



Export Sale Deed Poll

This Deed Poll is made on

Parties

1 _____ (ABN _____)
of _____ (**Exporter**)

In favour of

2 **The Occupant of the position of Product Responsibility Organisation or an equivalent position in the Queensland Container Refund Scheme**, which, as at the date of this Deed Poll is **Container Exchange (QLD) Pty Ltd** (ACN 622 570 209) of Level 25, 480 Queen St, Brisbane QLD 4000 (the **PRO**)

Recitals

- A The Exporter acknowledges that Manufacturers have entered into Container Recovery Agreements with the PRO. for the purpose of section 99P of the Act.
- B Manufacturers Sell Beverage Products to the Exporter in Queensland.
- C The Exporter subsequently sells a portion of those Beverage Products outside of Queensland.
- D The Exporter wishes to enter into this Deed Poll to enable it to participate in the process set out in the Container Export Protocol.

It is declared as follows.

1 Definitions and interpretation

1.1 Definitions

In this Deed Poll:

Act means the *Waste Reduction and Recycling Act 2011* (Qld).

Beverage Product has the meaning given in the Act.

Business Day means a day that is not a Saturday, Sunday, or public holiday and on which banks are open for business generally in Brisbane.

Common Dispute means a dispute which involves a question of law (including a question of contract interpretation) or a question of fact, that is of general application or importance to the PRO, the Exporter and one or more other Scheme Contributor.

Common Dispute Procedure means the process for resolving Common Disputes as set out in Schedule 1.

Container Export Protocol means the protocol of that or a similar name which is made available by the PRO.

Container Recovery Agreement has the meaning given in the Act.

Corresponding Law has the meaning given in the Act and Regulations.

Export Sales means Beverage Products previously Sold by a Manufacturer in Queensland that the Exporter subsequently sold outside of Queensland which the Exporter reasonably believes will not be further sold to a person within Queensland.



Export Sale Statement means a statement in relation to Export Sales provided by the Exporter to the PRO pursuant to the Container Export Protocol.

Manufacturer has the meaning given in the Act.

Regulations means any regulation made under Part 3B of Chapter 4 of the Act.

Sale means the first transfer of title in Queensland of a Beverage Product from a Manufacturer to another person, and **Sell** and **Sold** have equivalent meanings.

Scheme Contributor means:

- (a) a Manufacturer that has entered into a Container Recovery Agreement with the PRO; and
 - (b) a Scheme Exporter that has executed a Container Export Deed Poll,
- as the context requires.

Scheme Exporter means a person who exports Beverage Products from Queensland and has entered into a Container Export Deed Poll and includes the Exporter.

State means the Crown in right of the State of Queensland.

1.2 Interpretation

In this Deed Poll:

- (a) headings are for convenience only and do not affect interpretation;
- (b) an obligation or a liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;
- (c) a reference to a party includes that party's executors, administrators, successors, permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;
- (d) a reference to a document (including this Deed Poll) is to that document as varied, novated, ratified or replaced from time to time;
- (e) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (f) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning; and
- (g) the words "including" and "includes", and any variants of those words, will be read as if followed by the words "without limitation".

2 Container Export Protocol

- (a) The Exporter is bound by the terms of the Container Export Protocol.
- (b) The Exporter acknowledges and agrees that:
 - (i) to the extent permitted by law, the PRO and the State have no obligation, whether under contract or any other basis, to the Exporter in relation to the Container Export Protocol; and
 - (ii) the PRO and the State will rely upon the commitments made by the Exporter in this Deed Poll.



3 Overpayments

- (a) The Exporter must pay the PRO any amount of overpayment the PRO reasonably determines (whether as a result of an audit, investigation or otherwise) has been made to the Exporter by the PRO pursuant to the Container Export Protocol.
- (b) Any amount payable under clause 3(a) is a debt due and payable by the Exporter to the PRO. The PRO may, at its discretion, deduct this debt from any amounts which are to be paid to the Exporter pursuant to the Container Export Protocol.
- (c) The Exporter agrees that confirmation or payment by the PRO of any amount relating to the Container Export Protocol:
 - (i) does not constitute approval of any information provided by the Exporter to the PRO in relation to the Container Export Protocol;
 - (ii) does not constitute approval of the Exporter's compliance with the Container Export Protocol or the Deed Poll; and
 - (iii) does not prevent the PRO from subsequently making a determination that an overpayment has been made to the Exporter pursuant to the Container Export Protocol.

