

## **Sales and Delivery Terms and Conditions**

### **I. General Provisions and Scope**

1. CHS Container Handel GmbH, CHS Spezialcontainer – Shelter and Engineering GmbH, and CHS Südcon GmbH are hereinafter collectively referred to as the "CHS Container Group."

2. These Sales and Delivery Terms and Conditions (hereinafter "Terms") apply to business relationships with the companies of the CHS Container Group related to the sale or delivery by one or more of the companies of the CHS Container Group. The business partners of the individual companies of the CHS Container Group will hereinafter uniformly be referred to as "Customers," regardless of whether a contract has already been concluded or a pre-contractual relationship of trust has been established.

3. Our Terms apply exclusively; we do not accept any conditions of the Customer that conflict with or deviate from our Terms unless we explicitly agree to their application in writing. Our Terms also apply if we perform the delivery to the Customer unconditionally, even though we are aware of conflicting or deviating conditions of the Customer.

4. We are entitled to make subsequent adjustments to these Terms in ongoing contracts. The adjustment will only become effective once the Customer has agreed to the adjustment or their consent is considered granted according to the following provisions: We will inform the Customer of the new Terms in text form at least two months before the proposed effective date and will simultaneously specify the changes made. The consent to the new Terms is considered granted if the Customer has not communicated their rejection to us before the proposed effective date. We will specifically draw the Customer's attention to this approval effect in our notification.

5. Our Terms also apply exclusively to all future contracts with the Customer within the framework of the existing business relationships between the Customer and us.

6. To the extent we also take on tasks of a freight forwarder, the ADSp (General Terms and Conditions for Freight Forwarders) in their most current version (currently ADSp 2017) shall apply. We hereby specifically refer to the application of the ADSp. The ADSp 2017 deviates from the law in § 23 regarding the maximum liability for cargo damages (§ 431 HGB) by limiting the liability in multimodal transport, including sea transportation and in the case of an unknown place of damage, to 2 SDR/kg, and in general, the standard liability of 8.33 SDR/kg is additionally limited to 1.25 million Euros per incident and 2.5 million Euros per event, but at least 2 SDR/kg.

7. Individual agreements made with the Customer (including side agreements, additions, and amendments) take precedence over these Terms in any case. The content of such agreements, subject to evidence to the contrary, is determined by a written contract or our written confirmation.

## **II. Offer, Conclusion of Contract, and Offer Documents**

1. Our offers are non-binding and only constitute an invitation for the customer to make an offer (invitatio ad offerendum). Acceptance of an offer by the customer is only deemed to be accepted by us upon our written confirmation to the customer (conclusion of the contract).
2. We retain all ownership and intellectual property rights to illustrations, drawings, calculations, and other documents (hereinafter "documents"), even if they were created by the customer based on our specifications.
3. We are entitled to make deviations from the documents included in the contract, such as illustrations, drawings, weight and dimension specifications (collectively "specifications"), within the scope of technical progress or due to production-related reasons, to a reasonable extent for the customer, unless we have explicitly designated the specifications as binding. Furthermore, technical changes, as well as changes in form, color, material, and/or weight, are reserved within the scope of technical progress and what is reasonable for the customer.
4. By placing an order, the customer makes a binding declaration of intent to purchase the ordered goods. If the order is not based on an offer from us, we are entitled to accept the contractual offer contained in the order within two weeks of its receipt. Acceptance can either be made through a written order confirmation or by the commencement of delivery of the goods to the customer. In the latter case, our delivery note serves as the order confirmation; the content of the contract is determined by the order confirmation and our Terms and Conditions.
5. If we do not receive correct or timely delivery from our suppliers, we are released from our obligation to perform and may withdraw from the contract. This applies only if the non-delivery is not our fault, particularly in the case of concluding a corresponding coverage transaction with our supplier. We will promptly inform the customer about the unavailability of the goods and refund any consideration already received.
6. If concerns arise regarding the customer's creditworthiness during or after the conclusion of the contract, especially if the customer is subject to garnishments or other enforcement measures, or if a petition for insolvency proceedings is filed or the initiation of insolvency proceedings is denied due to lack of assets, and thus our claim for the purchase price is at risk due to the customer's lack of ability to perform, we may make the fulfillment of the contract conditional upon an advance payment or security deposit from the customer or, in accordance with the statutory provisions on refusal of performance – possibly with setting a deadline – withdraw from the contract. The remainder of the contract remains binding on the customer even if certain parts become invalid.
7. Brochures, advertising materials, or catalogs issued by us or the manufacturer, as well as the information contained therein, only become part of the contract concluded by us if they are explicitly incorporated into the contract. Otherwise, they are non-binding and subject to change.

