

**TERMS & CONDITIONS OF LICENCE AGREEMENT**

1. **STORAGE - The Storer:**
    - a. is deemed to have knowledge of the goods in the Space;
    - b. warrants that they are the owner of the goods in the Space, and/or are entitled at law to deal with them in accordance with all aspects of this agreement;
    - c. acknowledges that this agreement does not grant the Storer a lease of the Space;
    - d. acknowledges that the Space provided is approximately the size advertised but that due to building tolerances may vary slightly;
    - e. agrees that all time limits imposed on the Storer by this agreement **must be complied with strictly**.
  2. **The FO - Facility Owner** (which term includes its directors, employees, and agents):
    - a. does not provide any service other than a licence to use the Space to store goods;
    - b. does not and will not be deemed to have knowledge of the goods;
    - c. is not a Bailee nor a warehouseman of the goods and the Storer acknowledges that the FO does not take possession of or any responsibility for the goods except as provided in clause 11 and 22.a.
  3. **COSTS - Upon signing this agreement, the Storer must pay to the FO:**
    - a. the Deposit if applicable (which will be refunded on termination of this agreement less any deductions authorised by this agreement);
    - b. the Administration Fee.
  4. **The Storer must pay:**
    - a. the Storage Fee which is payable in advance. It is the Storer's responsibility to see that payment is made directly to the FO, on time and in full, throughout the Storage Period. The FO does not invoice for monthly fees. The FO may increase the Storage Fee any time after expiry of the Storage Period. The FO will give the Storer 42 days' written notice of any increase. If the Storer does not agree to pay the increased fee, the Storer may terminate this agreement by giving the FO written notice any time before the end of the FO's 42 day notice period;
    - b. the Cleaning Fee is payable at the FO's discretion if the Space requires cleaning;
    - c. the Late Payment Fee or fees which become payable each time a Storage Payment is late;
    - d. any reasonable internal or external costs and disbursements incurred by the FO in collecting late or unpaid Storage Fees, or in enforcing this agreement in any way;
    - e. interest on outstanding Storage Fees at the rate of \$15 per late paid invoice.
  5. **ACCESS TO AND CONDITIONS OF USE OF SPACE - The Storer:**
    - a. may access the Space during the access hours notified by the FO from time to time;
    - b. is solely responsible for securing the Space in a manner acceptable to the FO, and will secure the Facility's external gates or doors when entering or leaving outside access hours;
    - c. will not store any goods that are hazardous, illegal, stolen, inflammable, explosive, environmentally harmful, perishable or that are a risk to the property of any person;
    - d. will use the Space solely for the purpose of storage and must not carry on any business or other activity in the Space;
    - e. will maintain the Space by ensuring it is clean and in a state of good repair. The FO may deduct (at the FO's reasonable discretion) the Cleaning Fee from the Deposit and/or charge an additional Cleaning Fee;
    - f. will ensure the goods are dry, clean and free from vermin and food scraps when placed in the Space;
    - g. may not physically alter or damage the Space in any way (including the use of screws or nails) without the FO's prior consent. If the Space is damaged, the FO may charge the Storer for any repairs and may deduct repair charges from the Deposit and/or charge an additional Fee;
    - h. cannot assign this agreement or let any other person store goods in the Space;
    - i. will notify the FO in writing of any change to the ACP or any change of contact details of the Storer or the ACP within 48 hours of the change;
    - j. grants the FO consent to discuss any default by the Storer with the ACP;
    - k. agrees to comply with all Facility rules and health and safety or other notices in respect of the Facility.
  6. The FO may refuse access to the Space by the Storer where any money is owing by the Storer to the FO, whether or not a formal demand for payment has been made.
  7. The FO reserves the right to relocate the Storer to another space of the same or similar dimensions as the Space for the proper management of the Facility. The FO will provide as much notice as reasonably practicable to the Storer of such a relocation and, unless agreed otherwise, the FO or its agent will carry out the relocation.
  8. Any items left unattended in common areas or outside the Space at any time may, at the FO's reasonable discretion be sold, disposed, moved or dumped immediately and at the expense and liability of the Storer.
  9. The Storer acknowledges in accordance with clauses 1.c, 2.a and 5.d that the FO is only providing a licence to use the Space provided by the FO for the sole purpose of storing goods. The Storer acknowledges that the Storer has been given the opportunity to assess for itself the suitability of the Space.
- FO LIABILITY**
10. If the Storer is using the Space for the purposes of business storage, then the guarantees and remedies in the Consumer Guarantees Act 1993 ("the Act") are excluded.
  11. If the Act applies, the FO's services come with non-excludable guarantees, including that they will be provided with reasonable care and skill. Except to the extent of those non-excludable guarantees, the goods are stored at the sole risk and responsibility of the Storer who is responsible (subject to FO negligence) for any and all theft, loss, damage to, and deterioration of the goods, and shall bear the risk of any and all damage to goods stored in the Space caused by flood, fire, leakage or overflow of water, mildew, heat, spillage of material from any other space, removal or delivery of the goods, pest or vermin or any other reason.
  12. No failure or delay by the FO to exercise its rights under this agreement will operate to reduce those rights.
  13. This agreement constitutes the entire agreement between the FO and the Storer and supersedes and extinguishes all previous discussions, correspondence, negotiations, agreements, assurances, warranties, representations and understandings between them (both written or oral).
- STORER RISK AND RESPONSIBILITY**
14. The Storer warrants that it will not store items which are irreplaceable, such as currency, jewellery, furs, deeds, paintings, curios, works of art, or items of personal sentimental value or that are worth more than \$2,000 (in aggregate) unless specifically itemised and covered specifically by insurance for the duration of storage.
  15. The Storer is responsible for any loss, damage or injury to the Storer, the FO or the Facility, third parties, and/or the true owner of the goods stored in the Space, caused by the Storer or resulting from or incidental to the use of the Space by the Storer (including but not limited to the Storer or their agent's actions, storage of goods in the Space, the goods themselves and/or accessing the Facility).
  16. The Storer is responsible (and must pay) for loss or damage caused by a third party who enters the Space (or the Facility) at the request or direction of the Storer or who otherwise accesses the Facility using the Storer's access card/code. The Storer is not responsible for loss or damage caused by the lost/stolen access card/code after it notifies the FO of the loss or theft of the access card/code.
  17. If the FO enforces its rights under clause 16 and the loss or damage is caused by a third party outside the Storer's control, the Storer may notify the FO of this and the FO will then assess the merits of the Storer's claim to determine where liability should reasonably lie.
- COMPLIANCE WITH LAWS**
18. The Storer will comply with all relevant laws applicable to the use of the Space. This includes laws relating to the goods which are stored, and the manner in which they are stored. Liability for any breach of such laws rests absolutely with the Storer and includes all costs resulting from such breach.
  19. If the FO believes at any time that the Storer is not complying with clause 18, the FO may (in its reasonable discretion):
    - a. take any action the FO believes necessary to ensure compliance, including inspection of the Space under clause 21 and/or termination under clause 24.b;
    - b. immediately dispose of or remove the goods in the Space at the Storer's expense; and/or
    - c. contact, cooperate with and/or submit the goods to the relevant authorities.

