



TERMS OF HIRE

1 DEFINITIONS

In these terms:

Access Service means any service provided by CHEP which permits the provision of Transaction Information from any CHEP transaction accounting database system to the Hirer;

CHEP means Brambles New Zealand Limited (and its successors and assigns) trading as CHEP New Zealand and Weck-Pack;

CHEP Authorised Person means an authorised person of CHEP as notified by CHEP to the Hirer from time to time;

Communicate means make available online or electronically transmit (whether over a path, or a combination of paths, provided by a material substance or otherwise) a work or other subject-matter, including a performance or live performance;

Confidential Information means the confidential information of a party and includes (without limitation) information relating to the design, format, specification and content of the Transaction Information, and trade secrets, financial, marketing, customer related and technical information, ideas, concepts, knowhow, technology, processes and knowledge which relate to the Transaction Information;

Electronic Rights Management Information means, in relation to a work or other subject-matter, information that:

- (a) is electronic; and
- (b) either:
 - (i) is or was attached to, or is or was embodied in, a copy of the work or subject-matter; or
 - (ii) appears or appeared in connection with a communication, or the making available, of the work or subject-matter; and
- (c) either:
 - (i) identifies the work or subject-matter, and its author or copyright owner (including such information represented as number or codes); or
 - (ii) identifies or indicates some or all of the terms and conditions on which the work or subject-matter may be used, or indicates that the use of the work or subject-matter is subject to terms or conditions (including such information represented as numbers or codes).

Equipment means CHEPBins, CHEPBoxes, CHEPTrays, Crates, Econoboxes, Foldable Containers, Foldable Returnable Plastic Crates, FreightPaks, Plastic Pallets, Plastic Bins, Produce Crates, Ropaks, Shuttle Bins, Stillages, Wooden Pallets, Wiremesh cages and lids, and containers and lids together with any other items of property branded CHEP, Weck, Weck-Pack, Greenleaf or co-branded CHEP or Weck-Pack with any other name or logo which is lent or hired out by CHEP from time to time;

Foldable Containers means items of Equipment which are designed to be used in an erected state and which are capable of being collapsed into a Folded State;

Folded State means in relation to a Foldable Container, the state of the Foldable Container after its walls have been folded inward so that the walls lie parallel with the base of the Foldable Container;

Hirer means any person, firm or company to whom Equipment is lent or hired by CHEP, and its legal personal representatives, successors and permitted assigns;

Intellectual Property Rights means copyright, trade mark, design, patent, semiconductor or circuit layout rights and any application for registration or registration of those rights;

Normal Use means the normal use of the Transaction Information for the internal management of the Equipment that the Hirer has obtained under these terms;

Produce means fresh fruit, fresh vegetables or other fresh foodstuffs and any other perishable goods supplied or transported by Hirers;

Produce Crate means any returnable plastic hire container of less than 100 litre capacity owned by CHEP which is lent or hired out by CHEP, and designed and used to supply or transport Produce;

Re-Use means the use of a Produce Crate for the storage and/or transportation of Produce or other goods after it has already been used for that purpose, and before it has been returned to CHEP;

Quantity on Hire means, in respect of any day, the quantity of Equipment lent or hired by CHEP to the Hirer;

Service Centre means a CHEP service centre that is made available to the Hirer from time to time for the issue and return of Equipment, as notified to the Hirer from time to time in accordance with clause 15;

Technological Protection Measure means a device or product, or a component incorporated into a process, that is designed, in the ordinary course of its operation, to prevent or inhibit the infringement of copyright in a work or other subject-matter by either or both of the following means:

- (a) by ensuring that access to the work or other subject-matter is available solely by use of an access code or process (including decryption, unscrambling or other transformation of the work or other subject-matter) with the authority of the owner or exclusive licensee of the copyright;
- (b) through a copy control mechanism; and

Transaction Information means any invoice, data, compilation of data, report or report format that is provided by or on behalf of CHEP in any material form.

2 HIRE OF EQUIPMENT

- (a) CHEP owns the Equipment and lends or hires it to the Hirer on the terms and conditions set down in these terms of hire.
- (b) Equipment will be added to or deducted from, as applicable, the Equipment held by the Hirer as recorded in the account in the name of the Hirer maintained by CHEP (**Account**) and the Hirer's Quantity on Hire when:

- (1) Equipment is hired to the Hirer (**Issue**);
- (2) Equipment is returned to CHEP at a Service Centre authorised to accept that Equipment (**Return**);
- (3) there is an approved transfer of Equipment by the Hirer (**Sending Party**) to another Hirer (**Receiving Party**) or by a Receiving Party to the Sending Party (**Transfer**); or
- (4) there is an adjustment under these terms (**Adjustment**).

In these terms, the words "Issued", "Returned" and "Transferred", respectively, shall have the equivalent meanings to the words "Issue", "Return" and "Transfer", respectively, as defined in this clause 2(b).

An item of Equipment will not be recorded as Returned under clause 2(b)(2) until the whole of the item is Returned or compensation is paid under clause 5.

- (c) A Sending Party must establish that the Transfer of any Equipment is accepted by the Receiving Party and

obtain CHEP's approval to the Transfer. Unless otherwise agreed by CHEP, a Transfer will be rejected unless it is notified to CHEP by an approved CHEP Transfer document. CHEP may refuse to issue Equipment to a Hirer or refuse to approve a Transfer. CHEP may refuse to act in accordance with or recognise any agreement or arrangement between a Receiving Party and a Sending Party. Variation by CHEP of a Hirer's Quantity on Hire or sending an invoice does not itself constitute approval of a Transfer.

