

Your Number One Shipping Container Solutions & Services Provider

HIRE / STORAGE TERMS AND CONDITIONS

- 1.1 "Minimum Hire / Storage Period" means the least amount of time that the Container may be hired by the Customer, as described in this Hire Contract.
- 1.2 This contract is a commercial chattels lease and does not create any lease or tenancy subject to any state residential tenancies act or property law act.
- 1.3 Charges shall commence from the time the Container departs from ERS Johnson's premises, and will continue until the return of the Container thereto, and/or until the expiry of any applicable Minimum Hire Period, whichever last occurs.
- 1.4 No allowance whatsoever can be made for time during which the Container is not in use for any reason, unless ERS Johnson confirms special prior arrangements in writing. In the event of any malfunction of, or fault in, the Container, provided the Customer notifies ERS Johnson immediately, Charges will not be payable during the time the Container is not operational, unless the condition is due to negligence or misuse on the part of or attributable to the Customer.
- 1.5 If the Customer wishes to terminate this contract:
 - (a) it must provide ERS Johnson two (2) weeks' notice in writing. The notice period begins from the date of receipt of the notice by ERS Johnson; and/or
 - (b) before the expiry of the Minimum Hire Period, the Customer must pay to ERS Johnson the remainder of the Charges which would otherwise have been payable to ERS Johnson for the duration of the Minimum Hire Period.
- 1.6 The Container is, and will at all times remain, the absolute property of ERS Johnson, however the Customer accepts full responsibility for:
 - (a) the safekeeping of the Container, and indemnifies ERS Johnson for all loss, theft, or damage to the Container, howsoever caused, and without limiting the generality of the foregoing, whether or not such loss, theft, or damage is attributable to any negligence, failure, or omission of the Customer (including, but not limited to, misuse, abuse or overloading, mysterious disappearance, wrongful conversion, breach of this contract, violation of any laws, normal servicing, location, use, loading, unloading or transportation on or over water, wharves, bridges or vessels or any kind, exposure to any corrosive substances (including caustic, cyanide, acids, salt water, etc.), theft where not reasonably locked and secured, transportation (except where transported by ERS Johnson); and
 - (b) shall keep ERS Johnson indemnified against all liability in respect of all actions, proceedings, claims, damages, costs and expenses in respect of any injury to persons, damage to property, or otherwise arising out of the use of the Container during the hire of the Container and whether or not arising from any negligence, failure or omission of the Customer or any other persons.
- 1.7 The Customer will insure, or self-insure (as per clause 19 of the GENERAL TERMS AND CONDITIONS), ERS Johnson's interest in the Container against physical loss or damage including, but not limited to, the perils of accident, fire, theft, burglary, storm, collision, and all other usual risks and will effect adequate Public Liability Insurance (\$20M) covering any loss, damage or injury to property arising out of the Container, including to note the interest of ERS Johnson and its financier on any insurance policy. Furthermore, the Customer will not use the Container, nor permit it to be used, in such a manner as would permit an insurer to decline any claim.
- 1.8 The Customer is not authorised to pledge ERS Johnson's credit for repairs to the Container, or to create a lien over the Container in respect of any repairs.
- 1.9 The Customer shall:
 - (a) inspect the Container on Delivery, to satisfy itself as to the condition, specifications, quality and fitness of the Container for its intended purpose; and
 - (b) ensure that the Container is used:
 - (i) only for its intended purpose, and not for any illegal purpose, or any use which would cause damage thereto, or store any illegal, prohibited, or unprotected corrosive/explosive substances or bulk commodities in, or on, the Container which may corrode, oxidise, explode, dent, puncture, contaminate, stain or damage the interior or exterior of the Container; and
 - (ii) maintained, moved and/or stored safely, strictly in accordance with the law (including all work health and safety (WHS) laws) and in accordance with the instructions and recommendations of the manufacturer of the Container, or in accordance with any specific instructions of ERS Johnson.
 - (c) ensure that:
 - (i) there is no smoking, open flames or use of drugs in the Container; and
 - (ii) no holes, hooks, screws or tape is put on the walls, roof or floor of the Container without the express permission of ERS Johnson; and
 - (iii) their belongings placed inside the Container are adequately insured; and
 - (d) not carry out repairs, maintenance, adjustments, or disassemble, alter (including making any structural alterations) make any additions to the Container, remove any signage, or in any other manner interfere with the Container, without the prior written consent of ERS Johnson; and
 - (e) at their own expense, keep and maintain the Container in proper working order and good and substantial repair; and
 - (f) notify ERS Johnson immediately by telephone:
 - (i) of the full circumstances of any defect, malfunction or accident (including any accident resulting in the injury to persons or damage to the Container or property). The Customer is not absolved from the requirements to safeguard the Container by giving such notification, and must cease use of the Container if such use would in any way aggravate the defect or otherwise prejudicially affect the Container; and
 - (ii) in the event the Customer wishes to relocate the Container. If ERS Johnson consents to such, the relocation of the Container must be on the terms and conditions specified in that consent; and
 - (g) not permit the Container, or any part thereof, to be used by any other party for any other purpose, without the express written approval of ERS Johnson; and
 - (h) not exceed the recommended or legal load and capacity limits of the Container; and
 - (i) keep the Container in their own possession and control, and shall not sell, transfer, create a security interest in, sign or sub-lease the Container, or assign the benefit of this contract, nor shall the Customer under any circumstances, mortgage, pledge or otherwise deal with the Container, or be entitled to lien over the Container; and
 - (j) not fix the Container in such a manner as to make it legally a fixture forming part of any freehold; and
 - (k) not move the Container from the nominated site without the express written approval of ERS Johnson, and advise ERS Johnson of the location of the Container, on request thereby; and
