



## Standard Customer Agreement

These terms and conditions (the **agreement**) are entered into between Cindicium Pty Ltd ABN 60 616 698 492 (**Cindi**) and the contracting entity nominated by you in the registration process (the **Customer**). By clicking to accept this agreement, accessing or using any of the services provided by Cindi or ordering any equipment from Cindi, the Customer agrees to be bound by the terms of this agreement. If you are accepting this agreement on behalf of your employer or another entity, you represent and warrant that you are agreeing to this agreement on behalf of the party that you represent and that you have the full legal authority to enter into this agreement and bind your employer or other applicable entity.

### 1. Services

- 1.1 Cindi provides its shipping container weighing service on an equipment/software-as-a-service basis. Cindi does not sell its standard container weighing Equipment.
- 1.2 The Services that Cindi provides are comprised of the following elements:
- (a) **Lease:** Customer may use the Equipment to weigh shipping containers and record weights;
  - (b) **Licence:** Customer may use the App and Portal to weigh shipping containers, record weights and manage their Weight Data; and
  - (c) **Support Services:** Cindi will provide the following support services:
    - (i) maintenance, calibration, repair and replacement of the Equipment in accordance with the Operational Processes;
    - (ii) software maintenance in accordance with clause 1.4; and
    - (iii) a “customer support” help desk:  
+61 1300 1cindi (1300 124 634)  
7:00 am – 7:00 pm AEST Mon – Fri (excluding public holidays)  
cindihelpdesk@cindi.email
- 1.3 Cindi may make changes or updates to the Services from time to time, provided that such changes or updates do not result in a material reduction in the level of performance or availability of the Services. If Cindi makes a material change to the Services, it will notify the Customer.
- 1.4 Cindi may at its option make updates, patches, bug fixes or service packs for the App or Portal from time to time.
- 1.5 Cindi may withdraw or discontinue any Services or any portion or feature of the Services for any reason and without any liability to the Customer (other than a refund of any unused Pre-paid Weighs), by providing the Customer with at least 30 days notice.
- 1.6 In limited circumstances, Cindi may sell equipment to the Customer subject to separate terms of sale.

### 2. Customer may resell the Services

- 2.1 The Customer may permit a third party to use the Equipment, App and Portal to weigh shipping containers and charge them, provided that:
- (a) the Customer ensures that those third parties and their Personnel comply with this agreement, the Equipment Terms of Use and the App and Portal Terms and Conditions, and the Customer remains liable to Cindi under this agreement for any failure of those parties to comply with those terms as though they were the Personnel of the Customer; and

- (b) the Customer does not compete with the business of Cindi.

### 3. Pricing

- 3.1 The prices associated with use of the Services and any applicable discounts or offers are set out at the following web page: [www.cindicium.com](http://www.cindicium.com) (the **Price List**).
- 3.2 Unless stated otherwise, the prices set out in the Price List are inclusive of all taxes other than GST.
- 3.3 Cindi may change its prices in its discretion provided that it provides Customer with no less than 60 days notice.
- 3.4 A price change does not affect any Pre-paid Weighs that Customer purchases before the date the price change becomes effective.

### 4. Payments

- 4.1 To use the Services to weigh a shipping container, the Customer must pre-purchase weighings at the price set out in the Price List (each a **Pre-paid Weigh**). The minimum number of Pre-paid Weighs that can be purchased at any time (including for any top-up) is 50.
- 4.2 Cindi uses ComPay, a third party service provider, to process payments. The Customer will comply with ComPay’s terms of service.
- 4.3 Once payment for any Pre-paid Weighs clears, those Pre-paid Weighs will be added to the Customer’s account ready to be used (**Account Balance**).
- 4.4 Each Pre-paid Weigh entitles the Customer to use the Services to weigh 1 container. Each time the Customer uses the Services to weigh a container, 1 Pre-paid Weigh will be deducted from the Customer’s Account Balance.
- 4.5 The Customer must top-up their Account Balance and purchase additional Pre-paid Weighs before its Account Balance reaches 0.
- 4.6 If the Customer uses all of its Pre-paid Weighs and does not top-up their Account Balance by purchasing additional Pre-paid Weighs within 30 days, Cindi may disable the Customer’s access to the App and Portal and charge the Customer a fee of \$500 to reconnect.