4 Declaration

No later than the date which is 40 Business Days after the end of each financial year (each ending 30 June) in respect of which the Exporter has made claims in relation to Export Sales pursuant to the Container Export Protocol, the Exporter must prepare and deliver to the PRO a statutory declaration by the means, in the form and with the signatory of a category set out in the Container Export Protocol.

5 Records and Auditing

The Exporter agrees:

- (a) that the PRO may at any time audit, or engage an independent auditor to audit (including a real-time audit of any applicable electronic systems for deliveries, supply chain logistics, payments, collections and verification) and review the Export Sale Statements and declarations (and any relevant or related supporting information) to ensure that the information provided by the Exporter is true and correct;
- (b) to give the auditor access (at all reasonable times) to any areas where that Exporter's business is being carried out for the purposes of clause 5(a);
- (c) to provide all reasonable assistance to the auditor under clause 5(a) (if requested by the PRO);
- (d) to keep appropriate and sufficient electronic records of all Export Sales and all Export Sale Statements for a minimum of 7 years; and
- (e) to provide a declaration by the means and in the form set out by the PRO within 10 Business Days of the notification by the PRO of the proposed audit for the period audited (or to be audited). Until the PRO specifies otherwise, the declaration must be in the form set out in Schedule 1 of the Container Export Protocol and signed on behalf of the Exporter.

6 Information Sharing

The Exporter agrees that the PRO may share any information provided by the Exporter in relation to the Container Export Protocol with:

- (a) the State, its agencies, instrumentalities and authorities;
- (b) the government of any jurisdiction in which a Corresponding Law is in force, its agencies, instrumentalities and authorities;
- (c) the PRO's agents, subcontractors and professional advisers; and
- (d) the occupant of a position equivalent to the PRO in any jurisdiction in which a Corresponding Law is in force,

and that these entities may share any information so provided with one another.

7 Dispute

- (a) The Exporter agrees that the PRO may issue a written notice to the Exporter requiring a Common Dispute to be resolved in accordance with the Common Dispute Procedure (***Notice of Common Dispute***).
- (b) If a Notice of Common Dispute is issued, the Common Dispute must be resolved in accordance with the Common Dispute Procedure.

8 Assignment

The Exporter agrees that the PRO may assign any or all of its rights under this Deed Poll to the State or a person nominated by the State.

9 Notices

Any notice or other communication given or made by the Exporter under this Deed Poll:

- (a) must be in writing and signed by the sender or a person duly authorised by the sender (or in the case of email, set out the full name and position or title of the sender or person duly authorised by the sender);
- (b) must be delivered to the PRO by prepaid post (if posted to an address in another country, by registered airmail) or by hand or email to the address or email address below or the address or email address last notified by the PRO to the Exporter:
 - (i) Address: Level 2, 100 Creek St, Brisbane QLD 4000
 - (ii) Email: notices@containerexchange.com.au
 - (iii) Attn: Container Exchange Notices Team

10 Executed Softcopy an Original

The Exporter may sign electronically a soft copy of this Deed Poll through DocuSign, and bind itself accordingly. That will satisfy any statutory or other requirements for it to be in writing and signed by the Exporter. Any soft copy so signed will constitute an executed original. In addition, the Exporter intends to print it out when so signed, so that the relevant signatures will appear in the printout, and any print-out will also be an executed and delivered original.

11 Governing law

This Deed Poll is governed by and construed in accordance with the laws of Queensland.



12 Jurisdiction

- (a) The Exporter irrevocably submits to the non-exclusive jurisdiction of the courts of the State of Queensland and the courts to which the appeals from those courts may be made with respect to any proceedings that are permitted to be brought at any time.
- (b) The Exporter irrevocably waives any objection it may now or in the future have to the venue of any proceedings, and any claim they it now or in the future have that any proceedings has been brought in an inconvenient forum, where that venue falls within clause 12(a).

13 Further acts and documents

The Exporter must promptly do all further acts and execute and deliver all further documents (in form and content reasonably required by the PRO) required by law or reasonably requested by the PRO to give effect to this Deed Poll.



Schedule 1

Common Dispute Procedure

1 Definitions and Interpretation

1.1 Definitions

Capitalised terms in this Procedure have the meaning given in clause 1.1 of this Agreement unless otherwise defined below.

Act means the *Waste Reduction and Recycling Act 2011* (Qld).

Business Day means a day that is not a Saturday, Sunday, or recognised public holiday in Brisbane.

Common Dispute means a dispute or an issue which involves a question of law (including a question of contract interpretation) or a question of fact, that is of general application or importance to a Scheme Agreement between the PRO and another Scheme Contributor, and in respect of which the PRO has given a Notice of Common Dispute.

