

Adaptainer Limited

Sale Terms and Conditions of Business

Statements on front of order

THE CONDITIONS SHALL APPLY TO THIS ORDER AND TO ANY CONTRACT BETWEEN US FOR THE SUPPLY OF ITEMS DETAILED IN THIS ORDER (SEE CONDITION 1). PLEASE READ ALL OF THEM CAREFULLY. THEY CONTAIN EXCLUSIONS AND LIMITATIONS OF OUR LIABILITY UNDER ANY SUCH CONTRACT.

1 Formation of contract

1.1 The Seller has agreed to and hereby sells to the Buyer the new or used container(s) more specifically referred to in the Schedule overleaf (“the Containers”).

1.2 Any order sent to the Seller by the Buyer shall be accepted entirely at the discretion of the Seller, and, if so accepted, will only be accepted upon these conditions (hereafter referred to as the “Conditions”) and by means of the Seller’s standard order acknowledgment form.

1.3 Each order which is so accepted shall constitute an individual legally binding contract between the Seller and the Buyer and such contract is hereafter referred to in these Conditions as an “Order”.

1.4 These Conditions shall override any contrary different or additional terms or conditions (if any) contained on or referred to in an order form or other documents or correspondence from the Buyer, and no addition alteration or substitution of these terms will bind the Seller or form part of any Order unless they are expressly accepted in writing by a person authorised to sign on the Seller’s behalf.

2 Acceptance

The Buyer shall be deemed to have accepted all Containers upon their delivery by the Seller to the address specified in the Order.

3 Delivery and risk

3.1 Unless otherwise stated in the Order, the price quoted includes delivery to the address specified in the Order, provided that the Seller reserves the right to make an additional charge to cover any increase in transport costs occurring before or after the date of delivery including but not limited to a failure to deliver caused as a result of

access restrictions to the site of delivery. Some vehicles such as heavy life Hiab vehicles may only load and offload from one side of the truck. If any equipment is ordered for delivery which needs special attention to siting during delivery it is the Buyer's responsibility to ensure that the vehicle loading requirements are met, failing which the Buyer will be responsible for any additional costs incurred.

3.2 Any time or date for delivery given by the Seller is given in good faith, but is an estimate only and time for delivery is not of the essence of these Conditions and the Seller shall have no liability to the Buyer for loss or damage occasioned by delay or failure to deliver the Containers.

3.3 Risk in the Containers shall pass to the Buyer upon delivery.

3.4 The Buyer will ensure there are no access restrictions to the site of delivery and the delivery/positioning point is clear, level and hard standing as the hauliers will not drive over or position on grass.

3.5 The Buyer will ensure sufficient space for the access and manoeuvre of a delivery vehicle up to approximately 65ft in length. Access and manoeuvre refers to aspects including but not limited to turning space, extension of stabiliser legs and lift off of Containers. Stabilisers can increase the width required to off-load, width of the vehicle 8ft plus extended stabiliser legs which can add another 4-5ft each side and this should be taken into consideration when arranging delivery. Should the transport be aborted due to site access, restrictions or obstructions, full transport cost plus 50% return journey cost remains payable by the Buyer together with £50.00 depot handling fee.

3.6 The Buyer may request re-scheduling of their confirmed delivery date provided the request is made at least two working days in advance of the agreed delivery date. Any change or cancellation request made by the Buyer after this period will result in the Buyer being liable to pay all of the original delivery fee in addition to any new charges for re-delivery.

3.7 Haulage services are provided under the RHA regulations, a copy of which can be supplied on request.

4 Title and payment

4.1 The Seller warrants that (except in relation to intellectual property rights of third parties as referred to in Condition 4.3) the Seller has good title to the Containers and that (pursuant to s.12(3) of the Sale of Goods Act 1979, or s.2(3) of the Supply of

Goods and Services Act 1982, whichever Act applies to the Order) it will transfer such title as it may have in the Containers to the Buyer pursuant to Condition 4.5.

4.2 The Seller warrants that it is not aware of any actual or alleged infringements of any intellectual property rights of third parties which relate to the Containers other than those (if any) which the Seller has disclosed to the Buyer prior to acceptance of the Order.

4.3 The Seller shall have no liability to the Buyer (other than as provided in Condition 10) in the event that the Containers to be supplied under the Order infringe any intellectual property rights of a third party (including without limitation by reason of their possession, sale or use, whether alone or in association or combination with any other goods); the Seller gives no warranty that the goods to be supplied under the Order will not infringe as aforesaid, and all conditions, warranties, stipulations or other statements whatsoever relating to such infringement or alleged infringement (if any), whether express or implied, by statute, at common law or otherwise howsoever, are hereby excluded.