The Storer agrees that the FO can take any such action at any time even though the FO could have acted earlier.
- INSPECTION AND ENTRY BY THE FO**
20. The Storer consents to inspection and entry of the Space by the FO on 14 days' written notice.
  21. In the event of an emergency, the FO may enter the Space using all necessary force without the prior written consent of the Storer. The FO will notify the Storer as soon as practicable of such entry. The Storer irrevocably consents to such entry. For the avoidance of doubt, an emergency includes but is not limited to where the FO believes that clause 5.c or 18 is being breached, or where property, the environment or human life is, in the opinion of the FO, threatened, or to allow access, inspection or seizure by relevant authorities.
22. **DEFAULT - The Storer acknowledges that:**
- a. All goods in the Space are subject to a general lien for all Storage Fees and any other amounts owing to the FO by the Storer. If the Storage Fee or any other sum owing by the Storer under this agreement is not paid in full within 42 days of the due date, the FO may enter the Space, retain the Deposit and/or take possession of any goods in the Space and may, at the FO's sole discretion, do any one or more of the following:
    - i. sell the goods in one or more lots by private arrangement or public auction to offset any unpaid Storage Fee, Cleaning Fee, Late Payment Fee, or costs associated with collection of Fees and/or disposal of the goods; and/or
    - ii. dispose of the goods in any manner as the FO sees fit, whether for value or not, if the goods are unsaleable, remain unsold after being offered for sale, pose a health and safety risk, or are of insufficient value to warrant a formal sale process; and/or
    - iii. if the FO believes in its reasonable opinion that it is a health and safety risk to conduct an inventory of goods in the Space, the FO may decide to dispose of some or all of the goods without conducting an inventory.

