



GENERAL TERMS AND CONDITIONS OF SALE
K-TAINER LEASING B.V. / K-TAINER TRADING B.V. and affiliated companies

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SECTION 1 - GENERAL

1. Definitions

In these general terms and conditions, the following definitions apply:

K-tainer: K-TAINER LEASING B.V. / K-TAINER TRADING B.V. and its affiliated companies

Agreement: the framework or other agreement concluded between K-tainer and the Other Party regarding the sale, rental, lease, repair, storage, transport and any other activity or delivery performed or to be performed by K-tainer, as well as all of the activities or deliveries arising from that agreement or related agreements

Party: K-tainer and/or the Other Party

Written/in writing: by letter, Fax or e-mail

Other Party: that party that has entered into an Agreement with K-tainer

2. Structure

2.1 These general terms and conditions consist of a general section and five sections focusing on a number of specific activities and legal acts on the part of K-tainer, to wit "Sale", "Rental and Lease", "Repairs", "Storage", and "Transport".

2.2 The provisions in Section 1 apply to every act, legal or otherwise, performed by K-tainer, unless these are deviated from in any of the provisions found in the other sections of these general terms and conditions. In that case, the provisions found in the relevant sections shall prevail.

3. Applicability

3.1 These general terms and conditions are applicable to all of K-tainer's acts, legal or otherwise, including the sale, rental, lease, repairs and transport of containers, as well as the storage of containers and the goods stored therein.

3.2 The applicability of the Other Party's general terms and conditions are explicitly dismissed.

3.3 These general terms and conditions may only be deviated with the written consent of K-tainer.

3.4 These general terms and conditions shall be sent to the Other Party at no charge upon first request.

4. Conclusion of a Contract

4.1 All of K-tainer's offers are without obligation and are valid for 7 (seven) calendar days after the date of the offer.

4.2 K-tainer is authorized at all times to terminate the negotiations with the Other Party without being bound to pay any compensation for damages.

4.3 An Agreement is concluded when K-tainer has accepted the order or offer from the Other Party in writing, or at the time K-tainer receives the offer signed by the Other Party from the Other Party.

4.4 Orders sent to K-tainer may no longer be revoked once K-tainer has sent a written acceptance of these or has started the execution of these orders.

5. Additions to a Contract

Upon the Other Party's request, K-tainer shall fulfill all of the modifications or additions to the order indicated in writing, provided these have been indicated to K-tainer in a timely manner, in its judgment, and are reasonably feasible. K-tainer retains the right to adjust the price agreed upon for the order mutatis mutandis.



6. Fulfilment of a Contract

6.1 K-tainer retains the complete freedom to determine the sequence and method of fulfilment of the Agreement.

6.2 K-tainer is authorized at all times to engage auxiliary persons or third parties in the fulfilment of the Agreement, without being required to enter into consultation with the Other Party in advance. K-tainer reserves the right to allow the terms and conditions imposed upon it by these auxiliary persons or third parties to apply unimpaired to the Other Party. The Other Party accepts that these terms and conditions also apply to it and accepts that K-tainer is only liable for damage caused by auxiliary persons or third parties to the extent K-tainer has a right of recourse against these auxiliary persons or third parties. The engagement of auxiliary persons or other third parties shall not alter the rights and obligations which K-tainer and the Other Party have towards one another on the grounds of these general terms and conditions and the Agreement valid between them.

7. Prices and payment

7.1 Unless otherwise agreed, K-tainer's prices are valid for 1 (one) year. In the event of any changes in price, K-tainer must notify the Other Party of this in writing no later than 1 (one) month prior to the end of the aforementioned term. Upon the expiry of the first year of the Agreement, the prices shall be valid for one half year repeatedly, and K-tainer must notify the Other Party of any changes in price in writing no later than 1 (one) month prior to the end of the six month term. Should the Other Party refuse to agree to a change in prices, a notice period of 1 (one) month applies to both parties.

7.2 With the exception of the case in which K-tainer requires payment in cash, K-tainer's invoices must be paid within the agreed days as mentioned on K-tainer's invoice(s). The payment must be executed in the currency in which the prices appear on the invoice, and without offset, discounts or suspension.

