

# TERMS AND CONDITIONS

## 1. DEFINITIONS

- 1.1 "Mason Containers" shall mean Mason Containers Limited, or any agents or employees thereof.
- 1.2 "Customer" shall mean the Customer, any person acting on behalf of and with the authority of the Customer, or any person purchasing products and services from Mason Containers.
- 1.3 "Goods" shall mean:
  - 1.3.1 all Goods of the general description specified on the front of this agreement and supplied by Mason Containers to the Customer; and
  - 1.3.2 all Goods supplied by Mason Containers to the Customer; and
  - 1.3.3 all inventory of the Customer that is supplied by Mason Containers; and
  - 1.3.4 all Goods supplied by Mason Containers and further identified in any invoice issued by Mason Containers to the Customer, which invoices are deemed to be incorporated into and form part of this agreement; and
  - 1.3.5 all Goods that are marked as having been supplied by Mason Containers or that are stored by the Customer in a manner that enables them to be identified as having been supplied by Mason Containers; and
  - 1.3.6 all of the Customer's present and after-acquired Goods that Mason Containers has performed work on or to or in which goods or materials supplied or financed by Mason Containers have been attached or incorporated.
  - 1.3.7 The above descriptions may overlap but each is independent of and does not limit the others.
- 1.4 "Services and Goods" shall mean all services, goods, products and advice provided by Mason Containers to the Customer and shall include without limitation all cartage, earth moving, rubbish removal, transfer and all general contracting services and the supply of associated goods and all charges for labour, hire charges, insurance charges, or any fee or charge associated with the supply of Services and Goods by Mason Containers to the Customer.
- 1.5 "Price" shall mean the cost of the Services and Goods as agreed between Mason Containers and the Customer and includes all disbursements eg charges Mason Containers pay to others on the Customer's behalf subject to clause 4 of this contract.

## 2. ACCEPTANCE

- 2.1 Any instructions received by Mason Containers from the Customer for the supply of Services and Goods shall constitute a binding contract and acceptance of the terms and conditions contained herein.

## 3. COLLECTION AND USE OF INFORMATION

- 3.1 The Customer authorises Mason Containers to collect, retain and use any information about the Customer, for the purpose of assessing the Customer's credit worthiness, enforcing any rights under this contract, or marketing any Services and Goods provided by Mason Containers to any other party.
- 3.2 The Customer authorises Mason Containers to disclose any information obtained to any person for the purposes set out in clause 3.1.
- 3.3 Where the Customer is a natural person the authorities under clauses 3.1 and 3.2 are authorities or consents for the purposes of the Privacy Act 1993.

## 4. PRICE

- 4.1 Where no price is stated in writing or agreed to orally the Services and Goods shall be deemed to be sold at the current amount as such Services and Goods are sold by Mason Containers at the time of the contract.
- 4.2 The price may be increased by the amount of any reasonable increase in the cost of supply of the Services and Goods that is beyond the control of Mason Containers between the date of the contract and delivery of the Services and Goods.

## 5. PAYMENT

- 5.1 Payment for Services and Goods shall be made in full on or before delivery.
- 5.2 Interest may be charged on any amount owing after the due date at the rate of 2.5% per month or part month.
- 5.3 Any expenses, disbursements and legal costs incurred by Mason Containers in the enforcement of any rights contained in this contract shall be paid by the Customer, including any reasonable solicitor's fees or debt collection agency fees.
- 5.4 Receipt of a cheque, bill of exchange, or other negotiable instrument shall not constitute payment until such negotiable instrument is paid in full.

## 6. QUOTATION

- 6.1 Where a quotation is given by Mason Containers for Services and Goods:
  - 6.1.1 Unless otherwise agreed the quotation shall be valid for ten (10) days from the date of issue; and
  - 6.1.2 The quotation shall be exclusive of Services and Goods tax unless specifically stated to the contrary;
  - 6.1.3 Mason Containers reserve the right to alter the quotation because of circumstances beyond its control.
- 6.2 Where Services and Goods are required in addition to the quotation the Customer agrees to pay for the additional cost of such Services and Goods.

## 7. AGENCY

- 7.1 The Customer authorises Mason Containers to contract either as principal or agent for the provision of Services and Goods that are the matter of this contract.
- 7.2 Where Mason Containers enters into a contract of the type referred to in clause 7.1 it shall be read with and form part of this agreement and the Customer agrees to pay any amounts due under that contract.

## 8. TITLE AND SECURITY (PERSONAL PROPERTY SECURITIES ACT 1999)

- 8.1 Title in any Services and Goods supplied by Mason Containers passes to the Customer only when the Customer has made payment in full for all Services and Goods provided by Mason Containers and of all other sums due to Mason Containers by the Customer on any account whatsoever. Until all sums due to Mason Containers by the Customer have been paid in full, Mason Containers has a security interest in all Services and Goods.
- 8.2 If the Services and Goods are attached, fixed, or incorporated into any property of the Customer, by way of any manufacturing or assembly process by the Customer or any third party, title in the Services and Goods shall remain with Mason Containers until the Customer has made payment for all Services and Goods, and where those Services and Goods are mixed with other property so as to be part of or a constituent of any new Services and Goods, title to these new Services and Goods shall be deemed to be assigned to Mason Containers as security for the full satisfaction by the Customer of the full amount owing between Mason Containers and Customer.

