

TERMS OF HIRE

1. Definitions

In these terms:

Australian Consumer Law means Schedule 2 of the *Competition and Consumer Act 2010* (Cwlth) as amended from time to time, and any successor provisions;

CHEP means CHEP Australia Limited ABN 11 117 266 323 (and its successors and assigns);

CHEP Customer Portal means the website as CHEP may specify from time to time through which Hirers can access their account details and other resources;

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;

Consumer has the same meaning as in the Australian Consumer Law;

Equipment means items of property hired out or lent by CHEP from time to time;

Foldable Containers means items of Equipment that are designed to be used in an erected state and that 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 corporation to whom Equipment is hired out or lent by CHEP and that has one or more accounts with 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;

Invoice Period means the period covered by an invoice issued by CHEP to the Hirer;

Issue means when Equipment is hired or lent to the Hirer and the Equipment is dispatched to, or collected by, the Hirer;

Lost Equipment Compensation Amount means the compensation amount payable for Lost Equipment (as defined in clause 10(c)) as published on the CHEP Customer Portal from time to time;

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

Produce Container means any returnable hire container owned by CHEP that is lent or hired out by CHEP, branded with the CHEP name and designed and used to supply or transport Produce;

Quantity on Hire means, in respect of any day, the quantity of Equipment hired or lent by CHEP to the Hirer and, where the Hirer has more than one account with CHEP, means the quantity of Equipment hired or lent by CHEP to the Hirer on each of its accounts;

Return means when hired or lent Equipment is returned to CHEP in accordance with these terms;

Service means a service provided 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 collection and Return of Equipment, as notified to the Hirer in accordance with clause 15;

Standard Hire Rate means the daily hire rate for Equipment as published on the CHEP Customer Portal from time to time;

Standard Issue Rate means the rate for Issues of Equipment as published on the CHEP Customer Portal from time to time;

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; and

Transfer means the transfer of any Equipment from the Hirer's Quantity on Hire to another Hirer's Quantity on Hire, from one of the Hirer's Quantities on Hire to another of the Hirer's Quantities on Hire, or from another Hirer's Quantity on Hire to the Hirer's Quantity on Hire in accordance with these terms.

2. Hire of Equipment

Subject to these terms, CHEP will hire or lend Equipment to the Hirer for the charges agreed between CHEP and the Hirer.

3. Quantity on Hire

- (a) Equipment will be added to the Hirer's Quantity on Hire when:
- (1) Equipment is Issued to the Hirer;
 - (2) there is an approved Transfer of hired or lent Equipment to the Hirer from another Hirer; or
 - (3) there is an adjustment under these terms.
- (b) Equipment will be deducted from the Hirer's Quantity on Hire when:
- (1) hired Equipment is Returned to CHEP in accordance with clause 3(c);
 - (2) there is an approved Transfer of hired or lent Equipment by the Hirer to another Hirer; or
 - (3) there is an adjustment under these terms.
- (c) Subject to clause 10 and unless otherwise agreed by CHEP, an item of Equipment will only be recorded as Returned if it is returned to CHEP at a Service Centre authorised to accept that Equipment during that Service Centre's operating hours in accordance with clause 15.

4. Transfers of Equipment

- (a) The Hirer may only Transfer an item of Equipment to another Hirer if:
- (1) CHEP has been notified of the intended Transfer in a manner reasonably acceptable to CHEP;
 - (2) it has been established that the Transfer of that Equipment is accepted by the other Hirer;
 - (3) the other Hirer has an active account with CHEP (that is, an account that has not been suspended or revoked); and
 - (4) CHEP approves the Transfer.

CHEP may refuse to approve a Transfer in its reasonable discretion and in any event will refuse to approve any Transfer that occurred more than 180 days prior to the date that CHEP is notified of the Transfer, unless otherwise agreed by CHEP.

Variation by CHEP of a Hirer's Quantity on Hire or sending an invoice does not itself constitute approval of a Transfer.