7.3 The Other Party can only object to an invoice within the term of payment.

7.4 In the event the payment term is exceeded, without prejudice to K-tainer's other rights and without a prior notice of default being required, the Other Party shall owe the statutory interest rate for business transactions owed for the outstanding invoice amount until the time payment is executed in full. All of the unpaid invoices shall be immediately due and payable and all of the consequences of the non-performance shall become effective immediately.

7.5 All of the costs associated with payment, including the furnishing of security, shall be at the Other Party's expense.

7.6 All of the extrajudicial costs, explicitly including those costs incurred for the writing and sending of reminders, conducting settlement negotiations and other actions required for the preparation of possible legal proceedings, as well as all of the judicial costs which K-tainer must reasonably incur as a result of the Other Party's breach, shall be at the Other Party's expense.

7.7 Payments received from the Other Party shall serve to settle, in succession, the extrajudicial costs, judicial costs, the interest fees it owes, and then, in the order of their age, the outstanding invoices, irrespective of any other instructions issued by the Other Party.

7.8 At K-tainer's request, the Other Party is bound to make an advance payment or pay the full amount due prior to the performance of the Agreement within the term prescribed by K-tainer.



8. Delivery

8.1 In the event K-tainer, pursuant to the Agreement, has undertaken obligations to deliver a product or service, the term of delivery agreed upon between the parties shall commence on the day after K-tainer has received the order in writing or an offer from K-tainer signed for approval by the Other Party, and has received all of the written information necessary to the delivery. In the event K-tainer has requested an advance payment of full payment as described in Article 7.8 of these general terms and conditions, the term of delivery shall commence on the day after K-tainer has received this payment. This provision shall apply by analogy to the sales and repair agreements as described in these general terms and conditions.

8.2 If, pursuant to the Agreement, the Other Party must purchase goods from K-tainer and the goods have not been purchased within 14 (fourteen) days of the expiry of the term of delivery, it shall owe the storage fees applied by K-tainer starting on the fifteenth day. Storage shall take place at the risk and responsibility of the Other Party. In the event the Other Party fails to purchase the goods within 30 (thirty) days after the expiry of the term of delivery, and has not provided notice in writing - after having received a written reminder to do so - that it will purchase the goods upon payment of the storage fees, it will be assumed that the Other Party no longer wishes to purchase the goods. This provision shall apply by analogy to the sales, repair and storage agreements as described in these general terms and conditions.

8.3 In delivering goods pursuant to a sales, rental, lease or repair agreement as described in these general terms and conditions, in the event the goods delivered do not conform to the provisions of the Agreement, K-tainer is required to repair or replace the goods.

9. Furnishing of security, right of pledge and right of retention

9.1 In the event - in K-tainer's judgement - sound reasons exist to suspect that the Other Party will fail to fulfil its obligations to K-tainer, or fail to fulfil them properly or on time, the Other Party is required to, upon first request by K-tainer, furnish satisfactory security forthwith in a form specified by K-tainer for the complete fulfilment of all of its obligations, payment or otherwise, or to replace or supplement security previously furnished. Should the other party fail to obey this request within 7 (seven) days of receipt of such a request to furnish security, all of the consequences of non-fulfilment shall become effective immediately.

9.2 As security for the fulfilment of the Other Party's obligations pursuant to the Agreement, K-tainer retains a right of pledge and right of retention for all goods, documents and monies of which it has or shall obtain possession, regardless of the reason or purpose. If requested, K-tainer may replace the pledge with an equivalent form of security, exclusively at its own discretion.

10. Liability

10.1 K-tainer excludes every liability with the exception of those which have arisen due to intent or gross negligence on the part of its director(s) and members of the management at K-tainer.

10.2 K-tainer is not liable for damage caused by auxiliary persons and other third parties, including, among others, its subcontractors and persons it employs.

10.3 K-tainer excludes liability in all cases of losses due to delays and consequential losses, including, among others, loss of profit, market loss, losses suffered and costs incurred, as well as any lost orders or lost savings, damage through production or business interruptions or standstills, etc.

10.4 Any compensation K-tainer is to pay for damages is limited in all cases to the amount that K-tainer is capable of recovering from its liability insurer in this matter.

