



Terms and Conditions of Business of LOTUS Containers GmbH

This is a translation of the applicable German "Allgemeine Geschäftsbedingungen der LOTUS Containers GmbH". In case of any discrepancies between the German text and the English translation, the German text shall prevail.

1 General, Scope of application

1. Our offers, services and supplies are made exclusively on the basis of these sale and delivery conditions (hereinafter referred to as „Terms and Conditions of Business“). These Terms and Conditions of Business form an integral part of and apply to all agreements which we conclude with our contractual partners (hereinafter referred to as our „Customer“) in respect of services and supplies offered by us. Our Terms and Conditions of Business shall also govern any future agreements in respect of services and supplies provided to our Customer.

2. We do not accept any conflicting terms and conditions from our Customer and we do not accept any terms and conditions which deviate from our Terms and Conditions of Business unless we have given our prior written consent. This requirement to give prior written consent shall also apply even if we have knowledge of our Customer's conflicting terms and conditions or of any terms and conditions which deviate from our Terms and Conditions of Business but still deliver the goods to our Customer without making an express reservation stating that our Terms and Conditions of Business apply.

3. Any term individually negotiated and agreed with our Customer (including any subsidiary agreements, additions and amendments) shall, in any case, take precedence over these Terms and Conditions of Business.

4. In case we provide our Customer with any freight forwarding services, the German Freight Forwarders' Standard Terms and Conditions (ADSp) (valid as from 01/01/2003) shall take precedence to these Terms and Conditions of Business.

2 Offer and conclusion of an agreement

1. Our offers are non-binding and may be revoked at any time until our Customer's order is confirmed by us, unless the respective offer is expressly marked as binding or contains a specific deadline for acceptance. Details given on our website at www.lotus-containers.com concerning services offered by us do not constitute a

binding offer. If our Customer enters data or details into a contact form provided on our website, the entry does neither constitute a binding offer on our part nor an order confirmation from us to our Customer.

2. Any details given by us in respect of our supplies or services (e.g. weights, measurements, utility values, resilience, tolerances and technical data), as well as our representations of the same (e.g. drawings and illustrations) shall only be deemed to be approximate unless the fitness for the contractually intended purpose requires exact compliance. Any regular commercial deviations as well as any deviations based on legal regulations or which constitute technical improvements, provided they do not impair the fitness of the goods or services for the contractually intended purpose, shall be admissible.

3. We reserve the right of ownership and copyright in respect of all illustrations, drawings, calculations, brochures and any other documentation provided to our Customer. Our Customer must not make such documents available to third parties as such nor its contents, nor shall our Customer publish or duplicate such documents without our prior express consent.

3 Prices and terms of payment

1. Unless anything to the contrary has been expressly agreed, the prices agreed are deemed net prices ex agreed warehouse, exclusive of ancillary expenses. All containers sold are under temporary importation and domestic buyer is responsible for and required to use all containers in international traffic or arrange for domestication, import and neutralization. All charges and costs in connection with domestication, import and neutralization are for domestic buyer's account. Domestic buyer accepts these responsibilities by paying this invoice.

2. Unless anything to the contrary has been expressly agreed, we only deliver or make the goods available once the amount invoiced has been received. Our Customer shall be obliged to pay the amounts invoiced, without making any deduction whatsoever, either in cash or by way of bank transfer to one of our accounts. In the latter case, bank charges are to be borne by our Customer. Payment is made when the funds are received by us or the amount is credited to our account.

3. Our Customer shall only be entitled to set-off his counterclaims against our claims provided his counterclaims have been

awarded by an unappealable judgment or arbitration award, are undisputed or have been acknowledged by us. Our Customer shall only be entitled to exercise his rights of retention or his right to refuse performance in circumstances where he is entitled to set-off his counterclaim. In addition to this, the Customer shall only be authorized to exercise his rights of retention in so far as his counterclaims are based on the same agreement from which our claim arises from.

4. We may make our performance under the terms of the agreement with our Customer subject to advance payments or security provided by our Customer in case it is agreed that delivery will take place against the provision of an invoice and any justified concerns about our Customer's creditworthiness arise after the conclusion of the agreement, in particular where attachments are made or other enforcement measures are brought against our Customer or where insolvency proceedings are instituted against our Customer or the institution of such proceedings has been declined due to lack of assets. Should the Customer not be prepared, or not be in a position to make advance payments or provide security, we shall be entitled to withdraw from the contract.

4 Supplies and services, delivery time and delay in delivery

1. In so far as nothing to the contrary expressly arises from the agreement, it is agreed that the goods will be made available at the agreed depot.

2. In so far as nothing to the contrary is expressly agreed, our Customer undertakes to use containers purchased only as a means for transporting goods.

3. The beginning of the delivery period specified by us requires that all technical issues have been clarified with our Customer. Moreover, adherence to our delivery obligation requires that the Customer fulfils its obligations in good time and properly, in particular makes the agreed payments and, if applicable, provides any agreed security.

