
CBOX CONTAINERS

GENERAL TERMS AND CONDITIONS OF BUSINESS

1. DEFINITIONS

- a. **Terms of Business:** these general terms and conditions of business of CBOX Containers.
- b. **Contract:** the contract entered into by and between a party and CBOX Containers.
- c. **Customer:** any person (whether a natural person or a legal entity) making an offer to CBOX Containers or the other party to the contract with CBOX Containers
- d. **Contractor:** CBOX Containers a private limited liability company under Dutch or Australian or Hong Kong law
- e. **Goods:** all materials, objects, tools, vehicles and containers the Contractor uses, rents out, sells or otherwise makes available in the performance of his activities, all in the broadest sense and however named or specified, which have been brought under the Customer's control by or on behalf of the Contractor.

2. FORMATION OF CONTRACT

- 2.1. These Terms of Business govern all offers and quotations made, business accepted and Contracts concluded, except in so far as expressly amended by Contract or insofar as their application is not possible in relation to the Goods or the Contract.
- 2.2. The following conditions will apply in addition to these Terms of Business:
 - a. for rental services: the Contractor's general terms and conditions;
 - b. for domestic road carriage: the most recent version of the General Transport Conditions 1983.
- 2.3. In the event of any conflict between the Terms of Business and the Contractor's general terms and conditions of rental referred to in Article 2.2(a), the latter terms and conditions will prevail. In the event of any conflict between the Terms of Business and the General Transport Conditions 1983 referred to in Article 2.2(b), the Terms of Business will prevail.
- 2.4. These Terms of Business set out the legal relationship between the Customer and the Contractor and form an integral part of the offer, respectively the (future) Contract.
- 2.5. The Contractor is the sole party that may rely on derogating and/or supplemental stipulations and/or a party's own terms and conditions and consequently such stipulations and conditions apply only if and to the extent the Contractor has expressly accepted them in writing or if they have expressly been agreed upon by the parties in writing.
- 2.6. The Contract will not be amended during its term unless the Customer and the Contractor have agreed on such amendment in writing.

3. QUOTATIONS AND CONTRACTS

- 3.1. All offers and quotations received from the Contractor, in whatever form, are without commitment and may be revoked at all times also if these state a period for acceptance. Instructions and orders given, and (the acceptance of) offers made by the Customer are considered to be irrevocable and are not binding on the Contractor until they have been confirmed in conformity with the provisions of Article 3.3.
- 3.2. Oral commitments and agreements made with the Contractor's staff will not be binding on the Contractor until after and to such extent as the Contractor has accepted these commitments or agreements in the manner set forth below.
- 3.3. The Contractor's acceptance of an instruction and/or order given and/or (the acceptance of) an offer made by the Customer will constitute a separate Contract between the Contractor and the Customer. The Contract will be concluded only upon the Contractor's express confirmation, in writing, of his acceptance of the instruction and/or order, and/or (acceptance of the) offer by signing an order confirmation and only in conformity with this confirmation or at moment the Contractor has commenced the execution of the Contract in accordance with the order or invoice. Any earlier arrangements to the contrary which are not included in the written confirmation as signed by the Contractor, will not apply save if and to the extent the Contractor specifically agreed to such arrangements in writing following the order confirmation.
- 3.4. If the Customer fails to give notice of his objections in writing within five (5) working days after the order confirmation has been sent, the order confirmation will be deemed to constitute a full and accurate representation of the Contract.
- 3.5. The Customer will not be entitled to assign his rights and obligations under any Contract to a third party without the Contractor's express written permission.
- 3.6. If the Contract is concluded between the Contractor and two or more Customers, the Customers will be jointly and severally liable for the fulfilment of the obligations under the Contract, unless expressly otherwise agreed in writing.
- 3.7. Save and in so far as otherwise agreed between the parties, the Contractor will be entitled to perform the Contract as he deems appropriate, either by engaging third parties or by executing the Contract in separate parts.
- 3.8. The Contractor expressly reserves the right to assign all rights under the Contract to a third party.
- 3.9. If and for as long as the Contractor fails to fulfil his obligations under the Contract, or fails to do so within the agreed time or in full, the Customer is entitled to suspend the performance of his obligations arising from the Contract.

