

**SCF**  
**AGREEMENT TO PURCHASE**

**1. GENERAL**

- 1.1. This Agreement will apply to the supply of Containers by SCF Group despite any conflicting terms proposed by the Buyer, unless waived in writing by SCF Group.
- 1.2. SCF Group agrees to supply the Containers and the Buyer agrees to purchase the Containers on the terms of this Agreement.
- 1.3. If the Buyer wishes to purchase Containers, the Buyer must request SCF Group to complete a Schedule of Supply. SCF Group will provide the completed Schedule of Supply to the Buyer for approval and, once approved by the parties, will supply the Containers to the Buyer pursuant to the terms of this Agreement. The Buyer acknowledges and agrees that the supply of all Containers by SCF Group pursuant to a Schedule of Supply are governed by this Agreement.

**2. COLLECTION**

- 2.1. SCF Group will make the Containers available for collection at SCF Group's depot specified in the Schedule. The Buyer will be responsible for any transport of the Containers from SCF Group's depot.
- 2.2. In the event that SCF Group is required, notwithstanding the provisions of this Agreement, to effect transportation of the Containers, the Buyer agrees to pay the cost of transportation to SCF Group as specified in the Schedule of Supply or otherwise upon receipt of an invoice. The Buyer agrees that the Containers shall be at the risk of the Buyer at all times once made available at SCF Group's depot, including transport of the Containers as arranged by SCF Group.
- 2.3. The Buyer acknowledges and agrees that SCF Group shall not be liable in any event or circumstance to the Buyer for any loss, damage, claims, costs or expenses of any kind suffered by the Buyer arising out of any delay or inability on the part of SCF Group to supply the Containers to the Buyer on the Delivery Date.

**3. PAYMENTS**

- 3.1. Any monies payable by the Buyer to SCF Group under this Agreement must be paid without any set off or counterclaim and free of any deduction or abatement whatsoever. If the Purchase Charge is not paid by the Buyer to SCF Group in accordance with this Agreement, the Buyer acknowledges and agrees that SCF Group has the right (without prejudice to any other rights and remedies it may have) to recover, remove and/or resell the Containers. For that purpose, SCF Group's employees, agents or workers may without notice enter any place SCF Group believes the Containers to be without committing a trespass.
- 3.2. The Buyer shall pay SCF Group upon demand the costs and expenses (including debt collection fees and commission and legal costs on a solicitor client basis) incurred or payable by SCF Group in respect of the recovery and any attempted recovery of any monies payable by the Buyer to SCF Group under this Agreement as a result of a breach by the Buyer.
- 3.3. Until SCF Group receives full payment of the Purchase Charges, the provisions of clause 11 apply and SCF Group has the right (without prejudice to any other rights and remedies it may have) to recover, remove and/or resell the Containers free from any claims by the Buyer.
- 3.4. The Buyer will indemnify SCF Group against any costs, claims, damages or losses suffered by SCF Group or a third party as a result of the Buyer's inability to pay the Purchase Charge.
- 3.5. In relation to all Containers, if the Buyer has not paid the total Purchase Charge, but sells or otherwise disposes of the Containers or any part of them, the monies received in respect of the disposal of the Containers will be held on trust by the Buyer for SCF Group and will be payable immediately to SCF Group on demand.
- 3.6. The payment by the Buyer of the Purchase Charge and any other moneys payable by the Buyer to SCF Group under this Agreement is an essential term of this Agreement, and unless specified otherwise, is to be paid within 30 days of the Invoice being presented to the Buyer by SCF Group.
- 3.7. If any monies payable by the Buyer to SCF Group under this Agreement are not paid on or by the due date for payment the Buyer shall be liable for interest on the outstanding amount in accordance with the following provisions:
  - 3.7.1. The rate of interest shall be that charged from time to time by CBA on commercial overdraft facilities plus 4.0%pa (but not exceeding any maximum amount prescribed under consumer credit laws in respect of short term credit).
  - 3.7.2. The interest will accrue on and from the due date of payment of the outstanding amount up to the date of payment.
  - 3.7.3. Interest will be calculated on a daily basis and will be compounded on the last day of each month.