4. Delivery in various separate batches shall be permissible, in so far as this is reasonable for our Customer.

5. Contrary to the terms of Sec. 286(2) German Civil Code (BGB), we shall only be in default for delay in respect of our delivery once we have received a written warning from our Customer. In case we are in de-

fault for delay in respect of our delivery, the Customer shall be required to set us a further grace period of at least two weeks to deliver the goods or services.

6. In case we are not be supplied by our own suppliers with appropriate goods or services or in good time, we shall be freed from our obligation to deliver and may also withdraw from the agreement. However, the aforementioned right to withdraw shall not apply in the event where the non-performance by our suppliers resulted from our fault. Our Customer shall be informed immediately about the service or goods not being available. In such circumstances, we shall reimburse any consideration already received immediately.

7. Cases of force majeure (e.g. industrial action at either our or our suppliers' premises, war, fire, transport hindrances, raw material shortage, official or government measures, natural disasters or lock-outs) shall interrupt the delivery time we have quoted for the period during which they exist plus an additional reasonable time to make the goods ready, if required. This shall even apply in case we are in default for delay in delivery. We shall immediately inform our Customer on the occurrence of any case of force majeure and the expected duration of the force majeure event. We shall be entitled to withdraw from the agreement, in whole or in part, in respect of the part of the agreement which has not yet been fulfilled if, based on the duration of the force majeure event, it is not reasonable for us to continue to fulfil the agreement, however by taking our Customer's interests into consideration.

8. Our liability for a delay in delivery shall be governed by paragraph 9 of these Terms and Conditions of Business.

5 Transfer of risk, shipping, delay in acceptance, warehouse charges

1. The risk of accidental loss or accidental impairment to the goods shall pass to our Customer upon the goods being made available to our Customer. In case goods are shipped the risk of any loss or any impairment to the goods to be delivered, as well as the risk of delay shall pass to our Customer as soon as the goods have been handed over to the freight forwarder, freight carrier or any other person appointed to handle the shipping. This shall also apply to delivery made in several parts, regardless of whether delivery has been agreed to be „carriage paid“ or not. In so far as an acceptance by inspection has been agreed,

this shall determine the point in time when the risk is transferred to our Customer. Risk always passes to our Customer where our Customer is in default in accepting the goods or services.

2. Our Customer shall be deemed to be in default in accepting the goods and services seven days after these goods or services have been made available. In such case, the Customer shall be required to pay one EUR per TEU per day as compensation for the damage caused by the delay, unless the Customer can prove that the actual damage incurred was less. The right to assert any further claims, in particular claims for compensation for damage, is reserved if, simultaneously with this delay, the Customer commits further defaults under the agreement, including but not limited to payment defaults.

3. Our Customer shall be obliged to remove any markings, labels and symbols indicating previous possessors of the goods immediately, however no later than within seven days after accepting the goods.

4. Should our Customer require permits or authorisations under either private or public law for the purpose for which he intends to use the goods or services (e.g. consent to undercut boundaries, building permits, structural calculations), our Customer shall be required to bear this risk, attend to and procure the permits or authorisations at its own expense.

6 Retention of title

1. Until full payment of all our present and future claims arising from the agreement and our ongoing business relationship with our Customer („Secured Claims“), we shall retain title to the goods (hereinafter referred to as „Reserved Goods“).

2. The Reserved Goods may not be pledged to a third party or transferred by way of security prior to full payment of the Secured Claims. Our Customer shall inform us in writing immediately if and in so far as the Reserved Goods are seized by a third party, so that we can file a claim under Sec. 771 German Code of Civil Procedure (ZPO).

3. Our Customer hereby authorises us to enter any of his business premises and warehouses unhindered, and to collect the Reserved Goods in case our Customer has not adhered to our request for them to be handed over within a reasonable period of time.

4. Our Customer shall be entitled to sell the Reserved Goods in his normal course of business. This shall not apply if it is agreed that our Customer's claim against the third party lapses by way of set-off.

5. The retention of title shall extend to the full value of the products emerging as a result of any processing or mixing of Reserved Goods with other goods or them being connected with each other. In these circumstances, we shall be deemed to be the manufacturer of such products.

6. For the purposes of security, our Customer hereby assigns to us any claims he has or may have against third parties which arise from the resale of the Reserved Goods, either in their entirety or to the extent of any co-ownership share that we may have in the goods in accordance with the above paragraph. We herewith accept the assignment. Our Customer's obligations specified in sub-paragraph 2 shall also apply in consideration of the claims assigned.

7. Our Customer shall remain authorised to collect the claims set out in sub-paragraph 6. We undertake not to collect the claims for as long as our Customer complies with his payment obligations in relation to us, does not fall into arrears with payment and does not cease to make payment.

7 Duty to inspect the goods and obligation to give notice of defects

1. The goods are to be inspected carefully immediately after delivery to our Customer or the third party appointed by it. The goods are deemed to have been accepted by our Customer in respect of any obvious defects or other defects that would have been identified had the goods been carefully examined immediately in case we do not receive a notification of the defects within two business days from delivery of the goods.