### 5. GST

- 5.1 Cindi will provide the Customer with a tax invoice in accordance with the GST Law in relation to the Pre-paid Weighs purchased by the Customer (**Tax Invoice**).
- 5.2 If any supply under this agreement is a Taxable Supply, then Cindi may recover the amount of GST payable on that Taxable Supply, subject to the issue of a valid Tax Invoice.
- 5.3 The Customer warrants to Cindi that it is registered for GST. The Customer will pay Cindi on demand the amount of any Loss incurred by Cindi arising from or in connection with any breach by the Customer of this warranty.

## 6. Operational Processes

- 6.1 From time to time, Cindi will notify the Customer of the operational processes that apply in respect of the Services, including the processes for each of the following activities:
- (a) ordering Equipment (including spare parts);
  - (b) induction and training to use the Equipment;
  - (c) registering Users;
  - (d) repair/re-calibration/replacement of the Equipment; and
  - (e) outages and maintenance of the App and Portal, (the **Operational Processes**).
- 6.2 The Customer must comply with the Operational Processes.

## 7. Use of the Equipment

- 7.1 Cindi will provide the Equipment to the Customer for it to use only in connection with the Services.
- 7.2 Customer must, and must ensure that its Personnel:
- (a) only use the Equipment in the manner in which it is intended to be used and in accordance with the Equipment Terms of Use, Cindi's reasonable instructions, directions, policies and procedures and all applicable laws (including all WHS Laws);
  - (b) take reasonable steps to minimise the risk of damage to the Equipment (reasonable wear and tear excepted);
  - (c) notify Cindi immediately of any damage to the Equipment; and
  - (d) return the Equipment to Cindi upon the expiration or termination of this agreement.
- 7.3 Customer must not, and must ensure that its Personnel do not:
- (a) sell, lease or otherwise dispose of the Equipment;
  - (b) create, or allow creation of, any security interest, encumbrance, lien, charge or mortgage over any Equipment; or
  - (c) alter or reconfigure the Equipment.
- 7.4 Customer will reimburse Cindi for the cost of repair or replacement of any Equipment lost or damaged by the Customer or any of its Personnel.
- 7.5 Cindi will provide the Customer with operating procedures and training collateral that demonstrate the correct, safe and efficient operation of the Equipment.

## 8. Title in the Equipment

- 8.1 Customer obtains no title or interest in the Equipment (unless expressly provided otherwise in separate terms of sale). The Equipment remains the personal property of Cindi, notwithstanding the manner by which it may be attached or affixed to land.
- 8.2 Cindi claims, and the Customer grants to Cindi, a Purchase Money Security Interest in all Equipment provided to the Customer from time to time.
- 8.3 The Customer agrees not to do or permit anything to be done that may result in any Purchase Money Security Interest granted to Cindi to rank or to be subjected to priority to any other Personal Property Security Interest in favour of any other party.
- 8.4 The Customer agrees to take such further steps which may be required by Cindi to take additional or better security under the PPSA over the Equipment, or to maintain the ability to claim and realise the security interest, including its priority, pursuant to the PPSA. This obligation on the part of the Customer includes obtaining written consents, supplying information, signing forms, executing documents, whether on the part of the Customer, any financier to the Customer, a lessor or landlord of the

Customer or any third party having a claim or interest over land or a building in respect of which the Equipment is located at present or at any time in the future.

- 8.5 The Customer must provide to Cindi all details of the location of the Equipment on request.
- 8.6 The lease granted in clause 1.2(a) will expire on the earlier of the expiration or termination of this agreement and the date that is 6 years and 11 months after this agreement commences.

## 9. Use of the App and Portal

- 9.1 The Customer's Personnel must each register for an account in order to use the App and Portal.
- 9.2 The Customer is responsible for identifying and authenticating all Users, for approving access by such Users to the App and Portal, for controlling against unauthorised access by Users and for maintaining the confidentiality of usernames, passwords and other account information.
- 9.3 The Customer may specify one or more Users who will also be able to access administrator privileges in the Portal that will allow them to carry out certain administrative functions in relation to the Customer's User accounts.
- 9.4 The Customer must ensure that each of its Users complies with this agreement.
- 9.5 Customer must ensure that each of its Users agrees to, and continues to comply with, the App and Portal Terms and Conditions before accessing and using the App and Portal.
- 9.6 The Customer must, and must ensure that each of its Users, accepts and installs all patches, updates, bug fixes and service packs necessary or desirable for the proper function and security of the App and Portal.
- 9.7 The Customer must not grant multiple individuals access to an individual User account.
- 9.8 The Customer must use commercially reasonable efforts to prevent unauthorised access and use of the App and Portal and to terminate any such unauthorised access or use. The Customer must promptly notify Cindi if it becomes aware of any unauthorised access or use of the App or Portal.
- 9.9 The Customer must not attempt to reverse engineer any element of the Services or attempt to create a substitute or similar service through use of, or access to, the Services.
- 9.10 Data or screen scraping of the App or Portal is not permitted. The Customer must not use any automated systems or software to extract data from the App or Portal without Cindi's prior consent.