10.5 The Other Party is obligated to indemnify K-tainer from claims made by third parties with regard to any type of damage, occurring as a result of or in connection with actions or legal actions on the part of K-tainer, including the costs of legal aid, to the extent these claims exceed the liability of K-tainer pursuant to Articles 10.1 through 10.4.



11. Force majeure

11.1 Unless provided for otherwise below, and without prejudice to mandatory national or international provisions, neither of the parties shall be liable for any failure or delay in the fulfilment of its obligations in the event the failure is due to force majeure as defined below.

11.2 The term “force majeure” as used in these general terms and conditions refers to every circumstance which may not reasonable be attributed to the party which invokes force majeure and which has an effect on the fulfilment of the obligations on the part of that party. It shall, without restrictions, also comprise government regulations which limit or hinder the fulfilment of the obligations by that party, strikes, lockouts or industrial disputes or disturbances, civil disturbances, actions or negligence on the part of third parties, fire, computer breakdowns, storms, floods, explosions, terrorist attacks or the threat thereof, traffic obstructions and the impossibility of obtaining necessary authorization or permits.

11.3 As soon as an event occurs which constitutes force majeure, the affected party shall take all of the measures which will be reasonably necessary in order to allow it to fulfil its obligations as quickly as possible. The parties shall, if necessary, study the measures which must be taken in order to limit the consequences of force majeure together.

11.4 In the event one of the parties wishes to invoke force majeure, that party shall inform the other party of this as quickly as possible orally, yet in any case no later than 24 (twenty-four) hours after the force majeure situation was discovered. This oral notification shall be followed by a written notification provided by the party which has invoked force majeure with respect to the other party, within 72 (seventy-two) hours of the discovery. In the event the force majeure situation persists for more than 7 (seven) calendar days, the other party shall be entitled to terminate the Agreement.

12. Claims

12.1 The other party must provide K-tainer with written notification of any defects to the items delivered by K-tainer pursuant to the sales, rental, lease or repair agreement within 3 (three) days of the delivery. In the event the claim involves a defect which was not visible at the time the product was first used, K-tainer must be notified of the claim in writing within 3 (three) days of the discovery of the defect. Should K-tainer not receive a claim within this period, the Other Party shall be deemed to have approved the product and may no longer invoke any rights with regard to any defect it may discover later.

12.2 The claim must include an accurate description of the defect.

13. Premature termination

Both K-tainer and the Other Party may terminate the Agreement with immediate effect by sending written notification to this effect by registered post to the other party as soon as one of the following events occurs:

- a) the other party applies for bankruptcy, is declared bankrupt, petitions for a suspension of payments, or a similar event occurs with regard to the other party or to a significant portion of its capital in a country other than the Netherlands;
- b) the other party is dissolved or its company or a considerable portion of it ceases to operate or a decision is made to this end;
- c) the Other party remains in default to fulfil any obligation under the Agreement, notwithstanding the expiry of a term agreed to in writing of 14 (fourteen) days during which it was to fulfil this obligation;
- d) the situation as described in Article 7, paragraph 1 of these conditions.



14. Dissolution

In the event the Other Party fails to fulfil its obligations pursuant to the Agreement or that which may reasonably be expected, K-tainer has, in addition to the rights to which it is entitled by law and on the basis of these general terms and conditions, the right to dissolve all of the current Agreements concluded with the other party, including those with respect to which the client is not in default, in whole or in part, with immediate effect and without judicial intervention.

15. Confidentiality

15.1 Each of the parties undertakes to refrain from ever disclosing confidential information regarding the Agreement or to use it, the result of which could cause damages for the other party, except for in the following instances:

- a) to the extent this is required by applicable law or any authority, yet in this case, only after consulting the other party with regard to the time and content of the disclosure;
- b) it discloses this to its professional advisers under an imposition of secrecy and only to the extent this is necessary for a legal objective; and
- c) to the extent this information has been made public on or after the date of the Agreement.

15.2 The parties undertake to also impose this obligation of confidentiality on their employees and non-employees which they engage in the fulfilment of the Agreement.

16. Transfer

Neither of the parties may transfer the Agreement (contract transfer) nor transfer one or more of its rights and obligations to a third party without the prior written consent of the other party.

17. Prescription and lapse of time

17.1 Claims and defenses made by the Other Party, based on facts that would justify the assertion that the work or deliveries performed by K-tainer do not conform to the Agreement lapse after (1) one year after the work or delivery was performed.

