

# Terms of Sale and Delivery

CHS Spezialcontainer –  
Shelter and Engineering GmbH



## I. General points and area of application

1. Our terms of sale and delivery (referred to below solely as the "Terms of Trade") apply exclusively; we do not recognise the customer's conditions which contradict or deviate from our Terms of Trade, unless we expressly approve their validity in writing. Our Terms of Trade also apply even if we deliver to the customer without reservation, in the knowledge of the customer's conditions which contradict or deviate from our own Terms of Trade.
2. We are entitled to subsequently adapt these Terms of Trade in on-going contracts. The adaptation does not become effective until the customer agrees to the adaptation or its agreement is regarded as given in accordance with the clauses below: We shall inform the customer of the new Terms of Trade 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 Terms of Trade is regarded as given if the customer does not object before the date foreseen for their enforcement. We shall make particular reference to this deemed approval in our notification to the customer.
3. Our Terms of Trade also apply exclusively to subsequent contracts and agreements within the business relationship between the customer and ourselves.
4. Insofar as we also take on the function of a freight forwarder, the German Freight Forwarders' Standard Terms and Conditions (ADSp) apply, we hereby refer specifically to their application. **Item 23 of the ADSp limits legal liability for damages for loss of or damage to goods in the forwarder's care - expect for damage to goods during transport with a means of carriage and with the exception of warehousing on request - to € 5 per kg of gross weight of the consignment, and in the case of contracts concerning multi-modal carriage - including sea transport - to 2 SZR per kg, and moreover to a maximum € 1 million or 2 SZR per kg per claim, whichever amount is the higher. Liability is limited in every case to € 2 million or 2 SZR per kg of the lost and damaged goods per claim, depending on whichever amount is the higher.**

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## II. Offer, conclusion of contract and offer documents

1. Our offers are free of obligation and can be revoked by us at any time up until the order is confirmed by the customer in writing, unless we have expressly designated our offer as binding.
2. 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 customer to our specifications.
3. We may deviate from the documents included in the contract, such as diagrams, drawings, details of weight and dimensions (collectively referred to here as "details") in the course of technical progress or for reasons of production in a scope reasonable for the customer, unless we have expressly designated the details as binding. Furthermore, technical changes and amendments in form, colour, material and/or weight in the course of technical progress and to an extent reasonable for the customer remain reserved.
4. By submitting an order, the customer bindingly declares its intention to purchase the ordered delivery item. If the order is not based on an offer issued by us, we are entitled to accept the offer of contract underlying the order within two weeks of its receipt. Acceptance can be declared either by written confirmation of order or by starting to dispatch the delivery item to the customer. In the latter case, our delivery note is regarded as the confirmation of order. The confirmation of order and our Terms of Trade are decisive for the content of the contract.
5. If we fail to receive supplies from our suppliers, or if these do not arrive on time, we are released from our duty of performance and can withdraw from the contract. This applies only in case we are not responsible for the non-delivery, in particular where a congruent covering transaction has been entered into with our supplier. We shall inform the customer without undue delay of the non-availability of the service and refund any payments already received without undue delay.
6. If justified doubts arise about the credit-worthiness of the customer upon or after conclusion of contract (in particular if its property is seized or other enforced

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execution action is taken, or if insolvency proceedings are opened or their opening is rejected due to a lack of mass), we can make fulfilment of contract dependent on payment in advance, on furnishment of security by the customer or withdraw from the contract. The rest of the contract remains binding on the customer, even if individual items are unworkable.

7. Brochures, advertising or catalogues issued by us or by the manufacturer, and the details contained therein, do not become objects of the contracts concluded by us unless they are expressly included in the contract.