## 10. Suspension of Services

- 10.1 Cindi may suspend the provision of any Services (including the suspension of the access of any User to the App or Portal) at any time if reasonably necessary to:
- (a) comply with any applicable law;
  - (b) protect the health or safety of any person; or
  - (c) preserve the security, stability, availability or integrity of the Service or Cindi's systems, network, equipment or facilities.

## 11. Access to Customer Sites

- 11.1 Upon reasonable request by Cindi, the Customer must provide Cindi and its Personnel with safe and timely access to any premises owned, controlled or occupied by the Customer which Cindi requires access to:
- (a) provide the Services; and
  - (b) inspect or recover the Equipment.
- 11.2 When accessing any site referred to above, Cindi must, and must ensure that its Personnel, comply with:

- (a) any site procedures, policies or reasonable directions notified by Customer from time to time; and
- (b) all WHS Laws.

## 12. Intellectual Property

- 12.1 Nothing in this agreement transfers or assigns ownership of a party's pre-existing Intellectual Property Rights (or those of a third party) or any Intellectual Property Rights created outside of this agreement.
- 12.2 Cindi grants the Customer and each of its Users a non-exclusive, non-transferable licence to use the App and Portal in accordance with the App and Portal Terms and Conditions.
- 12.3 Cindi grants Customer a non-exclusive, non-transferable licence to use any training material provided by Cindi.
- 12.4 If Cindi believes or it is determined that any element of the Services infringes a third party's Intellectual Property Rights, Cindi may choose to either modify the relevant material so that it no longer infringes (whilst preserving its functionality) or obtain a licence to permit the Customer to use the relevant material. If neither of these alternatives is commercially reasonable, then Cindi may terminate this agreement and refund the amount of any unused Pre-paid Weighs.
- 12.5 Neither party can use the other party's trade mark or brand without the other party's consent.

## 13. Data

- 13.1 The Customer owns their Weight Data.
- 13.2 Cindi may collect data about the Customer's use of the Equipment and the Services.
- 13.3 Cindi owns data generated by the App and Portal (not including Customer's Weight Data).
- 13.4 The Customer grants Cindi a non-exclusive, irrevocable, perpetual, transferable licence to use the Weight Data (provided that it is not associated with the Customer).
- 13.5 Cindi provides the ability for the Customer to export its Weight Data from the Portal at any time. The Customer is responsible for making backup copies of its Weight Data.

## 14. Privacy

- 14.1 Cindi will comply with the Privacy Act 1988 (Cth) and its Privacy Policy, when handling Personal Information (as that term is defined in the Privacy Act).

## 15. Warranty and Disclaimer

- 15.1 Cindi warrants that the Services will operate substantially in accordance with this agreement.
- 15.2 Except as expressly provided for in this agreement, to the extent permitted by law, Cindi does not make any other warranties and there are no conditions of any kind, whether express, implied, statutory or otherwise, including without limitation, warranties or conditions of merchantability, fitness for a particular purpose or noninfringement. In particular, Cindi does not warrant that the Services will:
  - (a) be free of errors and defects, or that access to the Services will be uninterrupted;
  - (b) operate in combination with the Customer's hardware, software or systems; or
  - (c) meet the Customer's requirements, specifications or expectations.
- 15.3 To the extent permitted by law, Cindi excludes all liability for any and all Losses suffered or incurred by the Customer to the extent caused or contributed to by:
  - (a) any delay, interruption, transmission error, delivery failure or other damage resulting from the inherent limitation in the transfer of data over communications facilities outside of Cindi's control,

including the internet and mobile telecommunications networks;

- (b) any data loss or corruption experienced by the Customer;
- (c) the Customer's hardware (including telecommunications handsets), software, systems or any content provided by the Customer; or
- (d) any third party web sites, content, products or services that may be accessible using the Services.