(d) The Hirer must not part with possession of any Equipment unless:

- (1) it is Returned to CHEP;
- (2) it is Transferred onto another Hirer's account with CHEP; or
- (3) the Hirer keeps and makes available to CHEP on demand approved CHEP documentation, CHEP electronic records or other control records approved by CHEP identifying the name and address of the person in possession of the Equipment, the date of the change of possession, the quantity and type of Equipment, and the terms (if any) on which the Hirer parts with possession. The Hirer must ensure that those terms are at all times subordinate to and will be overridden by these terms. If CHEP requests, the Hirer must provide to CHEP (at CHEP's reasonable expense) a copy of all or any part of such records.

(e)

- (1) The Hirer acknowledges that its purpose in hiring Produce Crates is to store, transport and merchandise Produce (or other goods agreed by CHEP in writing) and for no other purpose.
- (2) The Hirer must not Re-Use a Produce Crate, unless CHEP gives its prior written consent.
- (3) The Hirer acknowledges and agrees that CHEP will only issue Produce Crates to the Hirer for hire in full pallet quantities or such other quantities as CHEP determines from time to time.
- (4) Where a daily hire fee is not being charged by CHEP in relation to a Produce Crate, the Hirer shall not hold the Produce Crate for a period exceeding 14 days.

3 CHARGES

(a) The Hirer must pay:

- (1) the agreed charges in respect of each item of Equipment and each service supplied by CHEP. Such charges may include, without limitation:
 - charges payable on Issue, Transfer or Return of Equipment;
 - daily hire charges in respect of the Equipment payable under clause 3(b);
 - any Deposit required to be paid by the Hirer to CHEP under clause 4; and
 - all other charges agreed by the Hirer and CHEP from time to time;

in each case in such amount as advised in writing by CHEP to the Hirer from time to time;

(2) if there are no agreed charges, CHEP's standard charges shall apply, in respect of each item of Equipment, other services supplied by CHEP and other fees applying from time to time; and

(3) any other amounts owing under these terms,

without deduction or set-off, to CHEP within 7 days of the date of CHEP's invoice to the Hirer. Payment does not affect the Hirer's rights under clause 3(d).

(b) The Hirer shall pay CHEP daily hire charges for the Equipment from and including the date the Equipment is either Issued to or is Transferred to the Hirer (in accordance with clause 2(b) and 2(c)), as applicable, until and including the date the Equipment is either Returned or is Transferred from the Hirer (in accordance with clause 2(b) and 2(c)). The agreed daily hiring charges will accrue in full in respect of Equipment even if that Equipment is only in the Hirer's possession for part of a day.

(c) If the Hirer fails to pay a CHEP invoice within 7 days of the date of the invoice, CHEP may require the Hirer to pay, and the Hirer must then pay, interest to CHEP on the overdue amount at a rate 2% higher than the Bank of New Zealand business overdraft prime lending rate from time to time calculated on the overdue sum from the date of the invoice until payment in full. If any amount becomes overdue, all amounts recorded on the Account are deemed to be immediately due and payable. The Hirer must pay all costs and expenses (including legal costs and debt collection costs on a solicitor and own client basis) which may be incurred by CHEP in the recovery or attempted recovery of the overdue amounts.

(d) (1) Each invoice issued by CHEP to the Hirer will, unless otherwise agreed, set out:

- the type of Equipment lent or hired to the Hirer and the Quantity on Hire on the first day of the period covered by the invoice (**Opening Balance**);
- subsequent variations to the Opening Balance due to Issues, Transfers onto the Hirer's Account, Transfers off the Hirer's Account, Returns and Adjustments during the period covered by the invoice;
- the type of Equipment lent or hired to the Hirer and the balance of the Quantity on Hire on the date of the invoice (**Closing Balance**);
- the amount of any Deposit charged for Issues, Transfers and Adjustments to the Hirer's Account less any Deposit credited for Returns, Transfers and Adjustments from the Hirer's Account by CHEP in accordance with clause 4 during the period covered by the invoice;
- the total charges payable by the Hirer for the period covered by the invoice; and
- all other charges payable by the Hirer for the period covered by the invoice.

(2) In respect of an invoice for any Account or group of Accounts; if for any reason (including because of a credit balance for any Equipment on the Account (**Credit Balance**)) the amount shown as being payable is negative, CHEP may at its sole discretion adjust the amount payable in respect of the invoice to zero or an amount that CHEP considers appropriate in the circumstances and/or adjust the Quantity on Hire with regard to the Account.

- (3) CHEP must keep a record of the amount by which the Quantity on Hire was adjusted in accordance with clause 3(d)(2) (**Credit**) and may make a compensating adjustment to the Quantity on Hire over the next 180 days by applying the Credit against the Quantity on Hire over that period if CHEP is satisfied that the Credit Balance should not have been removed. CHEP is not liable under any circumstances to make any payment to, or allow any set-off against or reduction of amounts owing to CHEP for the benefit of, the Hirer in respect of a Credit Balance.

- (4) Each invoice may include Adjustments to the Equipment held by the Hirer, the Quantity on Hire, the charges payable by the Hirer or otherwise in the current or previous invoice periods:

- made under clauses 3(d) or (e); or
- resulting from incorrect entries in previous invoices; or
- resulting from any Equipment on hire to the Hirer but not recorded as Quantity on Hire on the Hirer's Account; or
- where the agreed period of hire for any Equipment has expired; or
- as otherwise agreed.