17.2 All of the claims and defenses referred to in paragraph one lapse after 2 (two) years after the performance of the work or date of delivery.

18. Partial nullity

In the event any of the provisions of these general terms and conditions or the Agreement shall become invalid, unlawful, non-binding or not feasible in whole or in part, the remaining provisions in these general terms and conditions or the Agreement shall remain in force. The parties shall do everything in their power to reach an agreement regarding a new provision which deviates as little as possible from the invalid, unlawful, non-binding or not feasible provision, taking into consideration the content and the objective of these general terms and conditions or the Agreement.

19. Applicable law and competent court

19.1 The laws of the Netherlands apply to all of the legal relationships between K-tainer and the Other Party.



19.2 Without prejudice to conventional law provisions and that provided for in Article 39, paragraph 1 of these terms and conditions, the competent court in Rotterdam has the exclusive jurisdiction to take cognizance of all of the disputes that may arise between K-tainer and the Other Party arising out of or in connection with the Agreement or performance thereof, as well as in connection with these general terms and conditions.

20. Prevalence of Dutch text

The Dutch text of these general terms and conditions shall prevail above any translation thereof.

SECTION 2 - SALES

21. Delivery

21.1 The delivery of goods by K-tainer is performed 'Ex Works (EXW)' to the location indicated by K-tainer in accordance with Incoterms 2010.

21.2 In the event the agreed upon delivery term or date of delivery has been exceeded, the Other Party must provide K-tainer with written notice of default and to prescribe a reasonable period in which it may deliver the goods.

22. Transfer of risk

22.1 In accordance with Article 21.1 and as stipulated in the Incoterms 2010, the Other Party shall bear the risk for the goods starting at the time they are delivered to the Other Party.

22.2 In the event K-tainer is unable to deliver the goods to the Other Party on the delivery date due to circumstances which are attributable to the Other Party, the risk shall nonetheless pass to the Other Party on the date of delivery.

23. Retention of title

23.1 The delivery of goods sold by K-tainer shall occur under the suspensive condition that the Other Party has settled all of K-tainer's claims with respect to the goods delivered or to be delivered, and/or with regard to failure on the part of the Other Party in the fulfilment, integral and including interest and charges.

23.2 The Other Party is not entitled to encumber, dispose of or make available to third parties the goods delivered under retention of title without prior written permission from K-tainer.

23.3 The Other Party is obligated to insure and continue to insure all of the goods upon which a right to retention of title rests for loss, theft, and damage. The Other Party shall transfer any claims arising from the insurance to K-tainer on first demand from K-tainer.

23.4 If the Other Party has failed to satisfy any payment requirement with respect to K-tainer in a timely manner, petitions for or obtains a temporary suspension of payments, or is declared bankrupt, the Other Party is required to deliver the goods to K-tainer on first demand, or to a third party designated by K-tainer.

SECTION 3 - RENTAL AND LEASE

24. Liability

24.1 Both in the case of receipt of the goods by or on behalf of the Other Party, as well as in the event of the return thereof to K-tainer, a report shall be drawn up and signed by or on behalf of the Other Party which describes the condition in which the goods were found. Any evidence to the contrary of the observations contained in this report is excluded.



24.2 From the time of receipt to the return delivery of the goods to K-tainer, the Other Party shall bear the risk for the retention of the goods and is liable for any damage or decrease in value caused to the goods. The Other Party is not liable for damages which have arisen as a result of the normal wear and tear of the goods.

24.3 In the event the goods are damaged in the period that the Other Party bore the risk of the retention of the goods, the Other Party is required to compensate K-tainer for the damage which has arisen, including any rental income lost during the period necessary for repairs.

24.4 As it is the Other Party's decision where and how to use the goods, in deviation of Article 11 hereof, the risk that the goods cannot be used, become immobilized, obstructed or affected in any other way by causes stated in Article 11.2 hereof or by any other reasons, similar to those causes, will be for the sole account of the Other Party and will not constitute force majeure on the part of the Other Party. Consequently all obligations of the Other Party concerning the rental and lease of the goods like the obligation to pay the lease price and to timely return the goods will not be affected by any reliance on force majeure and can be enforced by K-tainer by all legal means.

