

# General Purchasing Terms & Conditions

## CHS Spezialcontainer – Shelter and Engineering GmbH



### **I. General points and area of application**

1. All contracts concluded with our suppliers and contractors (referred to below as the "Supplier") are subject solely to the following general Purchasing Terms & Conditions (referred to below solely as the "Purchasing Terms & Conditions"); our supplier's conditions which deviate or supplement these do not become a component of contract, even if we are aware of such, unless we expressly approve their validity in writing. Our Purchasing Terms & Conditions also apply even if we accept the delivery or service (referred to below solely as "delivery" or "deliveries") without reservation in the knowledge of the supplier's conditions which contradict or deviate from our own Purchasing Terms & Conditions.
2. We are entitled to subsequently adapt these Purchasing Terms & Conditions in on-going contracts. The adaptation does not become effective until the supplier agrees to the adaptation or its agreement is regarded as given in accordance with the clauses below. We shall inform the supplier of the new Purchasing Terms & Conditions in text form at the latest two months before the date foreseen for their enforcement, thereby stating the amended items at the same time. Agreement to the validity of the new Purchasing Terms & Conditions is regarded as given if the supplier does not object before the date foreseen for their enforcement. We shall make particular reference to this deemed approval in our notification to the supplier.
3. Our Purchasing Terms & Conditions also apply exclusively to subsequent contracts and agreements within the business relationship between the customer and ourselves.

### **II. Offer, contractual documents and objects provided by us**

1. Our orders are free of obligation and non-binding; we can revoke them at any time up until they have been accepted in writing by the supplier. This does not apply if we have designated the order as a binding, fixed order.
2. Offers submitted by the supplier are non-binding and free of charge for us.

# General Purchasing Terms & Conditions

## CHS Spezialcontainer – Shelter and Engineering GmbH



3. Upon conclusion of contract, the supplier is obliged to present a certificate of exemption in the sense of income tax legislation to us without delay.
4. We reserve all rights of ownership and copyrights to diagrams, drawings, calculations and other documents (referred to below as "documents"), even if these have been compiled by the supplier to our specifications. The supplier may use the documents solely to execute the contract; after the contract has been processed, the documents shall be returned to us, free of charge, without prompting or definitively deleted. The supplier may not allow third parties to access the documents. In addition, it shall undertake any action required to prevent inadmissible disclosure of the documents.
5. Objects provided by us are (re)processed on our behalf and remain our property at each stage of (re)processing. If the items are processed together with other objects not belonging to us, we accrue co-ownership to the newly manufactured object in the ratio of the value of our item to the value of all objects used during manufacture plus the supplier's expenses for processing them. Insofar, the supplier safeguards the objects for us at no charge. The same applies if our ownership expires due to mixing or combining.

### **III. Delivery item**

1. The supplier shall deliver its goods in the quality expected in the trade, factory-new, packed appropriately for the product in question to the agreed place of receipt/use in accordance with the delivery deadlines. If and insofar as the order does not stipulate any further-going requirements, the supplier shall provide the delivery in the quality expected in the trade and – if DIN, VDE, VDI or equivalent norms apply – also conform to these norms.
2. In case of contracts involving software and consultancy services, and likewise amendments to such contracts, the supplier must agree functional specifications with us without delay, these stipulating the deliveries to be made by the supplier in detail. Before conclusion of contract, the parties shall clarify whether such functional specifications are to be compiled by the supplier before or after conclusion of contract.

# General Purchasing Terms & Conditions

## CHS Spezialcontainer – Shelter and Engineering GmbH



3. If software has been developed especially for us, the supplier is obliged to handover the programming documents, in particular the source code.
4. The supplier shall transfer to us rights of ownership and any existing protected rights to the items delivered to us without delay for each delivery item. Unless contradicted by overriding legal norms, the supplier shall grant us an exclusive right of use, even when making the delivery, which corresponds to and enables the use of the delivery item as foreseen by contract.