CHEP may withhold Adjustments to the Hirer's Account pending receipt of any information requested by CHEP as to the Equipment held by the Hirer or the Quantity on Hire or otherwise, and may refuse to make an Adjustment if that information is not provided to CHEP's satisfaction within 21 days of the date of request.

- (e) Subject to clause 3(a), the Hirer must within 21 days from the date of an invoice give written notice to CHEP if it objects to any item or calculation in that invoice, and CHEP may take that objection into account in a subsequent invoice to the Hirer. If the Hirer fails to give the notice within the time prescribed, it is taken to have accepted the contents of the invoice. Payment of subsequent invoices from CHEP incorporating any Adjustments by CHEP resulting from an objection constitutes a final determination of the objection as between CHEP and the Hirer.
- (f) Notwithstanding any other clause in these terms, to the extent that any supply made under or in connection with this agreement is a taxable supply (as defined by the Goods and Services Tax Act 1985), the Hirer must pay to CHEP, in addition to the consideration provided for under this agreement for that supply (unless it expressly includes GST) an amount (**Additional Amount**) equal to GST charged on that supply. The Hirer must pay to CHEP the Additional Amount at the same time as the consideration to which it is referable.

4 DEPOSIT

In addition to any charges under these terms, CHEP may require the Hirer to pay a deposit (**Deposit**) on the Issue of Equipment. In this event, notwithstanding any other provision of these terms:

- (a) the Hirer may part with possession of the Equipment only in accordance with clause 2(c) and 2(d);
- (b) when making a calculation under clause 3(d)(3), CHEP shall not take into account any Deposits on Equipment paid by the Hirer under this clause 4;

- (c) subject to compliance by all parties with clause 2(b), if the Hirer Returns Equipment, CHEP shall credit to the account of the Hirer the amount of any Deposit on each item of Equipment, unless it considers that the Hirer does not have the right to receive such a credit for that Deposit in respect of the Equipment;

- (d) CHEP shall be under no obligation to credit the Account of any Hirer or pay any Deposit to any person unless the Equipment is Returned in good order and repair, fair wear and tear excepted;

- (e) If, in accordance with clauses 4(c) and 4(d), CHEP credits the Account of the Hirer with the amount of any Deposit, it may set off against such amount any amounts due and payable to it by the Hirer under these Terms; and

- (f) CHEP shall be free to use any Deposit it has received from a Hirer in the operation of its business and no trust shall be construed or implied in relation to the Deposit.

5 OWNERSHIP, LOSS, CONDITION AND REPOSSESSION OF EQUIPMENT

The Hirer acknowledges that each item of Equipment has a special value to CHEP in that, as part of CHEP New Zealand, CHEP repairs, maintains, handles and otherwise administers the circulation of all Equipment. The Hirer expressly agrees to all the following matters as a condition of CHEP agreeing to lend or hire Equipment to the Hirer:

- (a) Notwithstanding any other clause in these terms, CHEP remains the owner of the Equipment at all times. No person is entitled to use, dispose of or otherwise deal with Equipment in any way that is inconsistent with CHEP's ownership or these terms. Payment of compensation, or any other circumstance or event, does not constitute or result in any transfer of property or interest in the Equipment from CHEP.

- (b) (1) If the Hirer establishes to CHEP's satisfaction that Equipment on hire is destroyed (**Destroyed Equipment**), the Hirer must pay CHEP compensation in an amount equal to the then current replacement cost, as advised by CHEP, of that quantity of new Equipment. The Hirer remains liable to CHEP for hiring charges in respect of Destroyed Equipment until payment of the compensation required by this clause.

- (2) If the Hirer establishes to CHEP's satisfaction that Equipment on Hire is lost (**Lost Equipment**), the Hirer must pay CHEP compensation in an amount equal to the then current replacement cost, as advised by CHEP, of that quantity of new Equipment. **The Hirer remains liable to CHEP for hiring charges in respect of Lost Equipment until payment of the compensation required by this clause.**

- (3) If the Hirer subsequently recovers possession of Lost Equipment in respect of which compensation has been paid, or if CHEP retakes possession of Equipment for which CHEP considers that the Hirer has paid compensation, CHEP will refund to the Hirer the amount of compensation paid for the Lost Equipment, after deducting any costs of recovery or retaking possession and an amount equal to the amount of hiring charges not paid by the Hirer and which would otherwise be due and owing if CHEP had not agreed to treat the Equipment as Lost Equipment.

- (c) Where Equipment which in CHEP's opinion is contaminated, rendered unusable or damaged beyond reasonable repair, is returned to CHEP, that Equipment will be treated as Destroyed Equipment and:

- (1) the Hirer must pay compensation for it in accordance with clause 5(b) and any costs of disposal; and
- (2) CHEP's obligation to repair in clause 6 does not apply.

- (d) If CHEP considers the Hirer is in breach, has breached or is about to breach these terms, CHEP has the right to immediate possession of all CHEP equipment (including, the Equipment) (**CHEP Equipment**), whether on hire or not, and may take possession of any CHEP Equipment immediately and without notice to any person. Otherwise, CHEP may at any time serve upon the Hirer notice to return all CHEP Equipment on the day specified in the notice or the day of service (whichever is later). In either case the Hirer shall return to CHEP the Quantity of Equipment on Hire and any other CHEP Equipment in their possession. The Hirer grants to CHEP an irrevocable licence to enter property occupied by the Hirer at any time and to take any steps CHEP considers reasonably necessary or appropriate to obtain possession of CHEP Equipment. The Hirer must pay CHEP's actual costs of obtaining possession of CHEP Equipment. CHEP may credit the Hirer's Account with Equipment so recovered. If CHEP takes possession of any CHEP Equipment which the Hirer demonstrates to CHEP's satisfaction was then on hire to the Hirer, CHEP will, at the Hirer's request, make available the same quantity of Equipment to the Hirer, if the Hirer demonstrates to CHEP's satisfaction that the Hirer would then have no more Equipment than its Quantity on Hire and that the Hirer is not in breach or about to breach these terms. The Hirer shall not be entitled to any damages or compensation from CHEP for any loss suffered by reason of the repossession of CHEP Equipment.