- (b) The Hirer must not part with possession of any Equipment unless:
- (1) it is Returned to CHEP or collected by CHEP;
 - (2) it is Transferred to another Hirer; or
 - (3) the Hirer keeps and makes available to CHEP on demand documentation, electronic records or other control records reasonably acceptable to 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 consistent with these terms and subject to these terms to the extent of any inconsistency.
- (c) For the avoidance of doubt, the Hirer is responsible for all Equipment in the Hirer's Quantity on Hire or hired out or lent to it by CHEP whether that Equipment is in the Hirer's possession or not, and all Equipment in the Hirer's possession or control.
- (d) The Hirer acknowledges and agrees that, although CHEP may offer assistance for the management of disputes between Hirers through the CHEP Customer Portal, this assistance is limited to the making of recommendations only and is subject to receipt of the required information through, and the terms and conditions set out on, the CHEP Customer Portal from time to time.

5. Use of Equipment

The Hirer acknowledges and agrees that:

- (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 reasonable opinion contaminated, a risk to health or safety, rendered unusable, or damaged beyond economic repair for any reason including, but not limited to, by toxic, radioactive or any other dangerous substance, pest or chemical. If any Equipment becomes contaminated, a risk to health or safety, rendered unusable or damaged beyond economic repair, the Hirer must notify CHEP immediately. CHEP may, in addition to any other rights it may have, in its sole discretion, either:
- (1) direct the Hirer to Return the relevant Equipment to a specified Service Centre; 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 10(b) will apply;
- (b) at the time of Return of Equipment, the Hirer must remove all liners, labels, wrapping, securing materials and any other material or items on or attached to the Equipment unless directed otherwise by CHEP. CHEP may charge the Hirer a reasonable fee for removing any of those items and for cleaning or removing any debris or spill substances from Equipment Returned to CHEP;
- (c) all items of Equipment must be used and operated by the Hirer in a safe and proper manner and strictly in accordance with all laws, any applicable CHEP policies and procedures and any handling instructions or guidelines and manufacturer warranty requirements applicable to that type of Equipment;
- (d) Produce Containers must not be used for any purpose other than to store and transport fresh Produce, unless CHEP gives its prior written consent;
- (e) Produce Containers must not be re-used 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, unless CHEP gives its prior written consent; and
- (f) CHEP will only Issue Produce Containers of less than 100 litre capacity to the Hirer for use in full pallet quantities or such other quantities as CHEP determines from time to time.

6. Charges

- (a) The Hirer must pay:
- (1) the agreed charges in respect of each item of Equipment;
 - (2) the agreed charges for each Service;
 - (3) all other charges agreed by the Hirer and CHEP from time to time;
 - (4) any applicable taxes, imposts, levies, stamp or other duties; and
 - (5) any other amounts owing under these terms.
- (b) If the Hirer has not agreed specific charges with CHEP, the Hirer is taken to have agreed to the standard charges (including the Standard Hire Rate and Standard Issue Rate) for each item of Equipment, each Service and any other standard charges, which will be published on the CHEP Customer Portal from time to time.
- (c) The full agreed charges are payable by the Hirer for Equipment even if that Equipment is only in the Hirer's possession or control or on the Hirer's Quantity on Hire for part of a day.
- (d) The agreed charges do not (unless specifically agreed) include any fee for transportation by CHEP of any Equipment. Any transportation fees will be agreed separately between CHEP and the Hirer.
- (e) 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 A New Tax System (Goods and Services Tax) Act 1999), 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 the amount of that consideration (or its GST exclusive market value) multiplied by the rate at which GST is imposed in respect of the supply. The Hirer must pay to CHEP the additional amount at the same time as the consideration to which it is referable.

