warrant that they have the power to enter into this agreement and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this agreement creates binding and valid legal obligations on them.

ADDITIONAL CLAUSES APPLICABLE TO (HIRE/PURCHASE OF) CONTAINERS ONLY

32. Delivery

- 32.1 Delivery ("Delivery") of the Container is taken to occur at the time that:
- the Customer or the Customer's nominated carrier takes possession of the Container at ERS's address; or
 - ERS (or ERS's nominated carrier) delivers the Container to the Customer's nominated address even if the Customer is not present at the address.
- 32.2 At ERS's sole discretion, any costs of Delivery are in addition to the Charges.
- 32.3 ERS shall accept no responsibility for Services undertaken by any third party contractor employed by ERS. If the Customer believes that they have any claim in relation to Services undertaken by that third party then said claim must be made against the third party contractor in the first instance.
- ### 33. Customer's Responsibilities
- 33.1 Prior to Delivery, it shall be the Customer's responsibility to:
- mark all boundaries of the nominated address, and if applicable to the Container supplied, locating all gas pipes, water pipes, sewage lines, drainage lines, telephone cabling, and other utilities that are on, near, or adjacent to the land upon which the Container is to be located; and
 - ensure the nominated address is level and ERS has clear and free access within twenty (20) metres thereof to enable them to deliver and/or remove the Container. ERS shall not be liable for any loss or damage to the address (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of ERS, and the Customer shall be responsible for the payment of any extra charges incurred by ERS as a result of delays or difficulties in delivering the Container (including, but not limited to, in the event the Container needs to be lifted over a fence, etc.); and
 - ensure access is suitable to accept the weight of laden trucks. The Customer agrees to indemnify ERS against all costs incurred thereby in recovering such vehicles in the event they become bogged or otherwise immovable; and
 - advise ERS of any possibility or knowledge of any subsidence, slip, erosion, flooding, or any other thing that may constitute a hazard on the nominated address where the Container is to be delivered, or on any adjacent land.
- 33.2 It shall be the responsibility of the Customer to arrange and pay for suitably licensed contractors to provide works and materials in order for the Container to be suitable for occupancy or habitation in accordance with all relevant laws and legal requirements of the State in which the Container will be located, and:
- the construction or alteration of footings, or a concrete slab, for the Container; or
 - connecting or installing services for use at the location address; or
 - conveying services to the Container, e.g. gas, water, electricity or telecommunication services, etc.; or
 - the issuance of planning or building permits or similar authorisations (excluding the Code of Compliance for the Container itself) that are related to works required hereunder.

34. Defects

- 34.1 The Customer shall inspect the Container on Delivery and shall within seven (7) days thereof (time being of the essence) notify ERS of any alleged defect, shortage in quantity, damage or failure to comply with the description or ERS's quotation. The Customer shall afford ERS an opportunity to inspect the Container within a reasonable time following such notification if the Customer believes the Container is defective in any way. If the Customer shall fail to comply with these provisions the Container shall be presumed to be free from any defect or damage. For any defective Container, which ERS has agreed in writing that the Customer is entitled to reject, ERS's liability for any defect or damage to the Container is:
- limited to the value of any express warranty provided to the Customer to ERS (at ERS's sole discretion); or
 - limited to any warranty to which ERS is entitled, if ERS did not manufacture the Container; or
 - otherwise negated absolutely.
- 34.2 The Container will not be accepted for return other than in accordance with 34.1 above.
- 34.3 Notwithstanding clause 34.1, ERS shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- the Customer failing to properly maintain, install or store the Container; or
 - the Customer using the Container for any purpose other than that for which it was designed; or
 - the Customer continuing the use of the Container after any defect became apparent, or should have become apparent to a reasonably prudent operator or user; or
 - the Customer failing to follow any instructions or guidelines provided by ERS; or
 - fair wear and tear, any accident, or act of God.

35. Intellectual Property

- 35.1 Where ERS has designed, drawn or developed Containers for the Customer, then the copyright in any designs and drawings and documents shall remain the property of ERS. Under no circumstances may such designs, drawings and documents be used without the express written approval of ERS.
- 35.2 The Customer warrants that all designs, specifications or instructions given to ERS will not cause ERS to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify ERS against any action taken by a third party against ERS in respect of any such infringement.
- 35.3 The Customer agrees that ERS may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Containers which ERS has created for the Customer.

36. Other Applicable Legislation

- 36.1 At ERS's sole discretion, if there are any disputes or claims for unpaid Containers and/or Services then the provisions of the Building and Construction Industry Security of Payment Act 2002 (Victoria), Building and Construction Industry Security of Payments Act 1999 (New South Wales), Construction Contracts Act 2004 (Western Australia), Building and Construction Industry Payments Act 2004 (Queensland), Construction Contracts (Security of Payments) Act (Northern Territory of Australia), Building and Construction Industry Security of Payments Act 2009 (Tasmania), Building and Construction Industry Security of Payments Act 2009 (South Australia) and Building and Construction Industry (Security of Payment) Act 2009 (Australian Capital Territory) may apply.
- 36.2 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the any of the Acts listed in clause 36.1 (each as applicable), except to the extent permitted by the Act where applicable.