- (e) In addition to the foregoing provisions of this clause 5, pursuant to the Personal Property Securities Act 1999 (the **PPSA Act**):

- (1) the Hirer acknowledges that CHEP is entitled to register a security interest in the Equipment, including any proceeds of sale, pursuant to the PPSA Act; and
- (2) the Hirer agrees that nothing in sections 114(1)(a), 133 and 134 of the PPSA Act shall apply to these terms, or the security under these terms, and waives the Hirer's rights under sections 121 and 148 of the PPSA Act.

6 CONDITION AND SUITABILITY OF EQUIPMENT

The Hirer acknowledges and represents to CHEP that it is the Hirer's responsibility to inspect and check the condition, state of repair and fitness for the Hirer's particular purpose for the Equipment immediately before taking possession of the Equipment. The Hirer acknowledges that CHEP gives no warranty or representation about the condition, state of repair or fitness for purpose of any item of Equipment. The Hirer shall not be entitled to damages as compensation from CHEP for any indirect or consequential loss of profit or revenue, loss of production or loss of contract by reason of the condition of the Equipment. If any Equipment on hire is damaged, the Hirer must immediately return it to CHEP. To the extent that the damage has resulted from what CHEP in its sole discretion considers to be fair wear and tear, CHEP will not charge for the repair, but otherwise the Hirer must either pay CHEP an amount equal to a reasonable charge for repairing the Equipment or if CHEP considers the extent of the damage to the Equipment is such that the Equipment should not be repaired, then the Hirer must pay CHEP compensation in an amount equal to the then replacement cost, as advised by CHEP, of that quantity of new Equipment.

7 RELEASE AND INDEMNITY

Except where legislation which cannot be excluded would make this clause illegal, or where the inclusion of this clause would otherwise make CHEP liable to a penalty:

- (a) the Hirer releases CHEP from any claim that is made against CHEP for damages or otherwise in respect of:
- (1) **any loss or damage arising from negligence** or otherwise caused directly or indirectly by or arising out of the use or condition of any Equipment while on hire to the Hirer or in its possession;
- (2) the exercise by CHEP of any of its rights (including, but not limited to, under clause 5(d), clause 16 and clause 27); or
- (3) the performance or delay in performance by CHEP of any of its obligations to the Hirer.
- (b) the Hirer indemnifies CHEP and agrees to keep CHEP indemnified against any and all claims, demands, losses, damages and costs that CHEP incurs or may incur as a result of or arising out of:
- (1) a breach by the Hirer of any of the Hirer's obligations under these terms;
- (2) any act of default or omission or wilful conduct or negligence by the Hirer;
- (3) the exercise by CHEP of any of its rights (including, but not limited to, under clause 5(d), clause 16 and clause 27);
- (4) the authorisation by the Hirer of any action or activity which infringes copyright in the Transaction Information; or
- (5) any use of the Access Service or the Transaction Information which is outside the limited licences granted in these terms.

These indemnities include all costs and expenses incurred by CHEP in investigating or defending the claim including legal costs on a solicitor and own client basis.

8 TRANSPORTATION & DELIVERY

- (a) Hiring charges do not include any transportation by CHEP of Equipment. Unless CHEP agrees otherwise, the Hirer must pay an additional fee for any transportation as agreed between the parties.
- (b) The Hirer shall not be entitled to damages or compensation from CHEP for any late delivery or non-delivery of Equipment.

9 USE OR INTERFERENCE WITH MARKS

The Hirer must not use, interfere with, remove, cover up or deface any trade mark, name, trade name, device or any other identifying mark, feature or printing on any Equipment or Transaction Information.

10 RETURN IN FOLDED STATE

The Hirer must ensure that all Foldable Containers which are collected by CHEP from the Hirer or delivered by the Hirer to CHEP are in a Folded State and stacked securely. If the Hirer fails for any reason to return a Foldable Container in a Folded State, the Hirer must pay CHEP the fee specified by CHEP from time to time for each Foldable Container that was not returned in a Folded State.

11 HANDLING

All Equipment must be used and operated by the Hirer in a safe and proper manner and strictly in accordance with any handling instructions or guidelines and manufacturer warranty requirements applicable to that type of Equipment as published in CHEP's product brochures from time to time, copies of which are available

by contacting the CHEP Customer Service Centre on (09) 279-2929 or (0800) 652-437.

12 CONTAMINATION

- (a) The Hirer must not permit or cause any Equipment to, and must take all reasonable steps to ensure that Equipment does not, become in CHEP's opinion contaminated or rendered unusable for any reason including, but not limited to, by toxic, radioactive or any other dangerous substance, pest or chemical. If any Equipment becomes contaminated or is rendered unusable, the Hirer must notify CHEP immediately. CHEP may, in its sole discretion, either:
- (1) direct the Hirer to return the contaminated or unusable Equipment to a specified Service Centre, and clause 5(c) shall apply; or
 - (2) direct the Hirer to dispose of or destroy that Equipment at the Hirer's cost in an appropriate manner as required by law and provide to CHEP reasonably satisfactory evidence that this has been done and clause 5(c) shall apply.
- (b) The Hirer must remove all liners, labels, wrapping and securing materials associated with the shipment of loaded Equipment unless directed otherwise by CHEP or the Receiving Party. CHEP may charge the Hirer for removing any of those items and for cleaning or removing any debris or spilt substances from Equipment returned to CHEP at the fee specified from time to time.