8. The customer is obliged to support us in providing our services to the best of their ability and to create all the necessary conditions for proper execution of the order within their sphere of responsibility; in particular, they must provide all documents and information necessary for the performance of the service in a timely and complete manner.

### **III. Prices and Terms of Payment**

1. Unless otherwise expressly agreed with the customer, our prices are net prices ex warehouse Bremen or, for CHS Südcon GmbH, ex Parsdorf (EXW – INCOTERMS 2020), excluding ancillary costs such as freight and customs; these will be invoiced separately where applicable. Value-added tax (VAT) is not included in our prices and, if incurred, will be shown separately in the invoice at the statutory rate applicable on the date of invoicing.

2. The sales price includes 14 days of free storage. After the expiration of the free storage period, the customer must pay a storage fee of €3.00 per day and per TEU (plus applicable VAT) to us.

3. Unless expressly agreed otherwise in the contract, the customer is obliged to pay invoice amounts without deduction, either in cash or by bank transfer free of charge to one of our accounts, within 14 days from the invoice date. The relevant date is the date on which we receive the payment or the date the amount is credited to our account.

4. Cheques and bills of exchange are accepted only on account of performance and only by prior express agreement. All fees or charges incurred in collecting cheques or bills of exchange are to be borne by the customer.

5. The customer may only offset counterclaims if such claims are legally established as final and binding or are undisputed. This applies equally to the assertion of rights of retention and rights to refuse performance. Notwithstanding the first sentence, the customer may always offset or assert a right of retention or right to refuse performance based on a counterclaim for reimbursement of defect remediation or additional completion costs arising from the same legal relationship.

### **IV. Transfer of Risk, Shipping, and Transport Insurance**

1. Unless expressly agreed otherwise in the contract, delivery ex warehouse Bremen (EXW – INCOTERMS 2020) shall apply to all companies of the CHS Container Group, with the exception of CHS Südcon GmbH, for which delivery ex warehouse Parsdorf (EXW – INCOTERMS 2020) shall apply.

2. The risk of accidental loss or accidental deterioration of the goods passes to the customer upon handover; in the case of shipment, upon delivery to the freight forwarder, carrier, or any other person designated to carry out the shipment – regardless of the place of dispatch. This also applies to partial deliveries and regardless of whether freight-free delivery has been agreed. If dispatch is delayed at

the request of the customer or due to the customer's delay in acceptance or default, the risk shall pass to the customer on the day the goods are ready for shipment. The customer shall bear any costs resulting from the delay (especially storage costs).

3. Unless expressly agreed otherwise in the contract, we will package the goods at the customer's expense and invoice the customer for the packaging costs incurred.
4. If the customer requests, we will take out transport insurance for the delivery; the associated costs will be borne by the customer.
5. If the intended use by the customer requires private or public permits or approvals (e.g. approval for reduced boundary distances, building permits, structural calculations), it is the customer's responsibility and risk to obtain these at their own cost.

## **V. Delivery, Delivery Period, and Delay in Acceptance or Delivery**

1. Partial deliveries are permitted insofar as they are reasonable for the customer.
2. The commencement of the delivery period stated by us requires that all technical questions have been clarified with the customer. If the customer fails to meet their cooperation obligations, particularly regarding technical approval or the provision of necessary information, Clause V, Section 4 shall apply. We reserve the right to plead non-performance of the contract (§ 320 German Civil Code – BGB).
3. Fulfillment of our delivery obligation further depends on the timely and proper performance of the customer's obligations, especially payment of the agreed amounts and, if applicable, provision of agreed securities. We reserve the right to plead non-performance of the contract.
4. If the customer is in default of acceptance, they must compensate us for any additional expenses incurred (e.g., for storage of the goods). If the customer culpably breaches other duties of cooperation, they shall be liable for any resulting damages (including additional expenses). Further claims, especially for damages due to simultaneous debtor's default, remain unaffected.
5. Cases of force majeure (unforeseeable circumstances or events not caused by us that could not have been avoided even with the care of a prudent businessperson, e.g., labor disputes at our premises or those of suppliers, war, fire, transport obstacles, shortages of raw materials, pandemics, government actions, natural disasters, or lockouts) suspend our delivery obligation for the duration of such events plus a reasonable start-up period and to the extent of their impact. This also applies if we are already in default. We will inform the customer immediately of the occurrence of such force majeure and the expected duration of the disruption. If continuing the contract becomes unreasonable due to the duration of the force majeure – even considering the customer's interests – we are entitled to withdraw from the contract in whole or in part with respect to the part not yet fulfilled.