2. In regard to any other defects, the goods shall be deemed to have been accepted by our Customer in case we do not receive a notification of the defect within two business days of the defect becoming apparent. In case the defect could have been identified by our Customer at an earlier date, such earlier point in time shall, however, determine the commencement of the period allowed for examination and notification of a defect or deficiency.

3. In case our Customer fails to inspect the item properly and/or notify defects, our liability in respect of the defect not notified shall be excluded.

8 Warranty, material defects

1. Should there be a defect in the goods purchased, we shall, at our discretion, be entitled to remedy the defect or deliver a new item to our Customer that is free of defects (Supplementary Performance).

2. In the event of Supplementary Performance, we shall bear the expenditure necessary to effect such Supplementary Performance, including transport costs, toll charges and the cost of labour and materials. In case Supplementary Performance would only be possible by incurring disproportionate expenses, e.g. because the goods have been taken to a different site than the place of performance and were not taken there in accordance with their intended use, we shall be entitled to refuse Supplementary Performance.

3. In case we are at fault for the defect, our Customer may only claim damages by complying with the requirements as set out in paragraph 9.

4. Claims by our Customer for defects in the goods shall be excluded in case of used goods. The Customer may, however, claim damages or claim reimbursement of expenses on the basis of the additional requirements set out in paragraph 9 below.

9 Liability for damages

1. Our liability to pay damages, on which legal basis whatsoever but in particular in respect of impossibility of performance, delay, defective or incorrect delivery, contractual breach, breach of obligations during contractual negotiations or tort, shall be limited to the terms as set out in this paragraph 9.

2. We shall not be held liable for simple negligence caused by our governing bodies, authorised officers, employees or other vicarious agents, unless a fundamental contractual obligation has been thereby breached. Fundamental contractual obligations include the obligation to deliver the goods in good time, that the goods are free of defects which impair the good's functional capability or fitness for purpose in a material respect, as well as information and protection and custody obligations aimed at enabling our Customer to use the goods as contractually agreed, or ensuring the personal safety of staff of our Customer or protecting the latter's property from significant damage.

3. In so far as we are liable for damages

under paragraph 9(2), such liability shall be limited to foreseeable damage only. Any further claims for damages, in particular but not limited to claims for indirect losses or for lost profits, shall be excluded.

4. In so far as we provide technical information services or actively advise our Customer and such information or advice does not form part of the contractually agreed scope of our services owed by us, our services and/or advice shall receive no consideration and all of our liability whatsoever in respect of such services/advice shall be herewith fully excluded.

5. The foregoing exclusions and limitations of liability shall also apply to the same degree in favour of our governing bodies, authorised officers, employees and other vicarious agents.

6. The limitations of this paragraph 9 shall not apply to our liability arising from intentional conduct, guaranteed characteristics, injury to life, body or health or to our liability arising under the German Product Liability Act.

10 Limitation period

1. The warranty period for defects to the goods shall be one year running from the date on which risk in the goods is transferred. The statutory warranty periods under Sec. 438(1) no 1 and 2, Sec. 438(3), Sec. 479 and Sec. 634a(1) no 2 German Civil Code (BGB) shall remain unaffected.

2. Any other contractual and non-contractual claims for compensation for losses on the part of our Customer are subject to a limitation period of one year. The statutory periods of limitation applicable for claims for damages and reimbursement of expenses based on intent and gross negligence, as well as for claims under the German Product Liability Act and any claims based on damage arising from injury to life, body or health shall remain unaffected.

3. Our claims against our Customer are subject to the statutory limitation periods.

11 Prohibition on assignment

Our Customer shall not be entitled to assign any claims he may have against us to third parties. Sec. 354a German Commercial Code (HGB) shall remain unaffected. Our Customer shall likewise not be entitled to assign this agreement or any parts thereof to third parties without our express prior consent.

12 Place of jurisdiction, place of performance and governing law

1. The exclusive place of jurisdiction shall be Hamburg. We do, however, reserve the right to file an action at the registered address or the business address of our Customer.

2. The place of performance for any obligations arising from the sale agreement shall be the agreed place of delivery or the agreed warehouse location. In case no place of delivery or depot location has been agreed, the place of performance for any obligations arising from the sale agreement shall be our registered office in Seevetal, Germany.

3. The law of the Federal Republic of Germany shall exclusively apply. The UN Convention on Contracts for the International Sale of Goods (CISG) is excluded.

13 Final provisions

In case any individual provision of the agreement concluded between us and our Customer or any provisions of these Terms and Conditions of Business are invalid, the validity of the remainder of the agreement shall remain unaffected. In the event that the agreement or these Terms and Conditions of Business contain any gaps or omissions, such legally valid provisions shall be deemed to have been agreed that the contracting parties would have agreed in accordance with the economic aims of the agreement and the purpose of these Terms and Conditions of Business had they known of such gaps or omissions.

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