13 EXCLUSION OF WARRANTIES

- (a) All warranties and conditions that are capable of exclusion and would, apart from this provision, form part of these terms, are expressly excluded. Except where by legislation liability may not be limited, or where a limitation of liability would otherwise render CHEP liable to a penalty, CHEP's liability for breach of terms which cannot be excluded is limited to replacement or repair, at CHEP's option, of the Equipment in question or supply of equivalent Equipment.
- (b) Where the hiring or lending of Equipment would otherwise be subject to the provisions of the Consumer Guarantees Act 1993, the Hirer agrees that all hire services supplied are supplied to the Hirer for business purposes in terms of sections 2 and 43 of the Consumer Guarantees Act 1993 and that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply to the Hirer.

14 RISK AND INSURANCE

- (a) Notwithstanding clause 5(a), the risk of loss or damage to, or deterioration of the Equipment due to any cause whatsoever, shall be borne by the Hirer at all times while it is on hire to the Hirer.
- (b) The Hirer shall fully insure all Equipment while it is on hire to the Hirer.

15 SERVICE CENTRES

The Hirer must only take an Issue or Return an item of Equipment from or to a Service Centre that is authorised by CHEP to issue and accept that type of Equipment. A list of authorised Service Centres will be published from time to time in CHEP's product brochures, copies of which are available by contacting the CHEP Customer Service Centre on (09) 279-2929 or (0800) 652-437.

16 TERMINATION

CHEP may at any time give the Hirer written notice terminating the hire of Equipment and further or alternatively any licence granted under these terms. On receipt of a written notice terminating the hire of Equipment, the Hirer must deliver to CHEP (at no cost to CHEP) within 7 days of the date the notice is given, or by any later

date specified in the notice, all Equipment held by the Hirer. CHEP may treat any Equipment not so delivered as Lost Equipment for the purposes of clause 5(b)(2), or may seek to recover the Equipment from the Hirer. If CHEP chooses to recover the Equipment, the Hirer must indemnify CHEP for its costs of recovery, including legal costs on a solicitor and own client basis. The Hirer grants CHEP an irrevocable licence to enter property occupied by the Hirer in order to recover any Equipment in accordance with this clause 16. The Hirer's obligations under this clause survive termination of the hire of the Equipment.

17 PROPRIETARY RIGHTS

- (a) The Hirer agrees and acknowledges that:
- (1) copyright subsists in New Zealand in Transaction Information as an original literary work;
 - (2) CHEP is the owner of all Intellectual Property Rights, and is entitled to any Confidential Information, in the Transaction Information; and
 - (3) the Transaction Information contains:
 - (i) Electronic Rights Management Information; and
 - (ii) one or more Technological Protection Measures.
- (b) CHEP reserves all rights in its Confidential Information, Intellectual Property Rights and Transaction Information not expressly granted to the Hirer in these terms.

18 LICENCE

- (a) CHEP hereby grants the Hirer a limited non-transferable non-exclusive royalty-free licence to gain access to and use the Access Service in New Zealand but only:
- (1) for the purpose of receiving Transaction Information; and
 - (2) solely for Normal Use.
- (b) CHEP grants the Hirer a limited non-transferable non-exclusive royalty-free licence in New Zealand to make:
- (1) a copy of the Transaction Information in the same format as supplied to the Hirer by CHEP, for archival (including back-up), internal record keeping, auditing or financial accounting purposes, provided that Hirer does not remove or alter any Electronic Rights Management Information or any Technological Protection Measure; and
 - (2) a copy of the Transaction Information in paper format produced through the normal operation of a computer program, provided that the Hirer does not remove or alter any Electronic Rights Management Information.
- (c) The limited licences granted to the Hirer by CHEP in these terms do not permit the Hirer:
- (1) to reproduce the Transaction Information (or any substantial part thereof) otherwise than in accordance with the limited licence granted to Hirer by clause 18.(b) of these terms;
 - (2) to Communicate the Transaction Information (or any substantial part of it) to the public except:
 - (A) to CHEP;
 - (B) to the Hirer's legal or accounting advisers or auditors;
 - (C) to the Hirer's related companies;
 - (D) to pallet consultants for the sole purpose of providing pallet administration and reconciliation services to the Hirer; or

- (E) in respect of a particular item of Transaction Information, to the counterparty to the transaction to which that item of Transaction Information relates;
- (3) to alter or remove any Electronic Rights Management Information or any Technological Protection Measure;
- (4) to make an adaptation of the Transaction Information; or
- (5) to do anything outside New Zealand in relation to the Transaction Information.

19 USE OF ACCESS SERVICE

The Hirer must comply with all requirements concerning the use of the Access Service issued by CHEP from time to time.

20 RECORD KEEPING AND AUDIT

- (a) The Hirer must keep and make available to CHEP on demand accurate records of its use of the Access Service and the Transaction Information. If CHEP requests, the Hirer must provide to CHEP (at CHEP's reasonable expense) a copy of all or any part of such records.
- (b) The Hirer authorises CHEP to generate, maintain and use information concerning or relating to the Hirer's use of the Access Service and Transaction Information issued or released to the Hirer.