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

1. Unless we have agreed something different with the customer, our prices are net ex-warehouse in Bremen (EXW – INCOTERMS 2010), to the exclusion of auxiliary costs, such as freight and customs duties; insofar as such are incurred, they shall be invoiced separately. Our prices do not include value-added tax; if value-added tax is to be applied, it shall be charged at the rate prevailing at the invoice date and be itemised separately.
2. Unless expressly agreed otherwise in the contract, the customer is obliged to pay invoices without deduction, in cash or by remittance to one of our bank accounts without bank charges, within 14 days from the date of invoice. The decisive date is that on which we receive the money or the amount is credited to our bank account.
3. Cheques and bills of exchange are accepted only to facilitate payment on the basis of express prior agreement. All charges or costs incurred for the encashment of bills of exchange or cheques are borne by the customer.
4. The customer may not offset its counter-claims unless these are undisputed or have been established by a court of law. This applies in the same scope to the pursuit of rights of retention and refusal of performance by the customer.

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## **IV. Transfer of risk, shipment and transport insurance**

1. Unless expressly agreed otherwise in the contract, delivery ex-warehouse in Bremen is agreed (EXW - INCOTERMS 2010).
2. Risk for the accidental deterioration or destruction of the delivery item is transferred to the customer upon handover, or in the case of sale by dispatch, upon delivery to the carrier, freight forwarder or to some other agent charged with executing the dispatch, regardless of the place of consignment. The same applies to part deliveries, regardless of whether carriage-free delivery has been agreed. If shipment is delayed at the customer's request, or if it is in default of acceptance or is in arrears, risk is transferred to the customer on the date of readiness for shipment. The costs incurred by any delay (in particular due to storage) are borne by the customer.
3. Unless something different has been expressly agreed in the contract, we package the delivery item at the customer's expense and invoice the costs incurred to the customer.
4. If requested by the customer, we shall conclude transport insurance for the delivery, the costs incurred are borne by the customer.
5. If the purpose of use foreseen by the customer requires permits or approvals under private or public law (e.g. approval to undershoot border margins, planning permission, static calculations), the customer shall obtain these at its own risk and at its own expense.

## **V. Delivery, delivery time, default of acceptance and delivery**

1. Part deliveries are admissible, insofar as these are within reason for the customer.
2. The delivery time stated by us does not start until all technical questions have been clarified with the customer. If the customer fails to fulfil its duties of cooperation, in particular by failing to issue technical releases or transmit necessary information, clause V. 4 applies. We reserve the right to plead non-completion of contract (§ 320 BGB – German Civil Code).

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3. Observance of our delivery obligation requires that the customer fulfils its obligations properly and in good time, in particular by making the agreed payments and furnishing any securities agreed. The argument of the non-fulfilled contract is reserved.
4. If the customer is in default of acceptance, it must recompense us for any added expenditure (e.g. for storing the delivery item). If the customer culpably infringes other duties of cooperation, it must recompense us for any damages or losses incurred (incl. added expenditure). Further-going claims are reserved, in particular claims to damages if the customer is simultaneously in default of acceptance and in arrears.
5. 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 affecting ourselves or our suppliers, war, fire, transport hindrances, shortages of raw materials, sovereign acts, natural disasters or lockouts), our delivery obligation is interrupted for its duration, plus a reasonable start-up time, and in the scope of its effects. The same applies even if we are already in default of delivery. We shall inform the customer of the occurrence of an Act of God and the likely duration of the hindrance without delay. We are entitled to withdraw, in full or in part, from that part of the contract still unfulfilled, if it would be unreasonable for us to set the contract forth, even in consideration of the customer's interests, due to the duration of the Act of God.
6. If the hindrance lasts longer than three months, the customer, after setting a reasonable period of grace, is entitled to withdraw from that part of the contract still unfulfilled.
7. Our liability for default of delivery is governed by clause VIII.

## **VI. Reservation of title**

1. We reserve ownership to the delivery item (also referred to below as "reserved goods") until the purchase price and all receivables from the on-going business relationship with the customer have been paid in full. Reservation of ownership

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is not affected by posting individual receivables to an on-going account and drawing a balance; in this case, the reservation refers to the recognised or actual balance. Payment has not been made until we receive the counter value or the sum is credited to our bank account. The reservation of ownership is not revived for a delivery item after the customer has acquired ownership to this delivery item and new claims from the business relationship are accrued against it.