6. Despite the general awareness of the COVID-19 crisis since February 2020, its ongoing impacts remain unpredictable. Therefore, in the event of impacts from the COVID-19 crisis affecting us in relation to contract performance (e.g., delays due to official orders like quarantine or restrictions, delivery or resource shortages, staff shortages, transport blockages such as route closures, shortages of containers or packaging materials, etc.), we shall be released from our performance obligations for the duration of such impacts and corresponding recovery phases. In such cases, we will agree with the customer on new deadlines and an updated schedule. We will take all reasonable and practical steps to minimize the impact on contractual performance.

7. If the disruption lasts longer than three months, the customer is entitled to withdraw from the contract with respect to the unfulfilled portion after setting a reasonable grace period.

8. Our liability for delivery delays is governed by Clause VIII.

## **VI. Retention of Title**

1. We retain ownership of the delivered goods (hereinafter also referred to as "goods subject to retention of title") until full payment of the purchase price and all other claims arising from the ongoing business relationship with the customer. Including individual claims in a current account and drawing a balance does not affect the retention of title; in this case, the retention refers to the recognized or actual balance. Payment is only deemed to have occurred once the equivalent value has been received by us or credited to our bank account. The retention of title does not revive for goods already transferred into the customer's ownership, even if new claims arise from the business relationship after ownership has passed.

2. In case of a breach of contract by the customer, especially in case of payment default, we are entitled under statutory provisions to withdraw from the contract and demand return of the goods. To facilitate such return, the customer irrevocably permits us to access their business and storage premises and retrieve the goods. Repossession always constitutes a withdrawal from the contract. After repossession, we are entitled to resell the goods. The proceeds from resale shall be credited to the customer's liabilities, minus reasonable resale costs, in accordance with § 367 BGB.

3. The customer is obligated to treat the goods with care, and in particular, to adequately insure them at their own cost at replacement value against fire, water, and theft. If maintenance or inspection work is required, the customer must carry this out regularly at their own cost and risk.

4. In the event of seizures or other interventions by third parties, the customer must notify us immediately in writing so that we can file a claim pursuant to § 771 ZPO.

5. The customer is entitled to resell and/or process the goods subject to retention of title in the ordinary course of business, unless the resale involves set-off, which would extinguish the customer's claim against the third party. The customer hereby assigns to us all claims (including any balance claims from a current account) in the amount of the invoice total (including VAT) that arise from the resale or from any other legal grounds against its buyers or third parties. This assignment applies regardless of whether the goods were resold without or

after processing. We accept this assignment. The customer remains authorized to collect these claims even after the assignment. Our right to collect the claims ourselves remains unaffected. However, we undertake not to collect the claims as long as the customer meets their payment obligations, is not in default, and has not ceased payments. If this occurs, we may require the customer to disclose the assigned claims and their debtors, provide all necessary information for collection (especially debtor addresses), hand over relevant documents, and notify the debtors of the assignment.

6. The right under Clause VI.5 does not include pledging or assigning the goods subject to retention of title or items made therefrom as security without our consent. Financing arrangements (e.g. leasing) involving the transfer of ownership of our reserved rights require our prior written consent, unless the financing institution agrees to directly pay us our share of the purchase price.

7. Any processing or transformation of the goods subject to retention of title by the customer is carried out on our behalf and does not result in any liability for us. If the goods are processed with other goods not belonging to us, we acquire co-ownership of the new item in proportion to the value of our goods (invoice total including VAT) to the other items at the time of processing. The resulting item is otherwise treated as goods subject to retention of title.