21 GIVING NOTICES

- (a) A notice to be given or an invoice to be issued by CHEP under these terms may be given or issued by:
 - (1) leaving it at or posting it to the Hirer's address last notified in writing to CHEP, and is taken as given at the time it is left or, if posted, on the next business day after it is posted; or
 - (2) sending it over the internet to the Hirer's email address last notified in writing to CHEP, and is taken as given:
 - (A) if sent prior to 4.00pm, at the close of that business day; or
 - (B) if sent after 4.00pm, at the commencement of the next business day; or
 - (3) sending it by facsimile to the Hirer's facsimile number last notified in writing to CHEP, and is taken as given when transmitted to the Hirer.
- (b) A facsimile is regarded as legible unless the Hirer telephones CHEP within 4 normal business hours (assuming normal business hours are between 9.00am and 5.30pm on any business day) after the transmission is received or regarded as received and informs the sender that it is not legible.

22 REPLACEMENT OF PREVIOUS TERMS

These terms replace any other terms previously in force between CHEP and the Hirer. By hiring additional Equipment from CHEP,

taking a Transfer of Equipment onto the Hirer's Account, or paying the next invoice after notification to it by CHEP of the new terms, the Hirer accepts and is bound by these terms in respect of all Equipment in the Hirer's possession or control as from the date specified in such notification. No variation of these terms binds either party unless confirmed by a CHEP Authorised Person in writing or made under clause 24.

23 NO ASSIGNMENT

The Hirer may not assign its rights under these terms without CHEP's prior written consent.

24 CHANGES TO TERMS

CHEP may change these terms (including, but not limited to, any charges payable by the Hirer) at any time. CHEP must give the Hirer written notice, signed by a CHEP Authorised Person, of the changes. By hiring additional Equipment from CHEP, taking a Transfer of Equipment onto the Hirer's Account, or paying the next invoice after notification of any changes, the Hirer accepts and is bound by the changed terms in respect of all Equipment in the Hirer's possession or control as from the date specified in such notification. If the Hirer does not accept the change, it must immediately notify CHEP to close its Account and within 7 days return all Equipment on hire.

25 SEVERANCE

Any provision or part of a provision, or the application of any provision or part of a provision, of these terms which is void, illegal or unenforceable, or which would or may render CHEP liable to a penalty if it were included as part of these terms in any jurisdiction, must be severed from these terms. Any severance does not affect the validity, legality or enforceability of that provision or the relevant part of that provision in any other jurisdiction or of the remaining provisions in that or any other jurisdiction.

26 NO WAIVER

Waiver by CHEP of a breach of these terms or of any right or power arising on a breach of these terms must be in writing and signed by a CHEP Authorised Person. A right or power created or arising on a breach of these terms is not waived by any failure to exercise or delay in exercising, or a partial exercise of, that or any other right or power.

27 STOCK-TAKES

The Hirer must allow CHEP, within 7 days of request of CHEP and during normal business hours to enter premises occupied by the Hirer to conduct a stock-take of Equipment, and must provide reasonable assistance to CHEP to enable CHEP to carry out the stock-take. The Hirer grants CHEP an irrevocable licence to enter property occupied by the Hirer in order to carry out stock-takes in accordance with this clause 27.

28 GOVERNING LAW

These terms will be governed by and will be construed according to the laws of New Zealand.



A Brambles Company

TERMS OF SALE

1 DEFINITIONS

In these terms:

CHEP means Brambles New Zealand Limited (and its successors and assigns) trading as CHEP New Zealand;

CHEP Authorised Person means an authorised person of CHEP as notified by CHEP to the Customer from time to time;

Customer means any person, firm or corporation to whom Goods are sold by CHEP and its legal personal representatives, successors and permitted assigns;

Goods means any goods sold by CHEP from time to time and includes each part of those goods; and

Manufacturer means any person, firm or corporation from whom CHEP obtains either Goods or the materials used to construct Goods, and its legal personal representatives, successors and permitted assigns.

2 APPLICATION OF THESE TERMS

(a) Each order or request by the Customer to purchase Goods from CHEP constitutes an offer by the Customer to acquire the Goods on these terms. A contract is made only on acceptance of the order or request by CHEP, which may be by the supply of all or part of the Goods ordered by the Customer.

(b) Where CHEP supplies all or part of the Goods ordered or requested by a Customer, these terms are incorporated into that order or request and every subsequent order or request for the purchase of Goods by that Customer from CHEP.

3 MANUFACTURER

(a) The Customer acknowledges that:

(1) CHEP is dependent on the Manufacturer for quotations, supply, delivery dates, specifications and all other things relevant to the Goods or, where the Goods are manufactured by CHEP, to the materials used for their manufacture; and

(2) the Manufacturer may reserve the right to alter the design or specifications of Goods or materials supplied to CHEP, and may deliver Goods or materials to CHEP which vary from their specifications.

(b) Subject to clause 9, CHEP is not in any way liable to the Customer for any liability which may arise from changes to Goods that are contracted to be supplied, or failure to meet specifications, where the changes or failure are caused by the Manufacturer implementing the changes in or varying the specifications of the Goods or materials delivered by the Manufacturer to CHEP.

(c) Subject to clause 9, CHEP is not liable to the Customer for any information or other thing received from a Manufacturer and passed on to the Customer.