#### **IV. Prices and terms of payment**

1. The price stated in the order is binding and, unless we have expressly agreed something different with the supplier, includes delivery carriage-free to the agreed place of receipt/use "DDP" (INCOTERMS 2010).
2. Value-added tax is contained in the price. The prices additionally include remuneration for all deliveries due from the supplier (including any necessary certificates, drawings, evaluations etc. in the agreed language).
3. We do not remunerate any additional services unless we have expressly agreed these with the supplier before the work starts.
4. Invoices should not accompany the shipment, but should rather be sent to us in duplicate. We are not able to process invoices unless these state the order number, quantities and the delivery address stipulated in our order. The supplier shall itemise the value-added tax separately in its invoice at the rate applicable on the delivery date. If these details are missing, incorrect or incomplete, the invoice sum does not become due for payment. The supplier is responsible for all the consequences arising from non-compliance with this obligation, unless it is able to demonstrate that it is not responsible for this.
5. The supplier's invoices must clearly state both its value-added tax identification number and the tax number assigned to it by the competent tax office.
6. Unless we have expressly agreed something different with the supplier, we shall pay the purchase price, after receipt of the delivery and invoice, at 3 %

# General Purchasing Terms & Conditions

## CHS Spezialcontainer – Shelter and Engineering GmbH



discount within 14 calendar days or net within 30 calendar days at our discretion.

### **V. Delivery, transport insurance and contractual fine**

1. The delivery time stated in the order or in our confirmation of order is binding. Unless we have expressly agreed something different with the supplier, the supplier shall make the delivery "DDP" (INCOTERMS 2010).
2. We are not obliged to accept part deliveries or over/under deliveries that have not been agreed. The specified dimensions and weights, as established upon receipt of the goods, are decisive.
3. The supplier shall send notice of dispatch to us in single copy on the date that the delivery is dispatched, stating our order number, consignment quantity and the precise designation of the goods. A packing note in neutral form must accompany every shipment, stating the same details as the notice of dispatch. If the packing note is missing, we are entitled to refuse to take in the shipment at the expense of the supplier, or to charge the added expenses we incur to the supplier. We are not responsible for delays in processing.
4. The supplier is obliged to notify us without delay in writing if circumstances occur or become apparent which make it likely that the delivery date cannot be met.
5. The supplier is obliged to conclude transport insurance at its own expense.
6. If the delivery time is overshoot, the supplier shall pay us a contractual fine amounting to 0.1 % of the price agreed for the delayed delivery for each calendar day on which the supplier is in default, although to a maximum of 5% of the price agreed for the delayed delivery. We can pursue the contractual fine up until the final payment.

We furthermore reserve the right to pursue all the rights and claims accruing to us under law due to default on the part of the supplier. Any contractual fine imposed shall be offset against claims to damages, insofar as the contractual fine and the claim to damages protect the same interests.

# General Purchasing Terms & Conditions

## CHS Spezialcontainer – Shelter and Engineering GmbH



7. In case of an Act of God (unforeseen circumstances and events outside our control, which we would not have been able to prevent even by exercising the care expected from a prudent businessman, e.g. industrial strife, war, fire, transport hindrances, shortages of raw materials, sovereign acts, natural disasters or lockouts) which makes acceptance impossible for us, we are entitled to postpone acceptance accordingly and exclude default of acceptance. If the hindrance lasts longer than three months, the supplier, after setting a reasonable period of grace, is entitled to withdraw from that part of the contract still unfulfilled. Our right to withdraw from the contract is governed by legal provisions.
8. The supplier may not offset its counter-claims unless these are undisputed or have been established by a court of law. This restriction also applies to the pursuit of rights of retention and refusal of performance by the supplier.