Container Export Deed Poll means a deed poll in favour of the PRO given by an Exporter in relation to Beverage Products exported from Queensland, in the form prescribed by the PRO.

Container Recovery Agreement has the meaning given to that term under section 99Q of the Act.

Manufacturer has the meaning given to the term "manufacturer" under section 99O of the Act.

Notice of Common Dispute means a Notice of Common Dispute given under a Scheme Agreement.

PRO Website means containerexchange.com.au as amended from time to time.

Procedure means this Common Dispute Procedure

Related Scheme Contributor means each party notified by the PRO in accordance with clause 3.2(a).

Scheme means the beverage container refund scheme established under Part 3B of Chapter 4 of the Act.

Scheme Agreement means:

- (a) a Container Recovery Agreement; and
 - (b) a Container Export Deed Poll,
- as the context requires, and includes this Agreement.

Scheme Contributor means:

- (a) a Manufacturer that has entered into a Container Recovery Agreement with the PRO; and
 - (b) a Scheme Exporter that has executed a Container Export Deed Poll,
- as the context requires.

Scheme Exporter means a person who exports Beverage Products from Queensland and has entered into a Container Export Deed Poll and includes the Exporter.

SP Party has the meaning given in clause 3.1(b)(ii).

1.2 Interpretation

Clause 1.2 of this Agreement applies to this Procedure as though set out here in full, except that references to "this Agreement" should be read as "this Procedure".

2 Status of this Procedure

- (a) The Exporter acknowledges that each Scheme Contributor must comply with the terms of the Procedure under and in accordance with their respective Scheme Agreement.
- (b) The Exporter acknowledges that its rights and obligations under this Procedure are in favour of each Scheme Contributor and are irrevocable.
- (c) The Exporter agrees that each Scheme Contributor may enforce the terms of this Procedure against the Exporter as if:
 - (i) this Procedure were a separate deed; and
 - (ii) each Scheme Contributor were a party to, and had signed, sealed and delivered, that deed.
- (d) The Exporter covenants and agrees with all Scheme Contributors that have entered into a Scheme Agreement, that on and from the date of this Agreement, it will:
 - (i) observe, perform and be bound by this Procedure;
 - (ii) comply with this Procedure; and
 - (iii) assume the rights and obligations of a Scheme Contributor and Scheme Service Provider as set out in this Procedure.
- (e) The Exporter:
 - (i) irrevocably and unconditionally consents to new Scheme Contributors exercising the rights and obligations of a Scheme Contributor in accordance with this Procedure on and from the date of their respective Scheme Agreement;
 - (ii) agrees that each new Scheme Contributor will be entitled to exercise all rights, privileges and benefits afforded to it as specified in this Procedure; and
 - (iii) agrees that it continues to be bound by this Procedure notwithstanding clause 2(e)(i) and (ii).

3 Common Disputes

3.1 Notice of Common Dispute

- (a) If a dispute or difference arises between Scheme Contributors in respect of any fact, matter or thing arising out of, or in any way in connection with, this Procedure (**CDP Dispute**), the CDP Dispute is deemed to be a Common Dispute and the PRO may issue a Notice of Common Dispute to the Scheme Contributors involved in the CDP Dispute.
- (b) If a Notice of Common Dispute has been issued under a Scheme Agreement:
 - (i) the Common Dispute must be resolved in accordance with clause 3 and clause 4 (**Scheme Contributor Dispute Resolution Procedure**); and
 - (ii) the parties to a dispute to be resolved via the Scheme Contributor Dispute Resolution Procedure are the PRO and the relevant Scheme Contributor(s) to whom the Notice of Common Dispute was issued (each an **SP Party**).

3.2 Related Scheme Contributors

- (a) The PRO must notify all Scheme Contributors with a copy to each SP Party, within 10 Business Days of the Notice of Common Dispute being issued.
- (b) Each notice given by the PRO under this clause 3.2 must clearly identify each of the Related Scheme Contributors to allow each SP Party to be able to comply with clause 4.4. The Related Scheme Contributors are not parties to the Common Dispute.

4 Scheme Contributor Dispute Resolution Procedure

4.1 Dispute resolution procedure

- (a) Within 5 Business Days of a Notice of Common Dispute being issued, a senior representative from each party must meet and use all reasonable endeavours acting in good faith to resolve the Common Dispute by joint discussions.
- (b) Compliance with the Scheme Contributor Dispute Resolution Procedure is a condition precedent to any entitlement to claim relief or remedy (whether by way of proceedings in a court or otherwise) in respect of the subject of a Common Dispute.
- (c) Nothing in this clause 4 prevents a party seeking urgent injunctive or declaratory relief from a court in connection with the Common Dispute.
- (d) The parties' obligations under the relevant Scheme Agreement will continue despite the existence of a Common Dispute between some or all of the parties.