7. Invoicing

- (a) Each invoice issued to the Hirer in respect of lent or hired Equipment must, unless otherwise agreed, set out (amongst other things):
- (1) the type of Equipment lent or hired to the Hirer and the Quantity on Hire on the first day of the Invoice Period (**Opening Balance**);
 - (2) subsequent variations due to Issues of Equipment by CHEP, Transfers onto the Hirer's account, Transfers off the Hirer's account, Returns to CHEP and adjustments during the Invoice Period;

- (3) the type of Equipment lent or hired to the Hirer and the balance of the Quantity on Hire on the last day of the Invoice Period (**Closing Balance**); and
- (4) the total charges payable by the Hirer for the Invoice Period.
- (b) If for any reason the Closing Balance is a negative figure (**Credit Balance**), the Closing Balance will be adjusted to zero. CHEP must keep a record of the amount by which the Quantity on Hire was adjusted (**Credit**) and, subject to clause 7(d), make a compensating adjustment to the Hirer's Quantity on Hire by applying the Credit over the next 90 days. If the Credit is not fully utilised at the end of this time (or any longer period that CHEP considers appropriate, acting reasonably), the unutilised amount of the Credit will expire. CHEP is not required 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.
- (c) If for any reason (including because of a Credit Balance) the number of days of hire of a certain type of Equipment shown on CHEP's invoice (**Equipment Days**) for the Invoice Period is a negative figure (**Escrow Days**), CHEP may adjust the relevant Equipment Days to zero. CHEP must keep a record of the number of Equipment Days that were adjusted (**Escrow**) and, subject to clause 7(d), make a compensating adjustment to the Hirer's Equipment Days balance by applying the Escrow over the next 90 days. If the Escrow is not fully utilised at the end of this time (or any longer period that CHEP considers appropriate, acting reasonably), the unutilised amount of the Escrow will expire. CHEP is not required 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 any Escrow Days.
- (d) CHEP is only required to apply a Credit in accordance with clause 7(b) or an Escrow in accordance with clause 7(b) against the relevant Quantity on Hire or Equipment Days (respectively) in respect of the same category of Equipment that generated that Credit or Escrow, and no Credit or Escrow will be applied against a different charge in respect of the Equipment or a different category or subcategory of Equipment whether recorded on the Hirer's account or not.
- (e) Each invoice may include adjustments to the Equipment held by the Hirer, the Quantity on Hire or any charges in the current or previous invoice periods:
- (1) made under clauses 7 and 10;
 - (2) resulting from incorrect or incomplete entries in previous invoices;
 - (3) resulting from CHEP not approving a Transfer in accordance with clause 4(a)0, even if CHEP has previously varied a Hirer's Quantity on Hire or sent an invoice reflecting the purported Transfer; or
 - (4) as otherwise agreed.
- CHEP may withhold adjustments to the Hirer's account pending receipt of any information reasonably requested by CHEP as to the Equipment held by the Hirer, the Quantity on Hire or the charges, and may refuse to make an adjustment if that information is not provided to CHEP's reasonable satisfaction within 28 days of the date of request.
- (f) If the Hirer objects to anything contained in an invoice:
- (1) the Hirer must give written notice to CHEP detailing the Hirer's objection within 60 days of the date of that invoice. The Hirer must include appropriate evidence supporting its objection. If the Hirer fails to give the notice within the time prescribed, it is taken to have accepted the contents of the invoice;
 - (2) CHEP may take the Hirer's objection into account in subsequent invoices to the Hirer; and
 - (3) upon receipt of a subsequent invoice from CHEP incorporating any adjustments by CHEP resulting from an objection, the Hirer may either:
 - (A) pay the invoice without further objection, in which case payment constitutes a final determination of the objection as between CHEP and the Hirer; or
 - (B) pay the invoice and at the same time give written notice to CHEP of a further objection, in which case payment of that invoice (and any further invoice) will be deemed to have been made subject to final determination of the Hirer's objection.
- 8. Payment**
- (a) The Hirer must pay the full amount of an invoice, without deduction or set-off, to CHEP within 7 days of the date of CHEP's invoice to the Hirer, unless otherwise agreed by CHEP. The Hirer must pay the full amount of an invoice even if the Hirer objects to any item or calculation in an invoice. The Hirer may object to any item or calculation in an invoice in accordance with clause 7(f).
- (b) If the Hirer fails to pay the full amount of an invoice in accordance with clause 8(a), CHEP may require the Hirer to pay interest to CHEP on the overdue amount at the Commonwealth Bank of Australia Corporate Overdraft Reference Rate from the date of the invoice until payment is made in full.
- (c) If any amount becomes overdue, all amounts recorded on the Hirer's account are deemed to be immediately due and payable.
- (d) The Hirer must pay all costs and expenses (including legal costs on a solicitor and own client basis) that are incurred by CHEP in the recovery or attempted recovery of the overdue amounts.
- 9. Condition and suitability of Equipment**
- The Hirer agrees that it is the Hirer's responsibility to inspect and check the condition, state of repair and fitness of the Equipment for the Hirer's particular purpose prior to 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 the Equipment.
- 10. Destroyed Equipment and Lost Equipment**