2. If the customer is culpable of conduct in violation of contract, in particular in case of default of payment, we are entitled, in accordance with legal provisions, to withdraw from the contract and reclaim the delivery item. The purchaser hereby irrevocably grants us unhindered access to its business premises and stores for the purpose of taking back the goods. If we reclaim the delivery item, this always signifies withdrawal from contract. After taking back the delivery item, we are authorised to dispose over it. The revenue earned from its exploitation shall be offset against the customer's liabilities - less reasonable marketing expenses - as per § 367 BGB (German Civil Code).
3. The customer is obliged to handle the delivery item with care, in particular it is obliged to adequately insure the delivery item at its own expense against fire and water damage and theft to the as-new value. If maintenance and/or inspection work is required, the customer shall perform such work regularly at own cost and risk.
4. The customer must inform us without delay in writing of seizures or other third party interventions to enable us to take legal action as per § 771 ZPO (German Code of Civil Procedure).
5. The customer is entitled to resell the reserved goods in regular business transactions; this does not apply if it has been agreed in the course of the resale that the customer's claim against the third party expires through netting. The customer even now assigns to us all claims (including balance claims from an on-going account existing even after the end of the on-going account relationship) to the amount of the end invoice sum (including VAT) of our claim which it accrues from the resale or for some other legal reason against its buyer or a third party. The assignment is independent of whether the reserved goods

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are sold processed or unprocessed. We accept the assignment. Even after making the assignment, the customer is still entitled to collect these receivables. This does not affect our authorisation to collect the claims ourselves. However, we shall not to collect the receivables as long as the customer meets its obligations of payment from the revenue it collects, is not in default of payment and has not stopped making payments. However, if this is not the case, we can demand that the customer discloses the assigned receivables and their debtors to us, provides us with all details required to make the collection, in particular the address of the debtors, hands over the associated documents and notifies the debtors of the assignment.

6. The entitlement under clause VI. 5. does not include the right to pledge or use the reserved goods or objects manufactured from them as security without our permission. The conclusion of financing agreements (leasing, for example) which include using our reserved rights as security, require our prior approval in writing, unless the agreement obliges the financing institute to pay the proportion of the purchase price due to us directly to us.
7. If the reserved goods are processed or reworked by the customer, this is always done on our behalf, without us incurring any obligations. If the reserved goods are processed with other objects not belonging to us, we acquire co-ownership to the new item in the ratio of the value of the reserved goods (end invoice sum including VAT) to the value of the other objects processed at the time of processing. The item created by processing is otherwise subject to the same regulations as those applicable to the reserved goods.
8. If the reserved goods are inseparably combined or mixed with other objects not belonging to us, we acquire co-ownership to the new item in the ratio of the value of the reserved goods (end invoice sum including VAT) to the value of the other combined or mixed objects at the time of combination or mixing. If the goods are combined or mixed in such a way that the customer's item is to be regarded as the main item, it is agreed that the customer even now assigns proportionate co-ownership to us. We accept the assignment. The customer shall safeguard our sole ownership or co-ownership for us at no charge.

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9. In order to secure our claims, the customer hereby assigns the receivables it accrues against a third party from combining the reserved goods with a plot of land. We accept the assignment.
10. The customer bears all the judicial and extrajudicial costs necessary to rescind a seizure or some other third party intervention against the reserved goods and to recover the reserved goods, unless these expenses can be collected from the third party. If this clause VI. entitles us to pursue claims assigned to us, the customer shall recompense us for the judicial and extrajudicial costs expended for the purpose.
11. At the customer's request, we shall release securities accruing to us insofar as the realisable value of our securities exceed the claims to be secured by more than 10 %; we select the securities to be released.