4.2 Referral to Expert Determination

If the Common Dispute is not resolved within 20 Business Days after the issue of a Notice of Common Dispute, the Common Dispute will be referred to expert determination by the PRO (**Referral Date**).

4.3 Expert Determination

- (a) The expert must be appointed, and the expert determination must be conducted in accordance with the Resolution Institute Expert Determination Rules as modified by Appendix 1.
- (b) The parties to the Common Dispute must enter into an agreement with the appointed expert on such terms as the parties and the expert may agree or as determined in accordance with the rules for the expert determination.
- (c) An expert determination conducted under this clause 4 is not an arbitration and the expert is not an arbitrator. The expert may reach a decision from his or her own knowledge and expertise.
- (d) The expert must:
 - (i) disclose to the parties to the Common Dispute any interest he or she has in the outcome of the determination; and
 - (ii) not communicate with one party to the Common Dispute or a Related Scheme Contributor without the knowledge of the other party or parties.
- (e) The expert must notify the parties to the Common Dispute and the Related Scheme Contributors of his or her decision upon an expert determination conducted under this clause 4 within the period agreed with the parties to the Common Dispute.

- (f) The date of the expert's determination will be the date it is provided to the parties to the Common Dispute and the Related Scheme Contributors under clause 4.3(e) (***Date of Expert Determination***).

4.4 Involvement of Related Scheme Contributors

- (a) Communications provided to the expert or a party to the Common Dispute relating to the expert determination, must be provided to the Related Scheme Contributors.
- (b) The PRO must provide a copy of each communication received from the expert (including the expert's decision), to the Related Scheme Contributors within 1 Business Day of receipt of the communication.
- (c) The SP Party must provide each relevant Related Scheme Contributor with access to drafts of the submissions and evidence (including expert opinions) that it proposes to submit in the expert determination, at least 20 Business Days before the SP Party is due to make its submission.
- (d) The Related Scheme Contributors may comment on the draft submissions, however any comments must be provided to the SP Party at least 10 Business Days before the SP Party is due to make its submission in the expert determination.
- (e) The SP Party must consider and take account of any comments provided in accordance with clause 4.4(d), in the preparation of its submissions.
- (f) The SP Party must:
- (i) provide the relevant Related Scheme Contributors with a draft of any proposed offer to settle the Common Dispute not less than 10 Business Days prior to submitting that proposed offer to the PRO; and
 - (ii) not settle, waive or compromise the Common Dispute without the prior written consent of all of the relevant Related Scheme Contributors.
- (g) If it appears to the expert, or on application by a party to the Common Dispute, that the SP Party is not able adequately to represent the interests of the relevant Related Scheme Contributors, the expert may make such directions as he or she thinks fit concerning the substitution of one of the Related Scheme Contributors for the SP Party, and make such other orders as it thinks fit. In this case, thereafter references to the SP Party in the Scheme Contributor Dispute Resolution Procedure will be references to the substitute party.

4.5 Costs of the expert determination

- (a) Each party to the Common Dispute will:
- (i) bear its own costs in respect of any expert determination; and
 - (ii) pay an equal share of the expert's costs.
- (b) Each Related Scheme Contributor will bear its own costs of participation in the Dispute Resolution Process.

4.6 Notice of dissatisfaction

- (a) If:
- (i) subject to clause 4.6(b), a party to the Common Dispute is dissatisfied with the expert's determination then it may, within 15 Business Days after the Date of Expert Determination; or

- (ii) the expert fails to give its determination within the time required (if any is agreed with the expert), then any party to the Common Dispute may, within 15 Business Days after this period has expired,

give notice of its dissatisfaction by providing it to the other parties to the Common Dispute (**Notice of Dissatisfaction**).

- (b) An SP Party must not give a Notice of Dissatisfaction if more than 15 Business Days have passed after the Date of Expert Determination or the period within which the expert was required to give its determination (as applicable).
- (c) A Notice of Dissatisfaction issued under this clause 4.6 must:
 - (i) state that it is given under this clause 4.6; and
 - (ii) set out the matter in dispute and the reason(s) for dissatisfaction.
- (d) If the SP Party or a Related Scheme Contributor considers that a Notice of Dissatisfaction should be issued then it must provide notice to the Related Scheme Contributors and the SP Party (as applicable) of that fact and its reasons for holding that view within 10 Business Days after the Date of Expert Determination.
- (e) Where a Related Scheme Contributor provides a notice under clause 4.6(d), the SP Party must take that notice into account when deciding whether or not to give a Notice of Dissatisfaction.