- (a) If the Hirer establishes to CHEP's reasonable satisfaction that Equipment on hire or loan is destroyed, contaminated, rendered unusable or damaged beyond economic repair (**Destroyed Equipment**), the Hirer must:
- (1) pay CHEP compensation equal to the cost of replacing that Destroyed Equipment with new Equipment as determined by CHEP; and
 - (2) dispose of 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.
- The Hirer remains liable to CHEP for all charges in respect of Destroyed Equipment until payment of the compensation. Upon payment of the compensation CHEP will treat the Equipment as Returned and adjust the Hirer's Quantity on Hire accordingly.
- (b) Where Equipment in CHEP's reasonable opinion is contaminated, a risk to health or safety, rendered unusable or damaged beyond economic repair:
- (1) CHEP may refuse to accept Return of that Equipment and 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;
 - (2) that Equipment will be treated as Destroyed Equipment; and
 - (3) the Hirer must pay compensation for that Equipment in accordance with clause 10(a).
- (c) If the Hirer establishes to CHEP's satisfaction that Equipment on hire or loan is lost (**Lost Equipment**), the Hirer must pay CHEP compensation equal to CHEP's Lost Equipment Compensation Amount from time to time or other amount as agreed between the Hirer and CHEP. The Hirer remains liable to CHEP for all charges in respect of Lost Equipment until payment of the compensation. Upon payment of the compensation CHEP will treat the Equipment as Returned and adjust the Hirer's Quantity on Hire accordingly.
- (d) CHEP's Lost Equipment Compensation Amount will not exceed the amount that the Hirer would have paid to CHEP if CHEP had hired out the Lost Equipment for the next 5 years at 50% of the sum of:
- (1) CHEP's Standard Hire Rate for the relevant type of Equipment; and
 - (2) five times CHEP's Standard Issue Rate for the relevant type of Equipment, (such product being the **Lost Equipment Compensation Limit**) at the time of the calculation assuming no change to those rates over that period. The Hirer acknowledges that the Lost Equipment Compensation Limit is a realistic pre-estimate of CHEP's loss suffered when Equipment becomes Lost Equipment (but not Destroyed Equipment), which takes into account, among other things, the lifespan of Equipment, CHEP's utilisation rate and the time value of money.
- (e) If the Hirer subsequently recovers possession of Lost Equipment for which the Hirer has paid compensation under clause 10(c), or if CHEP retakes possession of Equipment that CHEP reasonably considers was Lost Equipment for which the Hirer has paid compensation under clause 10(c), CHEP will refund to the Hirer the amount of compensation paid by the Hirer for the Lost Equipment minus any costs of recovery or retaking possession of the Lost Equipment paid by CHEP and the charges that would have been payable under clause 6 from the date that the Hirer paid the compensation under clause 10(c) and the date the Equipment was retaken by or Returned to CHEP.
- (f) If any Equipment on hire is damaged while on hire or loan to the Hirer, the Hirer must immediately Return the Equipment to CHEP. CHEP will not charge the Hirer for repair of the Equipment if CHEP in its sole discretion (acting reasonably) considers the damage to be caused by fair wear and tear. If CHEP in its sole discretion (acting reasonably) does not consider the damage to be caused by fair wear and tear, the Hirer must pay CHEP a reasonable amount for repairing the Equipment as determined by CHEP. The Hirer must not attempt to repair any item of Equipment or permit any item of Equipment to be repaired by any person other than CHEP, unless otherwise agreed by CHEP.
- (g) 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.
- 11. Ownership of and access to Equipment**
- (a) The Hirer acknowledges that each item of Equipment has a special value to CHEP in that, as part of CHEP's business, CHEP repairs, maintains, handles and otherwise administers the circulation of all Equipment.
- (b) Despite any other clause in these terms, as between the Hirer and CHEP, CHEP remains the owner of the Equipment, including any Destroyed Equipment and Lost Equipment, at all times. The Hirer must not, and must ensure that no other person may, use, modify, 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.
- (c) CHEP has the right to immediate possession of all CHEP Equipment, whether on hire or not, and may take possession of any Equipment without notice to any person. The Hirer gives CHEP an irrevocable licence to enter property occupied by the Hirer at any time and take any steps CHEP considers reasonably necessary or appropriate to obtain possession of Equipment. If CHEP takes possession of any Equipment that the Hirer demonstrates to CHEP's reasonable satisfaction was then on hire to the Hirer, CHEP will, at the Hirer's request, either:
- (1) make available the same quantity of Equipment to the Hirer; or
 - (2) deduct from the Hirer's Quantity on Hire the Equipment so recovered, in either case if the Hirer demonstrates to CHEP's reasonable satisfaction that, after CHEP either makes that Equipment available to the Hirer or adjusts the Hirer's Quantity on Hire, the Hirer will then have no more Equipment in its possession or control than its Quantity on Hire.
- 12. Stocktakes**
- The Hirer must allow CHEP, within 7 days of CHEP's request, to enter premises occupied by the Hirer to conduct stocktakes of Equipment, and must assist CHEP in doing so, including by providing CHEP with such information as CHEP may reasonably request.
- 13. Exclusion of warranties; release and indemnity**
- (a) The Australian Consumer Law gives certain statutory rights to all Consumers. Subject to those rights and to any other statutory rights that cannot be excluded, CHEP expressly excludes all statutory warranties, conditions, guarantees and rights (**Rights**) that would, apart from this provision, form part of these terms.