- (l) on expiration or termination of this contract, have the Container ready for collection within forty-eight (48) hours (complete with all parts, components and accessories), clean and in good, serviceable condition as delivered, fair wear and tear accepted. If the Customer fails to adhere to this sub-clause ERS Johnson shall be entitled to charge the Customer additionally until such time as the Container is ready for collection and/or retake possession of the Container, including any personal property of the Customer stored therein (and in this instance clause 26.2 of the GENERAL TERMS AND CONDITIONS (attached) shall apply to such personal property); and
- (m) grant ERS Johnson (or ERS Johnson's agent) the right to (as an invitee of the Customer) enter upon and into the nominated site or any other land and premises owned, occupied or used by the Customer, or any premises where the Container is situated:
 - (i) at all reasonable times to view the state thereof, provided ERS Johnson gives the Customer notice of at least twenty-four (24) hours of its intention to do so; or
 - (ii) to take possession thereof, without being responsible for any damage thereby caused, on the expiration or termination of this contract.
- 1.10 Immediately on request by ERS Johnson, the Customer will pay:
 - (a) the new list price of any Container, accessories, parts or components (including but not limited to, keys) that are, for whatever reason, lost, destroyed, written off or not returned to ERS Johnson; and
 - (b) all costs incurred in cleaning the Container (including, where applicable, cost of removal of contents); and
 - (c) the cost of repairing any damage to the Container caused by:
 - (i) the ordinary use of the Container up to an amount equal to ten percent (10%) of the new list price of the Container; or
 - (ii) wilful or negligent actions of the Customer, or any agent or employee of the Customer; or
 - (iii) vandalism, or (in ERS Johnson's reasonable opinion) in any way whatsoever other than by the ordinary use of the Container by the Customer.
 - (d) the cost of fuels, consumables and/or components (light bulbs, batteries, etc.) provided by ERS Johnson, and used by the Customer; and
 - (e) any costs incurred by ERS Johnson in repossessing the Container; and
 - (f) any lost revenue which ERS Johnson would otherwise be entitled to under this, or any other, contract for the sale or hire of the Container; and
 - (g) any insurance excess payable in relation to a claim made by either the Customer or ERS Johnson in relation to any damage caused by, or to, the Container whilst the same is hired by the Customer, irrespective of whether charged by the Customer's insurers or ERS Johnson's; and
 - (h) any costs and/or expenses incurred by ERS Johnson in making good any injury caused to any land or to the property of any third party by the Delivery or repossession of the Container.
- 1.11 In the event of premature termination of this contract (either by notification, or breach, by the Customer), the Customer shall be responsible for the immediate payment of the following sums:
 - (a) all Charges due and payable up to the date of termination; and
 - (b) all other sums owing by the Customer under this contract as a result of their breach of this contract and its termination; and
 - (c) liquidated damages for the loss of bargain; and
 - (d) all payments made, or due and payable, to ERS Johnson shall be deemed as part of the Charges.
- 1.12 Only to the extent that the hire of the Container exceeds a twelve (12) month contract term (or a six (6) month contract term with the right of renewal), shall clause 26 of the GENERAL TERMS AND CONDITIONS apply, and this contract a security agreement for the purposes of PPSA generally, and in particular Section 20.
- 1.13 Upon expiry of the hire of the Container, provided the Customer has made full payment of all monies payable and fulfilled their obligations under this contract, the Customer may enter into a separate PURCHASE CONTRACT to acquire ownership of the Container by payment to ERS Johnson of the specified amount.
- 1.14 All Goods that are to be stored under this agreement shall be tallied into and out of storage and if the Customer (or the Customer's representative) is not present at the time of receipt or delivery of those Goods, as the case may be, then ERS Johnson's tally shall be accepted as final.
- 1.15 The Customer acknowledges and agrees that (unless specifically advised to ERS Johnson) the quality, quantity and condition of the contents of any packages tendered for storage are generally unknown to ERS Johnson.
- 1.16 The Customer shall ensure that all Goods (and/or containers in which the Goods are packaged) tendered for storage shall be clearly, distinctively, and indelibly branded.
- 1.17 The Customer shall immediately notify ERS Johnson of any change of the ownership of any Goods which are stored on the Customer's behalf under this agreement.
- 1.18 ERS Johnson reserves the right at any time to require the removal of any Goods held in storage on the Customer's behalf by giving not less than one weeks' notice to the Customer that they wish them to do so.
- 1.19 The Customer shall on request by ERS Johnson provide samples of the signature(s) of any person(s) entitled to uplift the Goods from storage.
- 1.20 The Customer agrees to give ERS Johnson at least forty-eight (48) hours of their intent to remove the Goods from storage. In the event the Customer fails to give such notice then ERS Johnson may at its sole discretion agree to facilitate the immediate removal of the Goods but shall be entitled to charge the Customer an additional fee for so doing.
- 1.21 An inward receipt in relation to Goods stored by ERS Johnson shall not constitute a document of title to those Goods, or be negotiable, nor shall any right of the Customer storing the Goods be assignable.
- 1.22 ERS Johnson shall store the Goods in bulk or in assorted lots at the convenience of ERS Johnson unless the Customer furnishes ERS Johnson, prior to, or at the time of the receipt of the Goods, a manifest showing marks, brands or sizes to be kept and accounted for separately and the class of storage desired in which case the Customer shall be liable for all additional costs incurred by ERS Johnson in facilitating the particular method of storage chosen.
- 1.23 The Customer shall be liable to ERS Johnson on demand and at any rate before removal of the Goods from storage, for all charges or fees in connection handling, loading or unloading, palletising, re-palletising, re-packing and/or delivery of the Goods, as the case may require, which charges and fees shall be in accordance with ERS Johnson's standard Price list, as amended from time to time, and in addition to any storage fee.