## 16. Limitation of Liability

- 16.1 To the extent permitted by law, the Customer's sole and exclusive remedy and Cindi's sole and exclusive liability for any breach of the warranty in clause 15.1 or any failure, error or defect in the Services, is:
  - (a) the correction of the deficient services; and
  - (b) if Cindi cannot substantially correct the deficiency in a commercially reasonable manner, a refund of the fees paid by the Customer in respect of the deficient services.
- 16.2 To the extent permitted by law, the liability of each party is capped at the lesser of the annual fees paid or payable by the Customer under this agreement and \$50,000.
- 16.3 The limitations of liability in clauses 16.1 and 16.2 do not apply to each party's liability:
  - (a) for any negligent or wilful acts or omissions of that party that cause or contribute to death or personal injury;
  - (b) for any acts or omissions of that party constituting fraud;
  - (c) in the case of the Customer, to pay any fees under this agreement; or
  - (d) for a breach of clause 20 (Confidentiality).
- 16.4 The liability of a party (the first party) to the other party in respect of any and all Losses arising from or in connection with this agreement (regardless of how that liability arises) is reduced proportionally to the extent that:
  - (a) the other party has not taken all reasonable steps to minimise and mitigate its own Losses in relation to the act, omission, event or circumstance giving rise to such Loss; or
  - (b) any Losses of the other party are caused, or contributed to, by any act or omission of the other party, its related entities or Personnel or their networks, systems, equipment or facilities.
- 16.5 To the extent permitted by law, neither party is liable to the other party for any Loss arising from or in connection with this agreement which:
  - (a) does not arise directly, or naturally in the usual course of things, from the breach, action or inaction in question; or
  - (b) constitutes loss of profit, loss of anticipated profit, loss of opportunity or anticipated savings, loss of revenue, loss or impairment of credit rating, loss of or corruption of data, loss of business opportunities and loss of or damage to reputation or goodwill, even if such loss arises directly or naturally in the usual course of things from that breach, action or inaction.

## 17. Disputes

- 17.1 If any dispute arises between the parties, before a party can commence legal proceedings, the CEOs (or their delegate) must meet and negotiate in good faith for 20 business days.
- 17.2 If they are unable to resolve the dispute, then either party may commence legal proceedings.

- 17.3 Notwithstanding the above, either party may still seek urgent interlocutory relief.
- 18. Insurance**
- 18.1 Each party will maintain product, public liability and workers compensation insurance as appropriate.
- 19. Term and Termination**
- 19.1 This agreement will commence on the date it is accepted by the Customer and continue until terminated in accordance with this clause 19.
- 19.2 Either party may terminate this agreement:
- for any reason by providing the other party with 30 days notice;
  - if the other party breaches this agreement and fails to remedy that breach within 20 days after the date it is notified by the first party; or
  - immediately if the other party becomes insolvent.
- 19.3 If this agreement is terminated, then:
- the Customer must return, or make available for collection by Cindi, all Equipment;
  - Cindi will disable the Customer's access to the App and the Portal;
  - any unused Pre-paid Weighs will be forfeited, they will not be refunded; and
  - for a period of 60 days after the date of termination, the Customer may extract all of their Weight Data from the Portal. At the end of the 60 day period, Cindi will delete all of the Customer's Weight Data.
- 20. Confidentiality**
- 20.1 Each party (**receiving party**) must keep confidential, and not disclose, any Confidential Information of the other party (**disclosing party**) except:
- as permitted under this agreement;
  - with the disclosing party's consent;
  - to the receiving party's officers, agents, professional advisers, employees, contractors, related bodies corporate, insurers and auditors; or
  - where the receiving party is compelled to do so by law, provided that it gives the disclosing party prior written notice.
- 20.2 Each party must only use Confidential Information of the other party for the purpose for which it was disclosed in connection with this agreement.
- 20.3 Notwithstanding any other provision of this agreement, the Customer must not publicly disseminate information regarding the performance of the Services, which is Cindi's Confidential Information.
- 21. Dictionary**
- 21.1 In this agreement:
- Account Balance** has the meaning given to that term in clause 4.3.
- App and Portal Terms and Conditions** means Cindi's terms and conditions that relate to use of the App and Portal.
- App** means Cindi's smartphone app available on iOS and Android.
- Equipment** means the CLAW Ground Series which is comprised of a jack, foot pump and associated fittings and 4 SMARTcells.
- Equipment Terms of Use** means Cindi's terms and conditions that relate to use of the Equipment.
- Confidential Information** in relation to a party means information of a confidential nature including information about its business, operations, strategy, administration, technology, affairs, clients, customers, employees,

contractors or suppliers, but does not include any information which is in the public domain other than through a breach of confidence

**GST** means a goods and services tax, or a similar value added tax, levied or imposed under the GST Law.

**GST Law** has the meaning given to it in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

**Intellectual Property Right** means any invention, discovery, secret process, trade mark, service mark, copyright work, design, patent, know how and any other intellectual property right throughout the world (whether or not it is capable of registration).