4.4 Invoices supplied by the Seller to the Buyer are due for payment upon receipt by BACS transfer, cheque, or debit/credit card. There is a 2.5% surcharge if payments are taken by credit card. In the event of any delay arising in the payment of any sum due hereunder interest shall be paid at 8% above the Bank of England base rate from the date of invoice. In addition penalties shall be charged in accordance with The Late Payment of Commercial Debts (Interest) Act 1998.

4.5 Title to the goods comprised in each consignment shall not pass to the Buyer until the Buyer has paid their price to the Seller, but, even though title has not passed, the Seller shall be entitled to sue for their price once its payment has become due.

5 Use

The Containers are sold for use in international trade unless otherwise specified. The Buyer will ensure that the Containers, if used in any domestic or national market, meet with any requirements imposed by any domestic or national authority, including the payment of all local import dues or other duties or taxes.

6 Storage

If the Seller shall be unable, through circumstances beyond its control (including without limitation lack of shipping instructions from the Buyer), to deliver the

Containers within 14 days after notification to the Buyer or its agent that the Containers are ready for delivery, the Seller shall be entitled to arrange storage on behalf of the Buyer, whereupon delivery shall be deemed to have taken place, all risk in the Containers shall pass to the Buyer, and delivery to the Buyer of the relevant receipt shall be deemed to be delivery of the Containers for the purposes of Condition 3. All charges incurred by the Seller for storage or insurance shall be paid by the Buyer within 30 days of submission of an invoice.

7 Damage in transit

The Seller will replace free of charge or in the case of minor damage reduce the price by agreement with the Buyer any Containers proved to the Seller's satisfaction to have been damaged in transit provided that within 24 hours after delivery both the Seller and the carriers have received from the Buyer notification in writing of the occurrence of the damage and also, if and so far as practicable, of its nature and extent.

8 Force majeure

8.1 The Seller shall not be under any liability for any failure to perform any of its obligations under the Order due to *Force Majeure*. Following notification by the Seller to the Buyer of such cause, the Seller shall be allowed a reasonable extension of time for the performance of its obligations.

8.2 For the purposes of this Condition, "*Force Majeure*" means fire, explosion, flood, lightning, Act of God, act of terrorism, war, rebellion, riot, sabotage, or official strike or similar official labour dispute, or events or circumstances outside the reasonable control of the party affected thereby.

9 Guarantee

9.1 The Buyer confirms he has inspected the Containers and they are accepted in the condition as supplied by the Seller upon delivery and the remainder of this clause only applies to defects which are not apparent from inspection.

9.2 In respect of all Containers supplied to the Seller by third parties the Seller will pass on to the Buyer (in so far as possible) the benefit of any warranty given to the Seller by such third parties and will on request supply to the Buyer details of the terms and conditions of such warranty and copies of any relevant product information

sheets, technical data sheets or product leaflets issued by such third parties and the Buyer shall be solely responsible to the entire exclusion of the Seller for complying with all of these.

9.3 The Seller's liability under this Condition shall (subject to Condition 13) be to the exclusion of all other liability to the Buyer whether contractual, tortious or otherwise for defects in the Containers or for any loss or damage to or caused by the Containers, and (subject to Condition 13) all other conditions, warranties, stipulations or other statements whatsoever concerning the Containers, whether express or implied, by statute, at common law or otherwise howsoever, are hereby excluded; in particular (but without limitation of the foregoing) the Seller grants no warranties regarding the fitness for purpose, performance, use, nature or quality of the Containers, whether express or implied, by statute, at common law or otherwise howsoever.

9.4 The Seller makes no warranties or representations as to the prior payment of any import, other taxes or duties. The Buyer agrees to assume exclusive liability for and to pay, indemnify and hold the Seller harmless from, all sales or use taxes, transfer, title and/or registration fees, Value Added Tax (or the like), personal property taxes, tolls, levies, imposts, importation or other duties or governmental charges imposed in connection with the sale, delivery, import and/or domestication of the Containers, or any service rendered by the Seller in connection with such supply or sale, including any penalties, fines, or interest thereon.

9.5 The Buyer accepts the Containers in the condition received upon delivery by the Seller and accepts that where the Containers are second hand they are subject to deterioration such as rust patches and dents.

10 Confidentiality

Both the Seller and the Buyer shall each keep confidential and shall not without the prior consent in writing of the other disclose to any third party any technical or commercial information which it has acquired from the other as a result of discussions, negotiations and other communications between them relating to the Containers and the Order.

11 Economic loss

Subject to Condition 14, and notwithstanding anything contained in these Conditions (other than Condition 14) or the Order, in no circumstances shall the Seller be liable,

in contract, tort (including negligence or breach of statutory duty) or otherwise howsoever, and whatever the cause thereof (i) for any loss of profit, business, contracts, revenues, or anticipated savings, or (ii) for any special indirect or consequential damage of any nature whatsoever.