4. PAYMENT

- 4.1. Unless expressly otherwise agreed in writing, all prices are exclusive of VAT, costs for transport, administration, packaging, insurance, installation, and levies imposed or to be imposed by the government or under international regulations, such costs and levies expressly including fines and penalties imposed in connection with the execution of the Contract. Unless expressly otherwise agreed in writing, all the aforesaid costs will - immediately and in full - be charged to the Customer (including VAT, if applicable).
- 4.2. Unless the parties have agreed in writing on a different term, all amounts the Customer owes to the Contractor are to be paid within fourteen (14) days of the billing date, in cash or by transfer to a bank or giro account held by the Contractor.
- 4.3. If the Customer fails to make payment, such failure will constitute an event of default by the Customer, without prior notice of default being required, and the Customer will pay to the Contractor - as from the due date - contractual interest thereon at a rate equal to 5% over the applicable promissory note discount rate of the Dutch Central Bank. The Contractor will also be liable to pay all judicial and extrajudicial collection costs the Contractor incurs, in an amount of at least 15% of the amount the Customer owes to the Contractor but at least in an amount of EUR 113.44.

- 4.4. Payments made by the Customer will serve first to reduce the costs and interest owed (in this order) and then to reduce the principal sums, where old amounts payable will take precedence over new amounts payable, notwithstanding any indication otherwise by the Customer in the event of (partial) payment to the Contractor.
- 4.5. If the Customer fails to make payment or otherwise culpably breaches his obligations under the Contract, the Contractor reserves the right to terminate the Contract with immediate effect and to repossess all goods that are the property of the Contractor but are held by the Customer.
- 4.6. The Customer will not in any event evade any of his payment obligations under the Contract, not by reliance on deduction, set-off, suspension or compensation or by any other means.

5. CHANGE OF ADDRESS

- 5.1 The Customer will immediately inform the Contractor of any changes in his address and/or telephone number.

6. PRICE CHANGES

- 6.1. All prices are based on the cost price as at the date of the Contractor's confirmation of the Contract. If, for instance, on account of exchange rate changes, changes in government rules or international regulations, an increase in commodity and/or material prices or for any other reason, the cost price increases following the Contractor's confirmation of the Contract, the Contractor is entitled to increase the agreed prices accordingly. The Contractor will as soon as possible inform the Customer of such price increase in writing. The Customer is required to pay the increased price. If the price is increased by more than 10% within three (3) months of the conclusion of the Contract, the Customer is entitled to terminate the Contract within eight (8) days following the date on which he received notification of the price increase and is entitled to be reimbursed by the Contractor for the costs he incurred in connection with the Contract. The Contractor will not be obliged to reimburse the Customer for any loss and/or damage he suffered or will suffer on account of such termination of the Contract. The Contractor will at all times be entitled to adjust the prices if a statutory price-determining factor gives rise thereto, but will refrain from making such adjustment within three (3) months following the conclusion of the Contract if the Customer is a consumer or a natural person considered to be equivalent thereto pursuant to Sections 6:235, 6:236 and 6:237 of the Dutch Civil Code.
- 6.2. Prices for the work to be performed by the Contractor are based on an hourly rate. The hourly rates for work performed by the Contractor before 7:30 am and after 4:00 pm or on Saturdays and Sundays as well as on public holidays will be subject to a surcharge as stated in the Contractor's price list.
- 6.3. Prices for the rental and/or making available of goods and staff will be calculated based on an hourly rate, where the time spent on transporting the goods and staff between the Contractor's place of business and the place of the work will be billed based on the hourly rate.
- 6.4. If the goods are rented out for a period of more than one (1) year, the rent will be adjusted on the basis of the monthly price index figure according to the consumer price index (CPI) 'all households' (2000=100), published by Statistics Netherlands (CBS). The adjusted rent will be calculated according to following formula: 'the adjusted rent is equal to the rent as at the commencement date of the (first) rental period multiplied by the index figure of the calendar month that is four calendar months prior to the calendar month in which the rent is adjusted, divided by the index figure for the calendar month that is four calendar months prior to the calendar month in which the first rental period commenced.'