**Loss** means losses, damages, liabilities, charges, expenses, compensation, fine, penalty, payment outgoings or costs and all related costs and expenses (including reasonable legal fees and reasonable costs of investigation, litigation, settlement, judgment, appeal, interest and penalties) of any nature or kind, however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

**Operational Processes** has the meaning given to that term in clause 6.1.

**Personal Property Security Interest** has the meaning given to that term in the PPSA.

**Personnel** means, in relation to a party or third party, that party's officers, employees, agents, contractors, subcontractors and consultants. In the case of the Customer, it also includes any third party that Customer permits to use the Equipment, App or Portal pursuant to clause 2.1.

**Price List** has the meaning given to that term in clause 3.1.

**Pre-paid Weigh** has the meaning given to that term in clause 4.1

**Portal** means the online portal that the Customer can use to manage its Weight Data and perform other functions, available at [www.cindiportal.com](http://www.cindiportal.com).

**PPSA** means the Personal Property Securities Act 2009 (Cth).

**Services** means all of the elements described in clause 1.2.

**Tax Invoice** has the meaning given in clause 5.1.

**Taxable Supply** has the meaning given in the GST Law.

**User** means each person authorised by the Customer to access and use the App and Portal on behalf of the Customer.

**Weight Data** means shipping container weights recorded by the Customer using the Services.

**WHS Laws** means all applicable laws that relate to workplace health and safety.

- 21.2 In this agreement, headings are for convenience only and do not affect the interpretation of this agreement, and unless the context otherwise requires:

- person includes an individual, the estate of an individual, a firm, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- a reference to a party includes its successors, permitted assigns and permitted persons substituted by novation;
- a reference to a document includes all amendments to that document;
- the singular includes the plural and vice versa;
- a reference to a party, clause, schedule or attachment is a reference to a party, clause, schedule or attachment to or of this agreement;

- (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;
- (g) the words 'include', 'such as' and 'particularly' in any form are not words of limitation; and
- (h) a reference to a monetary amount is in Australian currency.

## 22. General

- 22.1 This agreement is governed by the laws of New South Wales, Australia. Each party irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales, Australia.
- 22.2 This agreement is validly executed if executed in one or more counterparts.
- 22.3 If any provision or part of a provision of this agreement is held or found to be void, invalid or otherwise unenforceable (whether in respect of a particular party or generally), it will be deemed to be severed to the extent that it is void or to the extent of voidability, invalidity or unenforceability, but the remainder of that provision will remain in full force and effect.
- 22.4 If a party is unable to perform an obligation under this agreement (other than, an obligation to pay money in the ordinary course of business) because of an unforeseeable event or circumstance beyond the reasonable control of the party, then to the extent that event prevents that party from performing that obligation, the party:
  - (a) will be excused from performing that obligation; and

- (b) will not be liable for any Losses arising from or in connection with the non-performance of that obligation.

- 22.5 The Customer must give any notice under this agreement by email to sales@cindi.email.
- 22.6 Cindi must give Customer any notice under this agreement either in writing, by notification to an Administrator in the App or Portal or by email to the contact person nominated by the Customer from time to time. It is the Customer's responsibility to ensure that the details of the nominated contact person are valid and current.
- 22.7 Each party agrees to comply with all applicable laws in connection with the exercise of its rights and the performance of its obligations under this agreement.
- 22.8 The parties are independent contractors and nothing in this agreement gives rise to any relationship of agency, partnership, employment or otherwise.
- 22.9 A party cannot assign or otherwise transfer any of its rights under this agreement without the prior consent of each other party, except that Cindi may assign all of its rights and obligations under this agreement to another entity within its corporate group.
- 22.10 Clauses 11, 12, 13.4, 15, 16, 17, 19.3, 20, 21 and 22, will survive the termination or expiry of this agreement.
- 22.11 This agreement embodies the entire understanding of the parties, and constitutes the entire terms agreed by the parties. It supersedes any prior written or other agreement of the parties.