8. If the goods subject to retention of title are inseparably combined or mixed with other items not owned by us, we acquire co-ownership of the resulting item in proportion to the value of our goods (invoice total including VAT) to the other combined or mixed items at the time of combination or mixing. If the combination or mixing is such that the customer's item is considered the main item, it is agreed that the customer will transfer proportional co-ownership to us. We accept this transfer. The customer shall hold our sole or co-ownership in safe custody for us free of charge.

9. The customer hereby assigns to us, as security for our claims, all claims against third parties arising from the combination of the goods subject to retention of title with real estate. We accept this assignment.

10. The customer bears all pre-litigation and court costs necessary to lift a seizure or other third-party intervention affecting the goods subject to retention of title and to recover them, insofar as such costs cannot be recovered from the third party. If we are entitled to assert assigned claims under this Clause VI, the customer must reimburse us for the associated costs.

11. We undertake to release securities held by us at the customer's request if the realizable value of such securities exceeds the secured claims by more than 10%; we shall select which securities to release.

## **VII. Warranty**

1. The customer's claims and rights regarding defects (hereinafter also referred to as "defect claims") require that the customer has duly fulfilled their inspection and notification obligations in accordance with § 377 of the German Commercial Code (HGB).

2. Defect claims do not exist in cases of only minor deviations from the agreed quality or in the case of only insignificant impairment of usability.

3. If the delivered item is defective, we shall—deviating from § 439 (1) of the German Civil Code (BGB)—have the right to choose whether to remedy the defect or to



supply a new, defect-free item. In the case of supplementary performance, we shall bear the expenses necessary for the purpose of supplementary performance—especially transport, travel, labor, and material costs—unless such costs are increased due to the item having been moved to a location other than the place of performance, unless such relocation was in line with the intended use of the item. Replaced parts become our property.

4. If the supplementary performance fails, the customer is entitled, at their discretion, to withdraw from the contract or demand a reduction in price. The customer's request for damages in lieu of performance or—if a contract for work and services is involved—self-remedy by the customer is excluded until supplementary performance has failed, unless a request for supplementary performance is dispensable by law. Supplementary performance is deemed to have failed if two attempts to remedy the notified defect are unsuccessful or are not made within a reasonable period.

5. If the defect is due to our fault, the customer may claim damages only under the additional conditions set out in Clause VIII.

6. For used items, defect claims are excluded, except as provided in the following sentence concerning claims for damages or reimbursement of expenses.

7. Clauses VIII and IX (points 2 through 4) apply accordingly to claims for damages or reimbursement of expenses, even in the case of used items.

### **VIII. Liability for Damages**

1. Our liability for damages—regardless of the legal basis, particularly in cases of impossibility, delay in delivery, breach of duty during contract negotiations, or tort—is limited in accordance with the provisions of this Clause VIII.

2. We are fully liable in accordance with the German Product Liability Act, in cases of fraudulent concealment of a defect, for damages resulting from injury to life, body, or health, in cases of intent, or where we have assumed a guarantee. In cases of gross negligence, our liability is limited to foreseeable, typical damages under the contract.

3. In the case of simple negligence in breaching essential contractual obligations—i.e., duties whose fulfillment is essential to the proper performance of the contract and on which the customer regularly relies—we are also liable only for foreseeable, typical damages.

4. Our liability under Clause VIII.3 is further limited in amount to €50,000 per damage event and €150,000 per contract. These limitations do not apply if the customer, prior to concluding the contract, notifies us in writing of a higher value to serve as the liability cap. If such a value is declared, the maximum liability shall be based on the declared value. In that case, we will charge the customer a surcharge to cover our additional costs (e.g., higher insurance premiums).

5. Except for the cases specified in Clause VIII.2 and VIII.3, we shall not be liable for damages caused by simple negligence.
6. Except as provided in Clause VIII.2, further claims for damages are excluded, in particular claims for indirect or consequential damages or lost profits.
7. Where our liability for damages is excluded or limited, this also applies to the personal liability of our employees, staff, and representatives.