#### **4. WARRANTY**

- 4.1. For sale of new Containers, to the maximum extent permitted by law SCF Group warrants for a period of 12 months following the sale of a Container that the Container is in good and serviceable condition and corresponds with the description in the Schedule. It is the responsibility of the Buyer to inspect the Container prior to collecting the Container.
- 4.2. For sale of second hand Containers, it is the responsibility of the Buyer to inspect the Container prior to collecting the Container, as SCF Group provides no warranty in respect of second hand Containers. The Buyer acknowledges that it purchases second hand Containers on an as is basis.
- 4.3. For sale of Containers that have had modifications, it is the responsibility of the Buyer to inspect the Container prior to collecting the Container, as SCF Group does not offer a warranty on such modifications, including air conditioners, unless a warranty is supplied by the manufacturer of the components installed.
- 4.4. Any damages caused to the Containers solely by mishandling, incorrect loading, impact and/or accident, fire and acid spillage by the Buyer after delivery, are not covered by this warranty.
- 4.5. For any agreed warranty repairs or replacement Containers, the Buyer will, at its own cost, transport the Containers to the nearest practicable depot notified by the SCF Group to the Buyer to allow the SCF Group to perform any repairs or maintenance on the Containers pursuant to this clause 4. The Buyer will give SCF Group a reasonable time to have the work completed or provide replacement Containers.
- 4.6. To the maximum extent permitted by law, SCF Group will not be liable for any indirect or consequential loss or damage (including loss of profit or opportunity).

#### **5. OWNERSHIP OF THE CONTAINERS**

- 5.1. SCF Group retains full legal and beneficial ownership of the Containers until the Purchase Charge is paid in full.
- 5.2. At time of final payment of the Purchase Charge, the full, unencumbered and unconditional title of each of the Containers shall pass from SCF Group to the Buyer.

#### **6. INDEMNITY**

The Buyer will indemnify SCF Group and keep SCF Group indemnified against all claims, demands and actions and all losses, damages, costs and expenses incurred or suffered by the Buyer in respect of any death, bodily injury, loss or damage to any person or property whatsoever caused by, arising out of or in connection with the use of the Containers, other than those arising from the negligence or wilful acts of SCF Group, its agents, contractors or employees.

#### **7. NOTICES**

- 7.1. Any notice or other communication in connection with this Agreement is taken to have been duly given when made in writing and delivered or sent by post, email or facsimile to the party to which such notice or communication is intended to be given at the address set out in the Schedule or such other address or facsimile number as may be from time to time be notified in writing from one party to the other for the purpose of this clause 7.
- 7.2. Notices to SCF Group shall be sent to the attention of the Director and either posted to PO Box 10219, Adelaide, SA 5000, or faxed on (08) 8208 0901.
- 7.3. Any notice or other communication sent by post shall be taken to have been received at the expiration of two business days after the date of posting.
- 7.4. Any notice or other communication sent by facsimile transmission is taken to have been received upon completion of a successful transmission to the recipient. However, if the facsimile is transmitted after 5.00pm at the place of receipt or on a day which is not a business day, it shall be deemed to have been received on the next business day.

#### **8. GOVERNING LAW**

This Agreement shall be governed by and construed in accordance with the law of the State of South Australia and the parties to this Agreement agree to submit to the jurisdiction of the courts of South Australia.

#### **9. CONFIDENTIAL INFORMATION**

- 9.1. The Buyer acknowledges and agrees that information regarding the operation of SCF Group's intellectual property, business, its products, services and systems ("Confidential Information") may be disclosed to it during the sale process.
- 9.2. The Buyer will not, during or after the sale process:
  - 9.2.1. use the Confidential Information for any other purpose or in connection with any other goods or services;

- 9.2.2. disseminate, distribute, offer for sale, sell, dispose of or publish the Confidential Information to a third party without SCF Group's consent;
- 9.2.3. permit unauthorised persons, including third parties, to have access to areas where the Confidential Information may be displayed, reproduced or stored; or
- 9.2.4. make, or assist any person to make any unauthorised use of the Confidential Information.

## **10. FORCE MAJEURE**

No party is liable for any failure to perform its obligations under this Agreement if the failure or delay is due to anything beyond that party's reasonable control. If that failure exceeds 90 days, the other party may terminate this Agreement with immediate effect by giving notice to the other party. This clause 10 does not apply to any obligation to pay the Purchase Charge due by the Buyer in accordance with this Agreement.