- 8.3 The Customer gives irrevocable authority to Mason Containers to enter any premises occupied by the Customer or on which Services and Goods are situated at any reasonable time after default by the Customer or before default if Mason Containers believes a default is likely and to remove and repossess any Services and Goods and any other property to which Services and Goods are attached or in which Services and Goods are incorporated. Mason Containers shall not be liable for any costs, damages, expenses or losses incurred by the Customer or any third party as a result of this action, nor liable in contract or in tort or otherwise in any way whatsoever unless by statute such liability cannot be excluded. Mason Containers may either resell any repossessed Services and Goods and credit the Customer's account with the net proceeds of sale (after deduction of all repossession, storage, selling and other costs) or may retain any repossessed Services and Goods and credit the Customer's account with the invoice value thereof less such sum as Mason Containers reasonably determines on account of wear and tear, depreciation, obsolescence, loss or profit and costs.
- 8.4 Where Services and Goods are retained by Mason Containers pursuant to clause 8.3 the Customer waives the right to receive notice under s.120 of the Personal Property Securities Act 1999 ("PPSA") and to object under s.121 of the PPSA.
- 8.5 The following shall constitute defaults by the Customer:
  - 8.5.1 Non payment of any sum by the due date.
  - 8.5.2 The Customer intimates that it will not pay any sum by the due date.
  - 8.5.3 Any Services and Goods are seized by any other creditor of the Customer or any other creditor intimates that it intends to seize Services and Goods.
  - 8.5.4 Any Services and Goods in the possession of the Customer are materially damaged while any sum due from the Customer to Mason Containers remains unpaid.
  - 8.5.5 The Customer is bankrupted or put into liquidation or a receiver is appointed to any of the Customer's assets or a landlord distains against any of the Customer's assets.
  - 8.5.6 A Court judgment is entered against the Customer and remains unsatisfied for seven (7) days.
  - 8.5.7 Any material adverse change in the financial position of the Customer.
- 8.6 If the Credit Repossession Act applies to any transaction between the Customer and Mason Containers, the Customer has the rights provided in that Act despite anything contained in these terms and conditions of trade.

## 9. SECURITY INTEREST FOR SERVICE PROVIDERS

- 9.1 The Customer gives Mason Containers a security interest in all of the Customer's present and after-acquired property that Mason Containers has performed services on or to or in which goods or materials supplied or financed by Mason Containers have been attached or incorporated.

## 10. DISPUTES

- 10.1 No claim relating to Services and Goods will be considered unless made within fourteen (14) days of supply or completion of services.

## 11. LIABILITY

- 11.1 The Consumer Guarantees Act 1993, the Fair Trading Act 1986 and other statutes may imply warranties or conditions or impose obligations upon Mason Containers which cannot by law (or which can only to a limited extent by law) be excluded or modified. In respect of any such implied warranties, conditions or terms imposed on Mason Containers, Mason Containers' liability shall, where it is allowed, be excluded or if not able to be excluded only apply to the minimum extent required by the relevant statute.
- 11.2 Except as otherwise provided by clause 11.1 Mason Containers shall not be liable for:
  - 11.2.1 Any loss or damage of any kind whatsoever, arising from the supply of Services and Goods by Mason Containers to the Customer, including consequential loss whether suffered or incurred by the Customer or another person and whether in contract or tort (including negligence) or otherwise and irrespective of whether such loss or damage arises directly or indirectly from Services and Goods provided by Mason Containers to the Customer; and
  - 11.2.2 The Customer shall indemnify Mason Containers against all claims and loss of any kind whatsoever however caused or arising and without limiting the generality of the foregoing of this clause whether caused or arising as a result of the negligence of Mason Containers or otherwise, brought by any person in connection with any matter, act, omission, or error by Mason Containers its agents or employees in connection with the Services and Goods.
- 11.3 If, contrary to the disclaimer of liability contained in these terms and conditions of trade, Mason Containers is deemed to be liable to the Customer, following and arising from the supply of Services and Goods by it to the Customer, then it is agreed between Mason Containers and the Customer that such liability is limited in its aggregate to \$500.00.

## 12. CONSUMER GUARANTEES ACT

- 12.1 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the Customer acquires Services and Goods from Mason Containers for the purposes of a business in terms of section 2 and 43 of that Act.

## 13. PERSONAL GUARANTEE OF COMPANY DIRECTORS OR TRUSTEES

- 13.1 If the Customer is a company or trust, the director(s) or trustee(s) signing this contract, in consideration for Mason Containers agreeing to supply Services and Goods and grant credit to the Customer at their request, also sign this contract in their personal capacity and jointly and severally personally undertake as principal debtors to Mason Containers the payment of any and all monies now or hereafter owed by the Customer to Mason Containers and indemnify Mason Containers against non-payment by the Customer. Any personal liability of a signatory hereto shall not exclude the Customer in any way whatsoever from the liabilities and obligations contained in this contract. The signatories and Customer shall be jointly and severally liable under the terms and conditions of this contract and for payment of all sums due hereunder.

## 14. MISCELLANEOUS

- 14.1 Mason Containers shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its control.
- 14.2 Failure by Mason Containers to enforce any of the terms and conditions contained in this contract shall not be deemed to be a waiver of any of the rights or obligations Mason Containers has under this contract.
- 14.3 If any provision of this contract 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.
- 14.4 Where applicable the Construction Contracts Act 2002 applies.
- 14.5 If the customer defaults in payment then the Customer agrees that where the Services and Goods relate to Customers land, then the amount of such default gives rise to a legal or equitable estate or interest in the Customer's land which entitles Mason Containers to enter a caveat against the Customer's land pursuant to the Land Transfer Act 1952 and its amendments or any legislation in substitution thereof.
- 14.6 Refer to Addendum 1 for Storage Recommendations and Addendum 2 for the Delivery Checklist.