12 Limitation of liability

Subject to Condition 14, and notwithstanding anything contained in these Conditions (other than Condition 14) or the Order, the Seller's liability to the Buyer in respect of the Order, in contract, tort (including negligence or breach of statutory duty) or howsoever otherwise arising, shall be limited to the price of the Containers specified in the Order.

13 Unfair Contract Terms Act 1977

13.1 If and to the extent that s.6 and/or s.7(3A) of the Unfair Contract Terms Act 1977 applies to the Order, no provision of these terms and conditions shall operate or be construed to operate so as to exclude or restrict the liability of the Seller for breach of the express warranties contained in Condition 5, or for breach of the applicable warranties as to title and quiet possession implied into the terms and conditions of the Order by s.12(3) of the Sale of Goods Act 1979, or s.2(3) of the Supply of Goods and Services Act 1982, whichever Act applies to the Order.

13.2 Where the Buyer is a natural person and if and to the extent that s.2(1) of the Unfair Contract Terms Act 1977 applies to the Order, nothing in these terms and conditions shall operate or be construed to operate so as to exclude or restrict the liability of the Seller for death or personal injury caused to the Buyer by reason of the negligence of the Seller or of its servants, employees or agents.

13.3 No provision of these terms and conditions shall have effect or operate so as to exclude any liability of one of the parties in respect of fraud or a fraudulent misrepresentation made by that party to the other, or to restrict or exclude any remedy which the other party may have in respect of such fraud or fraudulent misrepresentation.

14 Miscellaneous

14.1 The failure of the Seller to insist on the due performance of any term of this agreement or the waiver of any breach thereof, shall not act as a waiver of any other

term or condition or any subsequent breach, and shall not affect the rights of the Seller hereunder.

14.2 All goods, and documents of title to those goods in possession of the Seller shall be subject to a particular and general lien for all sums owed to the Seller in respect of such goods or other goods or services, and unless payment or security is given within ten days of notice of the exercise of the lien the Seller may sell the goods by auction or otherwise as it thinks fit in its absolute discretion in satisfaction of its lien.

14.3 The Order shall be considered a contract made in England and shall be governed in all respects by the law of England and the parties agree to submit to the exclusive jurisdiction of the English courts.

Right to Cancel

The Buyer has the right to cancel this contract under the Consumer Protection (Distance Selling) Regulations 2000.

This only applies if you sign the Terms and Conditions of Business:

- (i) At your home, workplace or at someone else's home; or
- (ii) At our offices but following a visit by us (or by someone acting on our behalf) to your home, workplace or someone else's home; or
- (iii) At our offices but following a meeting between us away from our offices.

The Buyer has the right to cancel this contract if they wish and can do so by delivering, sending (including electronic mail) a cancellation notice to the person mentioned below at any time within 14 days starting with the day of receipt of this Notice. The person to whom a cancellation notice may be given is Paul Clark of Adaptainer Limited at Reliant House 3 Angel Lane Fore Street Ipswich IP4 1JX. Email:sales@adaptainer.co.uk

Notice of cancellation is deemed to be served as soon as it is posted or sent to the Seller. If the Buyer wishes to cancel the contract, they **must do so in writing** and deliver personally or send (which may be by electronic mail) this to the person named above.

15 Deposits

Where a deposit has been paid, in the event of a cancellation during production, any costs incurred for materials or labour will be deducted from the deposit held on account prior to being refunded.

16 Complaints

Whilst we will always endeavour to provide you with a high level of customer service if you feel dissatisfied with the service you have received you should in the first instance, contact the office you usually deal with to register your complaint, or alternatively you may refer the matter to

Email: paul@adaptainer.co.uk

Post Adaptainer Limited

Unit 3 Reliant House, Angel Lane, Fore Street, Ipswich, Suffolk IP4 1JX

Tel 01473 281818

Fax 01473 281828

We will endeavour to rectify the problem immediately, but if we are unable to do so your complaint will be dealt with in accordance with our formal Complaint's Procedure, a copy of which will be provided to you. If you remain dissatisfied you may be an eligible complainant within the rules of the Financial Ombudsman Service (FOS), details of which can be found at www.financial-ombudsman.org.uk
Full details will be supplied in our Complaints Procedure.

This Agreement shall be governed and construed according to English law and the English courts will have exclusive jurisdiction. By signing or ticking the box provided below, you certify that you have read, understand and comply to agree with all the terms and conditions of Adaptainer Limited.

Acknowledged & Signed by: _____

Date: _____

Please Print Name: _____

Please tick here to acknowledge Terms and Conditions.