4.7 Proceedings

- (a) If a Common Dispute has not been resolved (in whole or in part):
 - (i) where a party to a Common Dispute has properly given a Notice of Dissatisfaction under and in accordance with clause 4.6(a), within 10 Business Days after the Notice of Dissatisfaction was provided; or
 - (ii) where clause 4.7(a) does not apply, within 85 Business Days of the PRO issuing a Notice of Common Dispute;

(irrespective of whether clauses 4.2 to 4.7 have been complied with), any party may commence legal proceedings.
- (b) Despite any Notice of Dissatisfaction, the determination of the expert will be binding on each SP Party, the PRO and the Related Scheme Contributors on receipt until such time as it is revised in an amicable settlement or a court judgment.

4.8 Binding Nature of Common Dispute

- (a) If the expert has given a determination as to a Common Dispute, and no Notice of Dissatisfaction has been properly given under and in accordance with clause 4.6 then the parties to this Procedure unequivocally and unreservedly agree that:
 - (i) the determination of the expert will be final and binding on each SP Party, the PRO and the Related Scheme Contributors on receipt, who must give effect to it;
 - (ii) they will be bound by any settlement or determination of the subject matter of that Common Dispute to the extent that it touches upon or concerns any right, remedy, benefit or entitlement in a Scheme Agreement to which they are a party;
 - (iii) any determination by an expert or a court in relation to that Common Dispute will be binding on the parties to that Notice of Common Dispute or a notice under clause 3.2(a) without the need for a separate appointment or determination under



this Procedure to the extent that such determination is binding on the parties to this Procedure; and

- (iv) the parties agree to accept in full and final resolution of all and any entitlement, privilege, benefit or liability, which they may have arising out of or in connection with this Procedure or any Scheme Agreement in respect of the Common Dispute, which has been determined in respect of the Common Dispute in accordance with this Procedure.
- (b) The parties agree that the provisions of this Procedure apply to a Common Dispute the subject of a Notice of Common Dispute whether or not they participate in the Scheme Contributor Dispute Resolution Procedure.

4.9 Time for Compliance

Any remedy or benefit to which a party to this Procedure is entitled pursuant to clause 4.8 must be paid or granted by the relevant party by the later of:

- (a) 20 Business Days of the binding settlement or determination of such entitlement under this Procedure; or
- (b) the date such remedy or benefit must be paid or granted by the party responsible for paying or granting it under any provision of this Procedure as determined by an expert or a court.



Appendix 1

Rules for the Expert Determination Process

Resolution Institute Expert Determination Rules

In accordance with, and subject to the Resolution Institute Expert Determination Rules including Schedules A and B, the Parties agree to modify the application of those Rules as follows:

Modifications are underlined.

1. **RULE 5 Role of the Expert**

1. The Expert shall determine the Dispute as an expert in accordance with these Rules, the Contract, the requirements of procedural fairness, and according to law.

2. No modification.

3. No modification.

3A. The rules of evidence do not apply to the Process.

4. (a) The Expert shall be independent of, and act fairly and impartially as between the parties, giving each a reasonable opportunity of putting its case and dealing with that of any opposing party, and a reasonable opportunity to make submissions on the conduct of the Process.

(b) The Expert must take all reasonable steps to avoid any conflict of interest, potential conflict of interest or other circumstances that might reasonably be considered to adversely affect the Expert's independence or capacity to act fairly and impartially in relation to the Dispute.

(c) If at any time during the Process, the Expert becomes aware of any circumstances that might reasonably be considered to adversely affect the Expert's independence or capacity to act fairly or impartially in relation to the Dispute, the Expert must inform the Parties immediately.

(d) The Expert's mandate will be terminated 7 days after the notice is provided by the Expert under clause 4(c) above, unless the Parties agree otherwise.

5. No modification.

2. **RULE 10 The Expert's Determination**

1. Unless otherwise agreed between the Parties, the Expert must notify the parties of his or her decision within 28 days from the acceptance by the expert of his or her appointment. As soon as reasonably practicable after receiving the submissions and evidentiary material from the parties pursuant to Rule 9, the Expert shall determine the Dispute between the parties and notify such determination in writing to the parties.

3. **RULE 12 Waiver of Right to Object**

Rule 12 is deleted in its entirety.



Executed and delivered as a Deed Poll

Executed and delivered as a deed poll in
accordance with section 127 of the
Corporations Act 2001 by

Director Signature

Director / Secretary Signature