25. Return deliveries

25.1 In addition to its obligation to return the goods to K-tainer in the same condition in which they were received pursuant to Article 24, the Other Party is also required to return the goods in a clean state. Should it remain in default in this regard, it shall bear the costs of cleaning.

25.2 Even upon valid termination of the agreement, the Other Party is obliged to pay the lease price as long as the goods are not returned to K-tainer yet.

26. Other party's insurance

26.1 The Other Party must conclude an insurance policy at its own risk and expense which provides sufficient coverage for its liability and that of K-tainer for all damage occurring from or as a result of the use of the goods. The insurance policy must also provide coverage against fire damage and consequential loss.

26.2 In the event the aforementioned damage occurs, the Other Party is required to transfer its claim on the insurer to K-tainer.

SECTION 4 - REPAIRS

27. Delivery

27.1 Goods repaired by K-tainer shall be delivered to the Other Party at the location where the repairs were performed.

27.2. Approximate repair periods shall be agreed upon, assuming that no unforeseen circumstances occur and that the materials necessary for the repair work will be available to K-tainer on time.

27.3 After the expiry of the agreed upon repair period or repair date, the Other Party must provide K-tainer with written notice of default and to prescribe a reasonable period in which it may deliver the repaired goods.

27.4. Notwithstanding that provided for under Article 10.1, K-tainer is only liable for damage arising from the term of delivery or delivery date which has been agreed upon in writing being exceeded, if the reason this term has been exceeded may be attributed to it. K-tainer's liability on the grounds of this article is limited to 10% of the agreed upon price. Articles 10.2 through 10.5 apply by analogy.

27.5 In the event the goods are stored prior to, during and after the completion of the work, the provisions from Section 5 of these terms and conditions apply.



28. Liability

28.1 Notwithstanding that provided for under Article 10, K-tainer is in no way liable for damage caused by work which has been performed or materials which have been applied on the instructions of the Other Party.

28.2 The Other Party must indemnify K-tainer from any damage resulting from visible and invisible remainders of a shipment still present in the container to be repaired. Notwithstanding the above, the Other Party is obligated to notify K-tainer as soon as it suspects the presence of harmful remainders.

29. Guarantee

29.1 K-tainer guarantees that the work it is to perform conforms to the description contained in the offer or order confirmation to the extent that K-tainer was free to determine the work it was to perform and determined the construction and the necessary materials itself. No guarantees will be given for emergency or temporary repairs nor will they be given in cases in which the parties agree to utilize used materials or spare parts for the repair work.

29.2 Defects, caused by the normal wear and tear of the goods, poor maintenance, irresponsible use or repairs performed by the Other Party or a third party are not covered under the aforementioned guarantee.

29.3 In the event of any defects, the Other Party must provide K-tainer with the opportunity to repair these defects within a reasonable period.

29.4 In the event the guarantee is invoked, K-tainer is required to do one of the following, at its discretion:

- to repair the defects at no charge, or
- in the event repair is not possible or is not in proportion to the originally agreed upon repair price, credit the invoice for the original work.

29.5 Any claim under the guarantee must be sent to K-tainer in writing and must contain an accurate description of the defects.

29.6 The Other Party may not make a claim under the guarantee in the event it has failed to fulfil its obligations pursuant to the Agreement.

SECTION 5 - STORAGE

30. Descriptions and information

30.1 The Other Party is obligated to provide K-tainer with the accurate and complete written description of the goods to be stored, including the value, the number of packages, the gross weight and furthermore all of the details of such a nature that if K-tainer had been notified of the actual nature of the goods, it would have not concluded the Agreement or would not have concluded it under the same terms and conditions.

30.2 The Other Party is obligated to provide K-tainer with all of the information, documents and regulations necessary to the storage.

30.3 Should the Other Party remain in default to fulfil the obligations specified in this article, it will then be responsible for the costs and liable for any damage arising as a result.

31. Delivery of goods

Unless otherwise indicated, goods shall be delivered in good condition, and if packaged, must be delivered packaged to K-tainer, the failure of which to do so shall not render K-tainer liable for any resulting damage.



32. Location of storage, relocation

K-tainer is free in its choice of storage location and is authorized at all times to move the goods to another storage location, provided it notifies the Other Party of this relocation.