## **VII. Warranty**

1. The customer's claims and rights due to defects (also referred to below as "claims due to defects") require that it has fulfilled its obligations of inspection and complaint as per § 377 HGB (German Commercial Code).
2. Claims due to defects do not exist for just a minor deviation from the agreed quality or if usability is only impaired insignificantly.
3. If the delivery item is defective, then in deviation to § 439 Para. 1 BGB (German Civil Code) concerning subsequent fulfilment, we can choose between rectification of the defect or delivery of a new, faultless item. In case of subsequent fulfilment, we are obliged to bear the expenses required for the purpose of subsequent fulfilment, in particular costs of transport, travel, work and materials, insofar as these are not increased by the fact that the delivery item has been relocated to a place different to the place of fulfilment, unless the relocation corresponds to the intended use. Replaced parts become our property.
4. If subsequent fulfilment fails, the customer is entitled to demand withdrawal or diminution at its discretion. The customer may not demand recompense for



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damages instead of performance or – in case of a work contract – undertake the work itself until subsequent fulfilment has failed, unless the law waives the requirement of subsequent fulfilment. Subsequent fulfilment is regarded as having failed if two attempts to rectify the defect under complaint do not result in a faultless condition of the delivery item, or if such attempts are not undertaken within a reasonable period of grace.

5. If we are responsible for the defect, the customer can only pursue claims to damages or losses under the additional prerequisites of clause VIII.
6. If the delivery item has been used, claims due to defects are excluded, on the proviso of the clause below on claims to damages or reimbursement. Clauses VIII. and IX. 2.-4. apply accordingly to claims to damages or reimbursement, even in the case of used delivery items.

## **VIII. 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 VIII.
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.
3. In case of 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 VIII. 2. and 3., we are not liable for damages caused by simple negligence.

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5. Apart from the area of application under clause VIII. 2., further-going claims to damages are excluded, in particular claims to reimburse indirect damages or losses or to recompense foregone profit.
6. 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.

## **IX. Expiry by limitation of time**

1. The warranty period for defects in the delivery item is one year. The legal periods of warranty under § 438 Para. 1 No. 2 BGB (German Civil Code) and § 634a Para. 1 No. 2 BGB (German Civil Code) remain unaffected.
2. Other claims on the part of the customer due to infringements of duty committed by us, in particular claims to damages or claims under a guarantee, expire by limitation of time in one year. The customer's right to withdraw from the contract due to an infringement of duty on our part which does not concern a defect remains unaffected. In deviation to sentence 1, the legal periods of limitation apply to the following claims accruing to the customer:
  - 2.1. under product liability laws and due to damages involving a loss of life, physical injuries or harm to health or the infringement of primary rights and duties arising from the contract,
  - 2.2. due to damages caused by an infringement of duty on the part of ourselves or our vicarious agents attributable to malice aforethought or gross negligence,
  - 2.3. due to malicious concealment of a defect,
  - 2.4. for reimbursement of expenditure as per § 478 Para. 2 BGB (German Civil Code).
3. Unless expressly agreed otherwise, legal provisions concerning the start, expiry suspension, suspension and re-starting of the periods of limitation remain unaffected.

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4. Our claims against the customer expire by limitation of time in accordance with legal provisions.

## **X. Data protection**

We are entitled to process and store the data concerning the customer received in the course of the business relationship - even if these originate from outside sources – in accordance with the stipulations of the German Data Protection Act and to have these processed and stored by third parties working on our behalf.

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

1. If the customer 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 customer 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 customer at its general place of jurisdiction.
2. Unless we have expressly agreed something different with the customer, the place of fulfilment for all deliveries/supplies to be provided by the supplier is Bremen, Germany.
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.

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## **XII. Concluding provisions**

1. Should individual provisions in the contract concluded between ourselves and the customer 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 Terms of Trade be or become unworkable, §§ 306 Para. 1 and 2 BGB (German Civil Code) apply in deviation to clause XII. 1.
3. The customer may not assign the claims it accrues against us to third parties. § 354a HGB (German Commercial Code) remains unaffected by this regulation. The customer 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 Terms of Trade 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.