4 PAYMENT TERMS

(a) The Customer must pay to CHEP the full purchase price for the Goods, shown on the invoice given by CHEP to the Customer, within 7 days of the date of the invoice, without reduction or deferment on account of any claim, counterclaim or set-off.

(b) If the Customer does not pay the money owed within 7 days of the date of the invoice, the Customer must pay interest on the overdue amount at a rate of 2% higher than the Bank of New Zealand business overdraft prime lending rate from time to time calculated on the overdue

sum from the date of the invoice until payment in full. If any amount becomes overdue, all amounts recorded on the Customer's account are deemed to be immediately due and payable. The Customer must pay all costs and expenses (including legal costs on a solicitor and own client basis) which may be incurred by CHEP in the attempted recovery of the overdue amounts.

(c) Notwithstanding any other clause in these terms, to the extent that any supply made under or in connection with these terms is a taxable supply (as defined by the Goods and Services Tax Act 1985), the Hirer must pay to CHEP, in addition to the consideration provided for under these terms for that supply (unless it expressly includes GST) an amount (**Additional Amount**) equal to GST charged on that supply. The Hirer must pay to CHEP the Additional Amount at the same time as the consideration to which it is referable.

5 PROPERTY IN GOODS PURCHASED

(a) Unless otherwise agreed in writing by CHEP, no legal or equitable title to the Goods passes to the Customer until the Customer has paid to CHEP:

- (1) the full price for the Goods; and
- (2) the purchase price for all Goods previously supplied by CHEP to the Customer.

(b) Until the legal and equitable title to the Goods passes to the Customer, the Customer:

- (1) holds the goods as bailee of CHEP returnable at the will of CHEP and without prior demand by CHEP;
- (2) without limiting clause 5(b)(1), on demand by CHEP, must immediately deliver up the Goods to CHEP;
- (3) authorises CHEP to enter the premises where the Goods are stored for the purposes of taking possession of them; and
- (4) must not purport to sell, transfer, assign or otherwise dispose of any right, title or interest in the Goods to any other person. However, until CHEP exercises its right to recover possession of the Goods, the Customer may, but only to the extent necessary for the ordinary course of the Customer's business, deal with the Goods and pass title to a purchaser of the Goods.

(c) The Customer must indemnify CHEP for any damage arising from or in connection with the recovery of possession of the Goods by CHEP.

(d) Until payment in full for the Goods and of all other amounts owing by the Customer to CHEP, if the Customer sells any of the Goods:

- (1) the Customer must:
 - (a) deposit all proceeds of sale in a separate and identifiable bank account;
 - (b) not mix the proceeds with any other money; and
 - (c) account to CHEP for the proceeds; and

(2) CHEP may trace all proceeds of sale of the Goods received by the Customer through the relevant account or any other account maintained by the Customer.

(e) In addition to the foregoing provisions of this clause 5, pursuant to the Personal Property Securities Act 1999 (the **PPSA Act**):

- (1) the Customer acknowledges that CHEP is entitled to register a security interest in the Goods, including any proceeds of sale, pursuant to the PPSA Act; and

- (2) the Customer agrees that nothing in sections 114(1)(a), 133 and 134 of the PPSA Act shall apply to these terms, or the security under these terms, and waives the Customer's rights under sections 121 and 148 of the PPSA Act.

6 DELIVERY AND RISK

- (a) Subject to clause 6(b) and clause 6(c), risk of loss or damage to the Goods passes to the Customer when the Goods are placed at the Customer's disposal at CHEP's premises.
- (b) CHEP may agree to arrange carriage of the Goods for the Customer, but will only do so as the Customer's agent. In that case, delivery will occur and risk will pass when the Goods are placed at the carrier's disposal. The Customer must pay CHEP's charges for carriage incurred on the Customer's behalf.
- (c) CHEP may agree to sell and deliver the Goods to the Customer without making a separate charge for delivery. In that event, delivery occurs and risk passes to the Customer when:
- (1) the Goods are left at the premises which the Customer nominated; and
- (2) without limiting any other means, an acknowledgment of delivery is executed by a person apparently employed by the occupier of the premises. An executed acknowledgment is conclusive evidence of delivery.
- (d) The Customer acknowledges that any agreed or stated delivery period is an indication only of the anticipated period for delivery of the Goods and that such an agreement does not make time of the essence of these terms. The Customer is not relieved of the obligation to accept the Goods because of any delay in delivery.
- (e) If CHEP decides that it is or may be unable to deliver the Goods within a reasonable time or at all, CHEP may at its sole discretion terminate the agreement with the Customer and the Customer will have no claim against CHEP for any damage, loss or expense.
- (f) CHEP reserves the right to deliver the Goods by instalments and to invoice the Customer for each instalment of Goods delivered where, in the opinion of CHEP, it is reasonable to do so. Failure by the Customer to pay for any instalments will entitle CHEP to withhold delivery of any remaining Goods.

7 DESCRIPTION OF GOODS

- (a) Subject to clause 9, CHEP has no obligation to the Customer in respect of the quality, condition, performance, fitness for a particular purpose or any other characteristic of the Goods.
- (b) If the Customer requests CHEP to manufacture the Goods and CHEP provides to the Customer a design, drawing or a sample of the Goods to be manufactured, failure by the Customer to notify CHEP within 5 business days of delivery of any inconsistency between the Customer's specifications for the Goods or any other requirements of the Customer and the design, drawing or sample will be deemed to be an acceptance by the Customer of the Goods having been manufactured in accordance with the design, drawing or sample.
- (c) The Customer acknowledges that the specifications for the Goods assume variations and tolerances dependent on the nature of materials and methods of construction used. The Customer acknowledges that it is the Customer's obligation to enquire prior to entering into these terms as to variation and tolerance levels for the Goods which may be relevant to the Customer's requirements and how they may be affected by differences in use or wear and tear on the Goods.