7. DELIVERY

- 7.1 Transportation of the Goods to the location designated by the Customer will be deemed to have been effected the moment the Goods are delivered at such location.
- 7.2 Unless the parties have expressly agreed in writing on a date for delivery of the Goods, the Contractor is entitled to set such date unilaterally. Any statement of the date and, if applicable, the time of installation will be approximate. If the parties have not expressly agreed, in writing, a time for delivery, the Contractor is entitled to deliver, or cause the delivery of, the Goods at the agreed day or period for delivery at any time between 7:30 am and 4.00 pm.
- 7.3 Performance of the obligation to deliver may in any event be suspended for as long as the Customer still needs to fulfil any obligation, by whatever reason, it has to the Contractor. In addition, the period for delivery will be extended by the time during which the performance of the Contract is delayed by any circumstance or circumstances that cannot be attributed to the Contractor.
- 7.4 Additional costs arising from the fact that the destination or the place where the Goods are collected does not have access to the public road or cannot or cannot adequately be reached by the relevant means of transportation will be fully payable by the Customer.
- 7.5 The Contractor will not be liable for the consequences of exceeding the time of delivery or any other period within which the Contractor was - reasonably - supposed to perform any obligation ensuing from the Contract. If the time for delivery is exceeded, that fact will not entitle the Customer to compensation, claim the termination of the Contract, suspension of performance, set-off or non-performance of any of its obligations.
- 7.6 Any times for delivery stated and/or agreed by the Contractor will not constitute strict deadlines, unless explicitly agreed otherwise. In the event of late delivery the Contractor will have to be sent a written notice of default, subject to a reasonable period of time.

8. RETENTION OF TITLE

- 8.1. The Contractor will retain title to all goods it has supplied to and/or made available to the Customer, for as long as the Customer has not effected:
 - a. the consideration payable for any goods supplied by virtue of the Contract and/or on the basis of additional work; and/or
 - b. the consideration payable for any other work performed by the Contractor by virtue of the Contract and/or on the basis of additional work; and/or
 - c. payment of such amounts as may be payable (including interest and costs) for failing to perform the obligations ensuing from the Contract and/or on the basis of additional work.
- 8.2. The Contractor will not lose the (retained) title of the goods of which the Customer has taken receipt are processed and/or treated and/or assembled.

- 8.3. If in spite of the provision of article 8.2 the Contractor does lose title, the Customer will at the Contractor's request render all such assistance as may be necessary to create a non-possessory pledge (*bezitloos pandrecht*) on the relevant goods in favour of the Contractor.
- 8.4. The Customer will be entitled to sell goods received from the Contractor. This is subject to the condition that the Customer notifies the buying customer in time before the execution of the contract of sale and purchase of the full wording of this article. Not until the Customer has created, in favour of the Contractor, a non-possessor pledge on the relevant goods will the Customer be allowed, at the Contractor's wish, to effect the sale and delivery. As soon as the Contractor so demands and has made this demand known to the Customer, the right referred to in the first sentence of this article will automatically cease to have effect.
- 8.5. The right referred to in article 8.4 will automatically cease to have effect if the Customer fails to fulfil the obligations ensuing from the Contract and/or the additional work. If the Customer fulfils his obligations after all, the right referred to in article 8.4 revives.

9. SALE OF GOODS

Unless agreed otherwise, the following will apply with respect to the sale of Goods:

- 9.1. The Goods are sold by the Contractor in the condition in which they were at the time of delivery and the Contractor therefore does not guarantee that these goods are ready for immediate use.
- 9.2. The Customer will be required to remove any brands, numbers and other marks of previous owners from the Goods and similar items. If such brands, numbers and marks have to be removed by the Contractor, any associated costs will be payable by the Customer.
- 9.3. If any import duties and/or other duties are found to be payable in relation to the Goods, in and/or outside the Netherlands, they will be payable by the Customer. If the Contractor is held liable for the payment of such duties, the Customer will be required to indemnify the Contractor accordingly.
- 9.4. Without prejudice to the retention of title referred to in article 8, the risk in the Goods will pass to the Customer on delivery.

10. RENTING OUT GOODS

In addition to the terms of the Agreement relating to the renting out of Goods, the following will apply:

- 10.1. The rented Goods will at all times remain the property of the Contractor. If any sticker, plate or other mark has been affixed to the Goods indicating that the Goods are the property of the Contractor, the Customer is not allowed to remove such sticker, plate or other mark.
- 10.2. Where the rental period exceeds one (1) month, invoices will be issued monthly. Payment of the monthly rent due will be effected before the first day of each month.
- 10.3. At every occasion when receipt is taken of the Goods by or on behalf of the Customer and when the Goods are returned to the Contractor, an inspection report will be drawn up, to be signed by or on behalf of the Customer, describing the state and condition of the Goods. By signing the inspection report, the Customer acknowledges the state and condition of the Goods, which is thereby established incontrovertibly.
- 10.4. Upon taking receipt of the rented Goods the Customer will bear the risk of maintenance of the Goods and will be liable for any damage inflicted thereupon until the moment of return of the rented Goods to the Contractor, save for fair wear and tear.
- 10.5. If the rented Goods are returned to the Contractor in a damaged state and condition, the Contractor will be entitled to claim compensation from the Customer, which compensation will at least equal the cost of repairs plus the loss of income from rent covering the period necessary to effectuate the repairs.
- 10.6. Unless the Contractor has given its explicit written consent, the Customer will not be allowed to dispose of, to sub-rent or to allow third parties (also) to use, to pledge or otherwise to encumber the Goods. The Customer will also ensure that the Goods are not encumbered with attachments or any other rights of third parties or any other encumbrance by third parties.
- 10.7. The Customer will look after the Goods with all due care, secure the same effectively and only use them in accordance with their designated use, whilst observing the operation and procedure manuals.

11. FORCE MAJEURE

- 11.1. For reason of circumstances beyond its reasonable control (force majeure) the Contractor is incapable of fulfilling its obligations vis-à-vis the Customer, the Contractor will suspend performance of such obligations for the duration of the instance of force majeure.
- 11.2. If the instance of force majeure has lasted two months or more, either party will be entitled to give written notice of termination of whole or part of the Contract.
- 11.3. Force majeure will be understood to mean any circumstance beyond the control of the Contractor rendering the performance of the latter's obligations vis-à-vis the Customer partly or fully, temporarily or permanently impossible or as a result of which the Contractor cannot reasonably be required to perform its obligations, irrespective of the question whether such circumstance was foreseeable at the time of conclusion of the Contract. Such circumstances will in any event include strikes, mass staff sickness, insurrection, boycotts, blockades, sabotage, fire, stroke of lightning, machinery breakdown, business interruptions, impediments to and other interruptions of transportation, withdrawals of permits, irrespective of whether these occur at the Contractor's operations or at the operations of the relevant third parties or suppliers.

12. LIABILITY

- 12.1. The Contractor will only assume liability for any damage suffered by the Customer that arose as a result of a failure, without legal excuse, to perform the obligations under the Contract or from wrongful conduct, if and to the extent such liability is covered by its insurance policy, up to the amount paid by the insurance company.
- 12.2. If for any reason the insurance company does not provide insurance cover or if the damage is not covered by the insurance policy, the liability will be limited to twice the sum of the invoice with a maximum of EUR 2,500. If the obligations arise from a continuing performance agreement, the liability will be limited to twice the annual price with a maximum of EUR 2,500.
- 12.3. Consequential damage, business interruption loss and lost profits, by whatever cause, do not qualify for compensation. If the Customer so wishes, he can take out insurance to cover such damage and/or loss;

- 12.4. The Contractor is in any event not liable for damage arising as a result of or caused by actions or (assembly) work performed by the Customer or third parties following delivery or the incorrect use of the Goods or their subsequent unsuitability for the purpose for which the Customer acquired or made use of the Goods.
- 12.5. If the defect is the consequence of force majeure, the Contractor will not be liable.
- 12.6. Entitlement to compensation may arise subject to the condition that following the discovery of the damage and/or loss the Customer notifies the Contractor in writing, by registered letter, as soon as reasonably possible and in any event within eight (8) days following the occurrence of the damage and/or loss, and that the Customer does everything it can reasonably be expected to do to mitigate the damage and/or loss.
- 12.7. Without prejudice to the foregoing, any claim for compensation or otherwise the Customer may have against the Contractor will in any event be barred by prescription upon expiry of one (1) year following the occurrence of the damage and/or loss or earlier if the Customer has failed to hold the Contractor liable in the manner set out in the preceding paragraph within said period. Any such claim will in any event be barred if the notice of liability, upon being challenged by the Contractor, is not followed up by legal action within one (1) year after the date of dispatch of the notice of liability.
- 12.8. The provisions of the preceding paragraphs are without prejudice to other provisions of this Terms of Business and/or statutory provisions pursuant to which any one or more rights of the Customer have become barred earlier.