### **VI. Production monitoring, end controls, inspection for defects and warranty**

1. We reserve the right to inspect the quality of the material used by the supplier, the dimensional accuracy and correctness of quantities of the manufactured parts and compliance with other regulations, in the supplier's works during production and before delivery. The supplier hereby irrevocably grants us unhindered access to its business premises and stores for the purpose of the aforesaid inspections.
2. We additionally reserve the right to perform end controls on the finished object of delivery and services in the supplier's works, either ourselves or through a third party working on our behalf. Clause VI.1. sentence 2 applies accordingly in this context. The costs of such inspections are borne by the supplier, with the exception of the costs of personnel deployed by us. Delivery to the agreed place of receipt/use nevertheless remains decisive for the start of periods of limitation and complaint and for the transfer of risk.
3. If we are obliged by law to inspect the delivery received, we shall notify obvious defects in the delivery to the supplier without delay in writing, as soon as these have been established in the course of proper operating procedures.

# General Purchasing Terms & Conditions

## CHS Spezialcontainer – Shelter and Engineering GmbH



Notification has been given without delay if we send this at the latest within 10 calendar days of receipt of the delivery. Complaints of concealed defects are made in good time if we send notification within 10 calendar days from discovery of the defect.

4. We accrue the legal claims and rights due to defects in the full scope; in every case we are entitled to demand, at our discretion, that the supplier rectifies the defect or delivers a new, faultless item.
5. If the supplier fails to fulfil its obligations arising from its liability for defects within a reasonable period of grace set by us, we can take the necessary action ourselves or arrange for third parties to do so at the expense and risk of the supplier. We also accrue this right if the urgency of the situation makes it impossible for us to set a period of grace for the supplier; in this case, we shall inform the supplier of this before rectifying the defect.
6. Claims due to defects in deliveries - regardless of the legal reason - expire by limitation of time after 36 months. This period also applies insofar as claims are not associated with a defect. Longer periods of limitation prescribed by law are just as much unaffected as the regulations concerning the start, expiry suspension, suspension and re-starting of the periods of limitation.

### **VII. Our liability for damages**

1. Our liability to recompense damages or losses, regardless of the legal reason, in particular due to impossibility, default of delivery, infringement of duties during contractual negotiations or illicit acts, is limited in accordance with this clause VII.
2. We have unrestricted liability if we are liable under product liability laws, in case of malicious concealment of a defect, for damages involving a loss of life, physical injuries or harm to health, if we acted intentionally or if we have extended a guarantee. In case of gross negligence, we have only restricted liability for the damages typically foreseeable for the contract.

# General Purchasing Terms & Conditions

## CHS Spezialcontainer – Shelter and Engineering GmbH



3. In case of a negligent infringement of primary rights or duties resulting from the content and purpose of the contract, we likewise have only restricted liability for the damages typically foreseeable for the contract.
4. Except in the cases stated in clauses VII. 2 and 3, we are not liable for damages caused by simple negligence.
5. Insofar as our liability to recompense damages is excluded or limited, the same applies to personal liability for damages on the part of our workforce, staff and representatives.

### **VIII. Product liability, release and indemnity insurance coverage**

1. If action is taken against us under domestic or foreign product liability regulations, the supplier is obliged to release us at first request from third party claims if it is responsible for the product errors which triggered liability. The supplier shall mark the objects it delivers so that these can be recognised as its products at all times. Legal provisions concerning an internal settlement between joint debtors remain unaffected.
2. Within the framework of its liability in the sense of clause IX. 1., the supplier is also obliged to refund any expenses (e.g. as per §§ 683, 670 BGB (German Civil code) or as per §§ 830, 840, 426 BGB (German Civil Code)) resulting from or in connection with a call-back campaign performed by us. We shall inform the supplier – insofar as possible and reasonable for us – of the content and scope of the call-back action to be performed and give it the opportunity to respond. We additionally reserve the right to pursue all the rights and claims accruing to us under law due to a product defect in the delivery.
3. The supplier is obliged to maintain product indemnity insurance, which also includes the costs of any call-back campaign, with a coverage sum of EUR 10 million per case of personal/material damage – flat rate – for the duration of this contract, although at least until the warranty period for the delivery has expired. The supplier is obliged to demonstrate the conclusion of the insurance to us without prompting. At our request, the supplier shall also demonstrate the



existence of the policy and payment of the premiums to us. Any further-going claims to damages accruing to us remain unaffected.