## **11. PERSONAL PROPERTY SECURITIES ACT 2009**

- 11.1. If this Agreement or any of the transactions contemplated by it create a security interest for the purposes of the *Personal Property Securities Act 2009* ("PPSA"), including but not limited to a Purchase Money Security Interest, SCF Group may register or give any notification or exercise any rights it may have in connection with the security interest. The parties acknowledge and agree that SCF Group is only required to make a single registration against the Buyer with respect to the security interests granted by the Buyer to SCF Group pursuant to the terms of this Agreement.
- 11.2. The parties acknowledge that the security interest includes all proceeds from any dealings with the Containers in accordance in with the PPSA.
- 11.3. The Buyer must do such acts and provide such information (which information the Buyer warrants to be complete, accurate and up to date in all respects) as in the opinion of SCF Group may be required or desirable to enable SCF Group to perfect the security interest created under the PPSA. The Buyer undertakes not to change its name in any form or other details on the Personal Property Securities Register without first notifying SCF Group.
- 11.4. The Buyer irrevocably and unconditionally waives its right to receive from SCF Group any notice under the PPSA (including without limitation under s157 of the PPSA), unless required by the PPSA and if the notice cannot be excluded. SCF Group need not give any notice under the PPSA (including a verification statement or a financing change statement) unless the notice is required by the PPSA and cannot be excluded. The Buyer agrees that, to the maximum extent permitted by law, it waives any rights it may have pursuant to, and the parties contract out of, sections 95, 118, 123, 125, 128, 129, 130, 132(1), 132(4), 135, 142 and 143 of the PPSA.
- 11.5. The Buyer agrees to pay the costs, charges and expenses of any incidental to the need for, or desirability of registration of, a financing statement or financing change statement or any action taken by SCF Group to comply with the PPSA or to protect its position under the PPSA. The Buyer agrees to pay any costs incurred by SCF Group arising from any disputes or negotiations with third parties claiming an interest in goods supplied by SCF Group.
- 11.6. No party may disclose information of the kind referred to in section 275(1) of the PPSA (except where the parties may do so and where required due to the operation of section 275(7) of the PPSA) and the Buyer must not authorise the disclosure of such information.
- 11.7. The Buyer acknowledges that, unless otherwise defined in this Agreement, the terms and expressions used in this clause 11 have the meanings given to them in, or by virtue of, the PPSA.

## **12. PRIVACY**

- 12.1. The privacy of the Buyer's personal information and credit related personal information ("personal information") is important to SCF Group. SCF Group is committed to respecting the Buyer's right to privacy and protecting the personal information provided by the Buyer in the Credit Application. SCF Group is bound by the Australian Privacy Principles in the *Privacy Act 1988* (Cth).
- 12.2. The Buyer acknowledges that any personal information collected by SCF Group is subject to SCF Group's Privacy Policy, available at [www.scf.com.au](http://www.scf.com.au).
- 12.3. SCF Group's Privacy Policy sets out:
  - 12.3.1. the purposes for which the Buyer's personal information is collected;
  - 12.3.2. the consequences if the Buyer's personal information is not provided to SCF Group;
  - 12.3.3. the third parties to which SCF Group discloses the Buyer's personal information;
  - 12.3.4. how the Buyer may seek access or correction of its personal information;
  - 12.3.5. whether the Buyer's personal information is likely to be disclosed to overseas entities and in which countries; and
  - 12.3.6. how the Buyer can complain about a breach of SCF Group's obligations in respect of the Buyer's personal information and how such a complaint will be dealt with.

### **13. VARIATION**

SCF Group may add to or vary the terms of this Agreement from time to time by giving seven days' written notice to the Buyer.

### **14. SPECIAL CONDITIONS**

The Special Conditions (if any) specified at the back of this Agreement will form part of this Agreement and will prevail over any other term of this Agreement to the extent of any inconsistency.

### **15. ELECTRONIC DOCUMENTS**

15.1. Each party acknowledges that:

15.1.1. SCF Group may issue to the Buyer a Schedule of Supply; and

15.1.2. the Buyer may accept the Schedule of Supply,

by electronic means, and SCF Group and the Buyer agree that the issue or acceptance of such documents electronically (irrespective of whether the relevant document is signed) will be deemed to be of the same effect as if the document had been issued or accepted as a signed hard copy.

15.2. SCF Group will not be liable to the Buyer or to any other person for any loss or damage suffered in relation to any document transmitted electronically, including any loss or damage under, out of, or in connection with:

15.2.1. the transmission of any harmful code (such as viruses) to the Buyer by email (including in any document attached to email); or

15.2.2. any failure by SCF Group to notify the Buyer that SCF Group may have received any harmful code (such as viruses) from the Buyer in any email (including in any document attached to email).

15.3. The parties to this Agreement consent to the execution of this document wherever necessary by virtue of electronic communication permitted by the *Electronic Transaction Act 1997* (Cth) and any corresponding State legislation.

### **16. INTERPRETATION**

In this Agreement, unless the context otherwise requires:

16.1. words denoting the singular shall include the plural and vice versa;

16.2. headings are for convenience of reference only and do not affect the construction or interpretation of this Agreement;

16.3. "Agreement" refers to this Agreement to Purchase,

16.4. "business day" means a day which is not a Saturday or a Sunday or a public holiday in South Australia.

16.5. "Containers" refers to all equipment outlined in the relevant Schedule;

16.6. "Credit Application" means the credit application issued by SCF Group to the Buyer;

16.7. "Delivery Date" means the estimated delivery date of the Containers as set out in the relevant Schedule;

16.8. "Invoice" means the invoice issued by SCF Group to the Buyer which sets out the Purchase Charges;

16.9. "Purchase Charges" means the total amount payable for the Containers, including applicable GST and delivery costs;

16.10. "SCF Group" refers to SCF Group Pty Ltd; and

16.11. "Schedule" means the schedule(s) which detail the Containers, in the form as annexed to this Agreement.