13. INDEMNIFICATION

- 13.1. To the extent permitted by law, the Customer indemnifies the Contractor against any claims by any one or more third parties arising from and/or in connection with the performance of the Contract concluded between the Customer and the Contractor, save where such damage and/or loss is caused by a failure, without legal excuse, by the Contractor to perform his obligations under the Contract or wrongful conduct.
- 13.2. If the damage and/or loss is caused in part by a circumstance to be attributed to the Customer, the Customer will at all times be required to pay a proportionate part of the damage and/or loss.
- 13.3. All subordinates and/or agents and/or representatives of the Contractor may invoke this article vis-à-vis the Customer and, if necessary, the Contractor may invoke this article vis-à-vis third parties on equal terms as the Contractor.

14. SUSPENSION OF PERFORMANCE

- 14.1. Prior to fulfilling its obligations, the Contractor will be entitled to demand payment in full and/or sufficient security - by means of, for example, a bank guarantee issued by a Dutch bank of sound repute - from the Customer if it is likely that the Customer will not (be able) to perform his obligations in a timely and/or correct fashion and/or if the Customer fails to perform his obligations.
- 14.2. If the Customer fails to perform any one or more of his obligations in a timely and/or correct fashion, the Contractor's performance of his own obligations will be automatically and immediately suspended until such time as the Customer has effected full payment of the amount he owes to the Contractor (including all interest and costs).

15. TERMINATION

- 15.1. Either party may give notice of termination of rental agreements in writing subject to a notice period of thirty (30) days before the end of the rental period, in the absence of which the rental agreement will be tacitly renewed for a period of the same duration.
- 15.2. The Customer is required to indemnify the Contractor for the costs - such as the costs of disassembly and transportation - associated with the termination of the Contract.
- 15.3. The Contractor will not be liable for any loss and/or damage suffered by the Customer that may ensue from actions taken by or on the instructions of the Contractor in response to any failure on the part of the Customer.

16. RIGHT TO CLAIM BACK GOODS

- 16.1. If the Customer fails to pay the purchase price of a good that has been delivered and possibly assembled, the Contractor may, in the event the Customer has been declared bankrupt or protection has been granted to the Customer against its creditors, by means of a written statement addressed to the Customer reclaim the good thus delivered within six (6) weeks after the purchase price has become due or within sixty (60) days from the day on which the good was stored in the custody of the Customer or of a person acting on behalf of the Customer.
- 16.2. The statement referred to in article 16.1 will serve to terminate the Contract (of sale and purchase) and cause all rights of the Customer and/or its legal successors with respect to the goods concerned to cease to have effect.

17. USE OF PREMISES

- 17.1. Anyone present at the premises of the Contractor or at the place where the work is performed will be considered, including any means of transportation, to be there at their own risk and will be required to adhere strictly to the rules and/or instructions given and to be given by government authorities and the Contractor.

18. INSURANCE

- 18.1. The Contractor will take out insurance for the benefit of the Customer at the risk and at the expense of the Customer following written instructions by the Customer to do so, such instructions to describe in detail the risks to be insured. The Contractor will at all times be entitled to refuse to take out insurance for the benefit of the Customer.

19. SETTLEMENT OF ACCOUNTS

- 19.1. At no time will the Customer be authorised to set off any payment obligations, immediately due or otherwise, against any obligation of the Contractor.

20. PARTIAL NULLITY

- 20.1. If any one of the terms or any part of any term from these Terms of Business or any part of the Contract is null and void, or is declared null and void, the remainder of the relevant term or terms of these Terms of Business will not be affected or the underlying Contract will remain in effect.
- 20.2. If any term from these Terms of Business is null and void, such term will automatically - by operation of law - be substituted with a valid term, which term will meet the purport of the null and void term to the extent possible. The parties undertake, if necessary, to consult in reasonableness on the wording of such new term.
- 20.3. In the event of conversion the other terms of these Terms of Business will remain in force and effect to the extent possible.

21. APPLICABLE LAW

- 21.1. The legal relationship between the Contractor and the Customer is governed by the laws of the Netherlands or Australia or Hong Kong.

22. DISPUTES

- 22.1. Any and all disputes, including injunctive relief proceedings, relating to and/or ensuing from these Terms of Business and/or agreements to which these Terms of Business apply will be submitted to the court of competent jurisdiction in the Netherlands or Australia or Hong Kong.
- 22.2. However, the Contractor will continue to be entitled to bring legal action before the court that would have jurisdiction under statute.