33. Access to the goods

33.1 The Other Party has the right to obtain access to the location at which its goods are stored, at its own risk and expense.

33.2 Access may only be granted during normal working hours and under the supervision of K-tainer. The Other Party must adhere at all times to the regulations valid at the location and any other regulations, safety or otherwise, prescribed by K-tainer.

34. Insurance

34.1 Apart from the fact that K-tainer is entitled at all times to reject a request for insurance, the ultimate acceptance or rejection of the risk presented lies with its insurer.

34.2 Should K-tainer conclude insurance at the Other Party's request, this shall always be at the risk and expense of the latter.

35. Destruction

In the event the goods are destroyed by fire, storm or another cause while in storage which may not reasonably be attributed to K-tainer, the Other Party shall owe the agreed upon storage fee up to the date the destruction occurred.

36. Repossession

36.1 The Other Party may repossess the goods in exchange for payment which it still has outstanding to K-tainer pursuant to the Agreement.

36.2 In the event a fixed storage period has not been agreed upon, K-tainer may demand that the repossession be subject to a notice period of 1 (one) month.

36.3 If the Other Party fails to fulfil its obligations under the Agreement, or in the event another circumstance arises by which K-tainer may not reasonably be expected to continue to store the goods for the Other Party, the Other Party is required to retrieve the goods from K-tainer on first demand.

37. Public sale

37.1 In the event the Other Party fails to retrieve the goods within 7 (seven) days of the expiry of the term of storage, as provided for in Article 36, it will continue to owe the agreed upon storage fee and the storage will then be entirely at the Other Party's responsibility and risk. In the event the Other Party fails to retrieve the goods within 30 (thirty) days after the expiry of the term of storage, and has not provided notice in writing - after having received a written reminder to do so - that it still plans to retrieve the goods upon payment of the storage fees, it will be assumed that the Other Party no longer wishes to retrieve the goods.

37.2 In the event of a situation as described in paragraph 1, K-tainer is authorized to sell the goods through a public sale. After deducting all of the costs and claims upon the Other Party, K-tainer will keep the proceeds from the sale at the Other Party's disposal for 1 (one) year. In the event the remaining amount is not claimed, K-tainer will deposit this with the Consignment Office.



37.3 If, after reasonable attempts to do so, K-tainer has been unsuccessful in finding a buyer, or the costs of the sale would exceed the proceeds, K-tainer is authorized to destroy the goods or have this done. In that case, the Other Party shall owe K-tainer the costs of destruction in addition to any other amounts it owes pursuant to the Agreement.

38. Transfer of ownership

38.1 The Other Party is obligated to notify K-tainer immediately in writing of any transfer of ownership or transfer of the goods, or of any transfer or devolution of the right to deliver the goods.

38.2 The transfer or devolution has no legal consequences with respect to K-tainer until the newly entitled party has accepted the provisions of the Agreement and these general terms and conditions in writing.

38.3 After the transfer or devolution, the Other Party shall remain liable to K-tainer for all of K-tainer's claims pursuant to the Agreement. In the event the newly entitled party has accepted the provisions from the Agreement and these general terms and conditions, in addition to the Other Party, it is also jointly and severally liable for K-tainer's claims pursuant to the Agreement, to the extent these arose prior to the transfer or devolution.

SECTION 6 - TRANSPORT

39. Applicable conditions

39.1 The most recently filed version of the "Forwarding Conditions of the Netherlands" issued by the FENEX, the Netherlands Association for Forwarding and Logistics, applies to every order received by K-tainer for the transportation of goods, including - and notwithstanding Article 19 of these general terms and conditions - the arbitration clause contained therein.

39.2 In the event K-tainer handles the transport of the goods itself, then the most recent version of the "General Transport Conditions (AVC)" issued by the Stichting Vervoeradres applies with regard to its liability for transport within the Netherlands. Its liability with respect to international transport is determined in accordance with the provisions of the "*Convention relative au contrat de transport international de Merchandises par Route*" (CMR Convention, or Convention on the Contract for the International Carriage of Goods by Road). With regard to situations which do not involve K-tainer's liability, the provisions from Section 1 of these general terms and conditions, with the exception of Article 10, apply.