



Export Supply Deed Poll

This Deed Poll is made on

Parties

1 [Exporter] (ABN [*]) of [*] (*Exporter*)

In favour of

2 **The Occupant of the position of Scheme Coordinator or an equivalent position in the New South Wales Container Deposit Scheme**, which, as at the date of this Deed Poll is **Exchange for Change (NSW) Pty Ltd** (ACN 620 512 469) of Suite 6, Level 1 Building C, 1 Homebush Bay Drive, Rhodes NSW 2138 (*Scheme Coordinator*)

Recitals

- A The Exporter acknowledges that Suppliers have entered into Supply Arrangements with the Scheme Coordinator for the purpose of section 38 of the Act.
- B Suppliers Supply the Exporter with Containers in New South Wales.
- C The Exporter subsequently Supplies a portion of those Containers outside of New South Wales.
- 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 Avoidance and Resource Recovery Act 2001* (NSW).

Container has the meaning given in the Act.

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

Corresponding Law means a law of another state or territory that is declared by the Regulations to be a corresponding law for the purposes of Part 5 of the Act.

Export Supplies means Containers previously Supplied by a Supplier in New South Wales that the Exporter subsequently Supplied outside of New South Wales which the Exporter reasonably believes will not be further Supplied to a person within New South Wales.

Export Supply Statement means any Export Supply Statement (including an Initial Export Supply Statement) that is provided by the Exporter to the Scheme Coordinator pursuant to the Container Export Protocol.

Portal means the online portal administered by the Scheme Coordinator and notified to the Exporter from time to time.

Regulations means:

- (a) the Waste Avoidance and Resource Recovery (Container Deposit Scheme) Regulation 2017; and

- (b) any other regulation made under Part 5 of the Act.

State means the Crown in right of the State of New South Wales.

Supplier means a person who has entered into a Supply Arrangement with the Scheme Coordinator for the purpose of section 38 of the Act.

Supply has the meaning given in the Act (and **Supplied** has the same meaning).

Supply Arrangement has the meaning given in the Act.

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 Scheme Coordinator 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 Scheme Coordinator and the State will rely upon the commitments made by the Exporter in this Deed Poll.

3 Overpayments

- (a) The Exporter must pay the Scheme Coordinator any amount of overpayment the Scheme Coordinator reasonably determines (whether as a result of an audit, investigation or otherwise) has been made to the Exporter by the Scheme Coordinator pursuant to the Container Export Protocol.
- (b) Any amount payable under clause 2(a) is a debt due and payable by the Exporter to the Scheme Coordinator. The Scheme Coordinator 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 Scheme Coordinator of any amount relating to the Container Export Protocol:
 - (i) does not constitute approval of any information provided by the Exporter to the Scheme Coordinator 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 Scheme Coordinator 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 in respect of which the Exporter has made claims in relation to Export Supplies pursuant to the Container Export Protocol, the Exporter must prepare and deliver to the Scheme Coordinator 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 Scheme Coordinator may engage an independent auditor to, at any time, audit (including a real-time audit of any applicable electronic systems for deliveries, supply chain logistics, payments, collections and verification) and review the Export Supply 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 independent auditor access (at all reasonable times) to any areas where that Exporter's business is being carried out for the purposes of clause 4(a);
- (c) to provide all reasonable assistance to the independent auditor engaged by the Scheme Coordinator under clause 4(a) (if requested by the Scheme Coordinator);
- (d) to keep appropriate and sufficient electronic records of all Export Supplies and all Export Supply Statements for a minimum of 7 years; and
- (e) to provide a declaration by the means and in the form set out by the Scheme Coordinator within 10 business days of the notification by the Scheme Coordinator of the proposed audit for the period audited (or to be audited). Until the Scheme Coordinator specifies otherwise, the declaration must be in the form set out in Schedule 1 and signed on behalf of the Exporter.

6 Information Sharing

The Exporter agrees that the Scheme Coordinator 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; and
 - (c) the occupant of a position equivalent to the Scheme Coordinator 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 Assignment

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

8 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 Scheme Coordinator 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 Scheme Coordinator to the Exporter:
 - (i) Address: Suite 6, Level 1 Building C, 1 Homebush Bay Drive, Rhodes NSW 2138
 - (ii) Email: legal@exchangeforchange.com.au
 - (iii) Attn: Commercial Manager – Exchange for Change

9 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.

10 Governing law

This Deed Poll is governed by and construed in accordance with the laws of New South Wales.

11 Jurisdiction

- (a) The Exporter irrevocably submits to the non-exclusive jurisdiction of the courts of the State of New South Wales 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 11(a)

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 **[Insert Exporter's details and amend signing block if required.]**

Director Signature

Director / Secretary Signature

Print Name

Print Name