The FO will give notice in accordance with this agreement and permit a reasonable period for the Storer to rectify a default before taking possession and selling/disposing of goods.
  - b. If any money is recovered from the sale or disposal of goods, that money shall be used as follows:
    - i. first, to pay the costs of and associated with the sale or disposal of the goods;
    - ii. second, (subject to any rights under the Personal Property Securities Act 1999) to pay all Storage Fees and other fees, costs or disbursements owed to the FO and any other costs incurred by the FO in connection with re-entering the Space and selling or disposing of the goods;
    - iii. third, any excess will be sent to the Storer.
23. Notwithstanding clause 22.a, if the Storer is in breach of this agreement and the FO enters the Space for any reason and no goods are stored there, the FO may terminate this agreement immediately. The FO will send written notice of the termination to the Storer within 7 days of such entry.
24. **TERMINATION** - This agreement may be terminated:
  - a. by either party after the Storage Period has ended on written notice as indicated on the front page to the other party, or, if the FO cannot contact the Storer, to the ACP; and
  - b. by the FO immediately without notice if the Storer breaches clause 3, 4, 5 or 18.
25. The Storer acknowledges that the Facility may use CCTV to view the inside of the Space and that the FO may use such CCTV footage as evidence of a breach of this agreement under clause 24.b.
26. If the Storer does not give the notice required to terminate under clause 24.a, the FO may deduct Storage Fees for the notice period from the Deposit.
27. On termination, the Storer will:
  - a. remove all goods in the Space by the date specified by the FO and leave the Space in a clean condition and good state of repair to the satisfaction of the FO; and
  - b. pay any outstanding moneys and expenses on default calculated by the FO as being owed to the FO up to the date of termination.
28. If the FO reasonably believes that the Storer will not carry out its obligations under clause 27.a or the Storer does not respond in a reasonable period to notices sent by the FO, the FO may, but is not obliged to, permit the ACP to access the Space to carry out the Storer's obligations under clause 27.a and the Storer irrevocably authorises the FO and the ACP to take this action.
29. If the Storer fails to remove all goods from the Space or the Facility on termination, the FO is authorised to (in its reasonable discretion) sell or otherwise dispose of all goods by any means 7 days from the termination date, regardless of the nature or value of the goods. The FO will give 14 days' notice of the intended disposal.
30. Liability for outstanding money, property damage, environmental damage and legal responsibility under this agreement continues to run beyond the termination of this agreement.
- NOTICE**
31. Notices must be made in writing to the contact details set out on the front of this agreement. Notices given by the Storer to the FO must be actually received by the FO to be valid.
  32. If the FO is not able to contact the Storer, notice is deemed to have been given to the Storer if the FO has sent notice to the Storer's last notified address or via any other contact method, including by text or email to the Storer or the ACP.
  33. If there is more than one Storer, notice to or by any single Storer is agreed to be sufficient for the purposes of any notice requirement under this agreement.
34. **PRIVACY - The FO:**
- a. may collect information about the Storer, including the Storer's Personal Information (as defined in the Privacy Act 1993), to assist in the provision of storage to the Storer, maintaining the Storer's account, and the FO's enforcement of this agreement in any way; and
  - b. may disclose or search for any information about the Storer, including the Storer's Personal Information, to Government departments, law enforcement agencies, including the police, any person who can demonstrate to the reasonable satisfaction of the FO a legal or equitable interest in the goods stored, liquidators, administrators or other persons appointed to administer the Storer's financial affairs, debt collection services or credit reporting agencies, the ACP, agents for any of the above, Storer Check Pty Ltd.
35. The Storer warrants that the Storer:
- a. has the right to disclose information to the FO about the ACP (including Personal Information) and that the FO may use this information as it would Personal Information collected about the Storer;
  - b. has informed the ACP that the Storer has made the disclosures referred to in clause 35a.
36. The parties acknowledge and agree that the ACP may access and correct the information held by the FO in the same manner the Storer may correct its Personal Information.

**1. DEFINITIONS**

- 1.1 "Mason Containers" shall mean Mason Containers Limited, or any agents or employees thereof. Also referred to as the "FO" or Facility Owner.
- 1.2 "Customer" shall mean the Customer or Storer, 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 e.g. 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 the due date as shown on the invoice ("the due date"). Agreements are based on payments being made on time.
- 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 & 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 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 clauses.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.
  - 8.6.1 The FO may make arrangements to recover any outstanding debt and recoverable costs with a debt recovery agency.

**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 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
- 14.7 Please note that stock changed daily and all prices are valid for 10 days. Prices are subject to change without notification and all items are subject to availability and prior sales
- 14.8 Please inspect the goods prior to delivery. Confirmation of order confirms your acceptance of the purpose, quality, condition and Terms of Trade.
- 14.9 The Buyer and/or Storer shall assume all risk of the condition of the goods and the Seller/FO shall have no liability for losses or damages with respect to the condition of the goods/container.
- 14.10 All items are where is, with no warranty either expressed or implied. One trip (as new) containers are used once into NZ, minor scratches or dents may occur in transit and are not considered defects.