- (b) If a Hirer has any Rights, and CHEP may under any applicable legislation limit its liability in respect of such Rights, CHEP's liability for breach of such Rights is limited to replacement or repair, at CHEP's option, of the Equipment in question or supply of equivalent Equipment.
- (c) Subject to any Rights the Hirer may have:
- (1) the Hirer releases CHEP from any claim that the Hirer may have against CHEP for:
 - (A) damages or otherwise in respect of 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 Equipment while on hire to the Hirer or in its possession;
 - (B) damages or otherwise in respect of the exercise by CHEP of any of its rights (including, but not limited to, under clause 11(b)); or
 - (C) damages or otherwise for consequential or indirect loss, as well as any loss of profit, loss of revenue, loss of contract, increased costs and/or expenses, or wasted expenditure, in respect of the performance or delay in performance by CHEP of any of its obligations to the Hirer; and
 - (2) 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:
 - (A) any act, default, omission, willful conduct or negligence by the Hirer in connection with these terms; or
 - (B) the exercise by CHEP of any of its rights in connection with these terms.

All indemnities in favour of CHEP in connection with these terms include all costs and expenses incurred by CHEP in connection with investigating or defending the claim (including legal costs on a solicitor and own client basis).

14. Return in Folded State

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

15. Service Centres

The Hirer must only collect 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 and only during the operating hours of that Service Centre. A list of authorised Service Centres and their operating hours will be published from time to time on the CHEP Customer Portal.