#### **IX. Limitation Period**

1. The warranty period for claims based on defects in the delivered goods is one year. The statutory limitation periods under § 438 (1) BGB and § 634a (1) No. 2 BGB remain unaffected.
2. All other claims by the customer arising from breaches of duty by us—particularly claims for damages or claims under a guarantee—are also subject to a limitation period of one year. The customer's right to withdraw from the contract due to a breach of duty attributable to us that does not relate to a defect remains unaffected. Notwithstanding Clause 1, the statutory limitation periods apply to the following customer claims:
  - 2.1. under the Product Liability Act or due to injury to life, body, health, or essential contractual rights and obligations;
  - 2.2. for damages caused by intentional or grossly negligent breach of duty by us or our vicarious agents;
  - 2.3. for claims based on fraudulent concealment of a defect;
  - 2.4. for reimbursement of expenses under § 478 (2) BGB.
3. Unless expressly stated otherwise, the statutory provisions concerning the commencement of limitation periods, suspension, interruption, and renewal of limitation periods remain unaffected.
4. Our claims against the customer are subject to the statutory limitation periods.

#### **X. Data Protection and Confidentiality**

1. We are entitled to process and store data obtained in connection with the business relationship with the customer—including data from third parties—in accordance with applicable data protection laws, particularly the General Data Protection Regulation (GDPR), and to have such data processed and stored by third parties commissioned by us.
2. The customer is obligated to keep confidential all confidential information (including trade secrets) obtained in connection with a contract with us and its execution, and not to disclose it to third parties. Confidential information includes any information marked as confidential or which, by its nature or context, should reasonably be considered confidential—regardless of whether it is disclosed in



written, electronic, physical, or oral form. This includes, in particular, our technologies, business data, business plans and strategies, financial relationships and conditions, personnel information, unpublished intellectual property rights, and any other non-public information.

3. The customer is expressly prohibited from obtaining confidential information by means of reverse engineering. Reverse engineering refers to any act—such as observing, testing, examining, dismantling, and potentially reassembling—undertaken to gain access to confidential information.

#### **XI. Place of Jurisdiction, Place of Performance, and Applicable Law**

1. If the customer is a merchant, a legal entity under public law, or a special fund under public law, Bremen shall be the exclusive place of jurisdiction for all disputes arising from or in connection with the business relationship between CHS Container Handel GmbH or CHS Spezialcontainer – Shelter and Engineering GmbH and the customer. This also applies to related transactions in which CHS Südcon GmbH, CHS Container Handel GmbH, and/or CHS Spezialcontainer – Shelter and Engineering GmbH are involved.

2. If the customer is a merchant, a legal entity under public law, or a special fund under public law, Munich shall be the exclusive place of jurisdiction for all disputes arising from or in connection with the business relationship between CHS Südcon GmbH and the customer.

3. Clauses 1 and 2 also apply if the customer does not have a general place of jurisdiction in Germany, relocates their residence or habitual place of abode abroad after conclusion of the contract, or if their residence or habitual place of abode is unknown at the time the action is brought. However, we reserve the right to bring an action against the customer at their general place of jurisdiction.

4. Unless expressly agreed otherwise between CHS Container Handel GmbH or CHS Spezialcontainer – Shelter and Engineering GmbH and the customer, the place of performance for all deliveries and services to be provided by the supplier is Bremen. Unless expressly agreed otherwise between CHS Südcon GmbH and the customer, the place of performance is Parsdorf.

5. The law of the Federal Republic of Germany shall apply. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is excluded.

#### **XII. Final Provisions**

1. Should any provision of the contract concluded between us and the customer be or become invalid or void, the validity of the contract as a whole shall not be affected. The invalid or void provision shall be replaced by a valid provision that

comes closest to the economic intent of the invalid or void provision. This provision shall apply accordingly in the event of any gaps in the contract.

2. Notwithstanding Clause XII.1, if individual clauses of these Terms and Conditions are or become invalid, §§ 306(1) and (2) of the German Civil Code (BGB) shall apply.

3. The customer is not entitled to assign claims against us to third parties. § 354a of the German Commercial Code (HGB) remains unaffected. The customer is also not entitled to transfer the contract or parts thereof to third parties without our prior express written consent.

4. No act on our part—except for an express written waiver—shall be deemed a waiver of any right arising from the contract, these Terms and Conditions, or by law. A delay in exercising any right shall not be construed as a waiver of that right. A one-time waiver of a right shall not be construed as a waiver of that right on any other occasion.

5. All contracts and any amendments or supplements thereto must be made in text form. Oral agreements are only valid if confirmed in text form by the respective CHS Container Group company. This also applies to this text form clause.

*(As of: February 2021)*