8 SALE OF PALLETS

- (a) The Customer acknowledges that CHEP does not sell pallets painted with its distinctive blue colour and marked with the "CHEP" logo. When a Customer purchases pallets from CHEP, unless they are made especially for the Customer, the Customer acknowledges that the pallets may be second-hand CHEP pallets with the blue colour over sprayed with white or another colour.
- (b) Except where pallets sold by CHEP are described as "new":
- CHEP does not give any warranties as to the history of use, age, condition or state of repair of the pallets; and
- the Customer acknowledges that the pallets may be damaged and that it must inspect all pallets purchased and rely on its own skill and judgment as to the suitability of the pallets for any use to which they may be put.
- (c) The Customer acknowledges that no food or other produce for personal use or consumption should be brought into contact with pallets.

9 EXCLUSION OF WARRANTIES

- (a) All warranties and conditions that are capable of exclusion and would, apart from this provision, form part of these terms, are expressly excluded. Except where by legislation liability may not be limited, or where a limitation of liability would otherwise render CHEP liable to a penalty, CHEP's liability for breach of terms which cannot be excluded is limited to replacement or repair, at CHEP's option, of the Goods or payment of the costs of replacing or repairing the Goods.
- (b) Subject to clause 9(a), except in respect of legislation which cannot be excluded because it would make this clause illegal, or in circumstances where the inclusion of this clause would otherwise make CHEP liable to a penalty:
- (1) the Customer releases CHEP from any claim that is made against CHEP for damages or otherwise in respect of:
- (A) any loss, damage, death or injury arising from negligence or otherwise caused directly or indirectly by or arising out of the use or condition of any Goods sold to the Customer;
- (B) the exercise by CHEP of any of its rights (including, but not limited to, under clause 5(b)); or
- (C) the performance or delay in performance by CHEP of any of its obligations to the Customer.
- (2) The Customer indemnifies CHEP and agrees to keep CHEP indemnified against any and all claims, demands, losses, damages and costs that CHEP incurs or may incur as a result of or arising out of:
- (A) a breach by the Customer of any of the Customer's obligations under these terms;
- (B) any act of default or omission or wilful conduct or negligence by the Customer;
- (C) the exercise by CHEP of any of its rights (including, but not limited to, under clause 5(b)).

This indemnity includes all costs and expenses incurred by CHEP in investigating or defending the claims, including legal costs on a solicitor and own client basis.

10 FORCE MAJEURE

CHEP is not liable for any delay, breach or default under these terms in circumstances where the delay, breach or default is caused by any thing beyond CHEP's control, whether or not CHEP may have been able to foresee the occurrence of the thing or had taken steps to avoid any of its consequences. During any delay, CHEP's obligations under its agreement with the Customer are suspended.

11 REPLACEMENT OF PREVIOUS TERMS

These terms replace any other terms of sale previously in force between CHEP and the Customer. By purchasing Goods from CHEP, or paying the next invoice after notification to it by CHEP of the new terms, the Hirer accepts and is bound by these terms as from the date specified in such notification. No variation of these terms binds either party unless confirmed by a CHEP Authorised Person in writing.

12 CHANGES TO TERMS

CHEP may change these terms at any time. CHEP must give the Customer written notice, signed by a CHEP Authorised Person, of the changes. By ordering additional Goods from CHEP after notification of any changes, the Customer accepts and is bound by the changed terms in respect of all purchases of Goods as from the date specified in such notification.

13 GIVING NOTICES

- (a) A notice to be given or an invoice to be issued by CHEP under these terms may be given or issued by:
- (1) leaving it at or posting it to the Customer's address last notified in writing to CHEP and is taken as given at the time it is left or, if posted, on the next business day after it is posted;
 - (2) sending it over the internet to the Customer's email address last notified in writing to CHEP, and is taken as given:
 - (A) if sent prior to 4.00pm, at the close of that business day; or
 - (B) if sent after 4.00pm, at the commencement of the next business day; or
 - (3) sending it by facsimile to the Customer's facsimile number last notified in writing to CHEP, and is taken as given when transmitted to the Customer.
- (b) A facsimile is regarded as legible unless the Hirer telephones CHEP within 4 normal business hours (assuming normal business hours are between 9.00am and 5.30pm on any business day) after the transmission is received or regarded as received and informs the sender that it is not legible.

14 SEVERANCE

Any provision or part of a provision, or the application of any provision or part of a provision, of these terms which is void, illegal or unenforceable, or which would or may render CHEP liable to a penalty if it were included as part of these terms in any jurisdiction, must be severed from these terms. Any severance does not affect the validity, legality or enforceability of that provision or the relevant part of that provision in any other jurisdiction or of the remaining provisions in that or any other jurisdiction.

15 NO WAIVER

Waiver by CHEP of a breach of these terms or of any right or power arising on a breach of these terms must be in writing and signed by a CHEP Authorised Person. A right or power created or arising on a breach of these terms is not waived by any failure to exercise or delay in exercising, or a partial exercise of, that or any other right or power.

16 NO ASSIGNMENT

The Customer may not assign its rights under these terms without CHEP's prior written consent.

17 TERMINATION

CHEP may at any time give the Customer written notice terminating these terms.

18 GOVERNING LAW

These terms will be governed by and will be construed according to the laws of New Zealand.