**IX. Assumption of the procurement risk**

The supplier vouches for the procurement of the supplies and sub-services required for the delivery/service (full assumption of the procurement risk).

**X. Protected rights**

1. The supplier shall ensure that no third party rights are infringed by or in connection with its delivery in Germany, in countries in which it manufactures the delivery item or has parts of this made and in countries in which the supplier could expect us to market the acquired products.
2. If action is taken against us by a third party due to violation of a protected right in the sense of clause XI 1., the supplier is obliged to release us at first written request from these claims. In such a case, we are also entitled to obtain the necessary permission from the owner of the right at the supplier's expense, if and insofar as the supplier does not obtain this for us within a reasonable period of grace set by us and the costs of this do not exceed the claims to be otherwise borne by the supplier as per sentence 1. The foregoing does not apply if the part of the delivery item which infringes the outside right originates from or was provided by us.
3. The supplier's duty of release also takes in all expenditure we incur from or in connection with the third party action and required to defend against it.

**XI. Data protection, security and secrecy**

1. We are entitled to store data concerning our suppliers in computer systems and to process and use such data in accordance with legal provisions for our operational purposes.



# General Purchasing Terms & Conditions

## CHS Spezialcontainer – Shelter and Engineering GmbH



2. The supplier must conform to our security instructions and, in the case of VS orders (locked objects), strictly observe the current version of the manual for preserving secrecy in business issued by the German Ministry for Business and Technology.

### **XII. Spare parts**

1. The supplier is obliged to stock spare parts for the products delivered to us for a period of at least five years after the delivery.
2. If the supplier intends to stop producing spare parts for the products delivered to us, it shall notify us of this decision without delay.

### **XIII. Place of jurisdiction and fulfilment, applicable law**

1. If the supplier is a merchant, a legal entity under public law or a public law special trust, Bremen, Germany is the sole place of jurisdiction for all disputes arising from or in connection with the contractual relationship. The same applies if the supplier does not have a general place of jurisdiction in Germany, if it relocates its offices or normal place of residence abroad after conclusion of contract, or if its offices or normal place of residence abroad are unknown at the time legal action is taken. We reserve the right to take legal action against the supplier at its general place of jurisdiction.
2. Unless we have expressly agreed something different with the supplier, the place of fulfilment for all deliveries/supplies to be provided by the supplier is the agreed place of receipt/use.
3. The laws of the Federal Republic of Germany, without its conflict laws, apply exclusively to the legal relationship between the customer and ourselves. The UN laws governing purchases (United Nations Agreement covering the international purchase of goods – CISG) are not applicable. The laws of the Federal Republic of Germany are also applicable for the interpretation of the contract.

# General Purchasing Terms & Conditions

## CHS Spezialcontainer – Shelter and Engineering GmbH



### **XIV. Concluding provisions**

1. Should individual provisions in the contract concluded between ourselves and the supplier be or become unworkable or ineffective, this shall not affect the workability of the contract as a whole. An unworkable or ineffective provision shall be replaced by a provision which comes closest to the financial sense and purpose of the unworkable or ineffective provision in a legally valid manner. The foregoing regulation applies accordingly to loopholes in the contract.
2. Should individual clauses in these general Purchasing Terms & Conditions be or become unworkable, §§ 306 Para. 1 and 2 BGB (German Civil Code) apply in deviation to that stated under clause XIV. 1.
3. The supplier may not assign the claims it accrues against us to third parties. § 354a HGB (German Commercial Code) remains unaffected by this regulation. The supplier may likewise not transfer the contract or parts thereof to third parties without our prior, express approval.
4. None of our actions, except an express declaration of waiver, can be construed as a waiver of a right accruing to us from this contract, these Purchasing Terms & Conditions or under law. Delay in pursuing our rights can likewise not be construed as a waiver of the right in question. A one-time waiver of a right is not regarded as a waiver of this right at a later date.