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 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 as determined under clause 18, or by any later date specified in the notice, all Equipment on hire to the Hirer. CHEP may treat any Equipment not so delivered as Lost Equipment, 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'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 Transaction Information as an original literary work; and
 - (2) CHEP owns and may exploit all Intellectual Property Rights in the Transaction Information and any other intellectual property that comes into existence in connection with these terms.
- (b) CHEP grants the Hirer a non-transferable non-exclusive royalty free licence to copy and utilise the Intellectual Property Rights referred to in clause 17(a)(1), terminable in accordance with clause 16 of these terms.
- (c) CHEP reserves all rights in its Confidential Information, Intellectual Property Rights and Transaction Information not expressly granted to the Hirer in these terms.
- (d) CHEP and the Hirer agree to protect each other's Confidential Information and not to divulge this information to any third person.

18. Giving notices

A notice to be given or an invoice to be issued by CHEP under these terms may be given or issued by:

- (a) 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 third business day after it is posted; or
- (b) emailing it to the Hirer's email address last notified in writing to CHEP, and is taken as given:
 - (1) if sent prior to 4.00pm, at the close of that business day; or
 - (2) if sent after 4.00pm, at the commencement of the next business day; or
- (c) sending it by facsimile to the Hirer's facsimile number last notified in writing to CHEP, and is taken as given when confirmation of transmission is received by CHEP. 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.

19. No assignment

The Hirer may not assign its rights under any agreement with CHEP without CHEP's prior written consent.

20. Changes to terms

- (a) These terms replace any other terms of hire previously in force between CHEP and the Hirer. No variation of these terms binds either party unless made under paragraph (b).
- (b) 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 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 that date. 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 in accordance with clause 16.

21. Severance

If any provision or part of a provision, or the application of any provision or part of a provision, of these terms is void, illegal or unenforceable, or would or may render CHEP or the Hirer liable to a penalty if it were included as part of these terms, in any jurisdiction, it is severed from these terms to that extent. 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.

22. No waiver

Waiver by CHEP or the Hirer of a breach of these terms or of any right or power arising in connection with any agreement between CHEP and the Hirer must be in writing and signed by CHEP or the Hirer (as applicable). A right or power in connection with any agreement between CHEP and the Hirer is not waived by any failure to exercise or delay in exercising, or a partial exercise of, that or any other right or power.

23. Law and jurisdiction

These terms are governed by and is to be construed under the laws in force in New South Wales. CHEP and the Hirer submit to the non-exclusive jurisdiction of the courts exercising jurisdiction in New South Wales and courts of appeal from them in respect of any proceedings arising in connection with these terms. Each party waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

TERMS OF SALE

1. Definitions

In these terms:

CHEP means CHEP Australia Limited ABN 11 117 266 323 (and its successors and assigns);

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 to a minor degree 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 the Commonwealth Bank of Australia Corporate Overdraft Reference Rate 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 this agreement is a taxable supply (as defined by the *A New Tax System (Goods and Services Tax) Act 1999*), 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 the amount of that consideration (or its GST exclusive market value) multiplied by the rate at which GST is imposed in respect of the 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.

6. Delivery and risk

- (a) Subject to clause 6(b), 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":
 - (1) CHEP does not give any warranties as to the history of use, age, condition or state of repair of the pallets; and
 - (2) 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) CHEP accepts liability for all warranties implied under the Trade Practices Act 1974 or any other legislation (such as the Fair Trading Acts (or equivalent legislation) in each State and Territory) the effect of which cannot be excluded. 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, the Customer releases CHEP from and indemnifies CHEP against any claim that is made against CHEP for damages or otherwise in respect of:
 - (1) 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;
 - (2) the exercise by CHEP of any of its rights; or
 - (3) the performance or delay in performance by CHEP of any of its obligations to the Customer.

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 anything 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. No variation of these terms binds either party unless confirmed by a CHEP director 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 Director, 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 that date.

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 Customer telephones CHEP within 2 hours 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 CHEP. 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.
