

General terms and conditions for container maintenance and repair work of KCT Krefelder Container Terminal GmbH

I. Scope

1. These terms and conditions shall apply to all future offers, deliveries and business transactions. They shall apply in particular to the performance of repair, maintenance and assembly work of containers, trailers, chassis or associated equipment, hereinafter referred to as "container" or " object of the contract", also if this only concerns a part of a container, trailer or chassis.
2. Deviations from these terms and conditions shall only be deemed effective if they have been confirmed by us in writing. General contractual terms and conditions of the customer which deviate from these terms and conditions shall not be deemed valid unless we have explicitly agreed to them in writing.

II. Offer and conclusion of contract

1. Our offers and cost estimates are subject to change without notice. Orders that are submitted in accordance with our cost estimates shall be deemed accepted if we perform the service without reservation. All other orders and declarations of acceptance shall only be considered binding for us if they have been confirmed by us in writing or by telex (e-mail is sufficient). The same shall also apply to supplements, amendments and subsidiary agreements. The content of the contract as laid down in writing shall be exclusively authoritative, superseding all previous information, assurances and the like not contained in the order confirmation.
2. The customer shall decide on the scope and expediency of a repair himself and under his sole responsibility. We are entitled to use the opinion of a classification society as a basis for our work, provided that it is not obviously incorrect.
3. If we or our agents conduct transshipments, this shall be done by order or at the expense of the customer.
4. The customer must furnish us with all information necessary for the proper performance of the service. This applies in particular to current or previous container contents (e.g. dangerous goods), special repair instructions as well as other regulations that have to be observed in connection with the container.
5. The work shall be performed by us pursuant to the ISO and IICL (Institute of International Container Lessors) standards and the regulations of Germanischer Lloyd, unless otherwise agreed with the customer. Matters that are not governed by the above rules shall be additionally governed by these terms and conditions and, alternatively, by the provisions of §§ 633 ff. of the German Civil Code [BGB] (Contract Law for Work and Labour).

III. Prices

1. Offer prices as well as invoice prices are calculated so that accrued old material passes into our ownership without compensation. Any costs incurred for the necessary disposal of contaminated old material shall be borne by the customer.
2. Our prices are based on the wages and material costs applicable at the time of the offer. In the event that wages and material costs increase before the order is placed, the offer price may be increased in reasonable proportion to the change in circumstances that have occurred.

IV. Terms of payment

1. Payments are due immediately without deduction upon notification of completion, but at the latest upon acceptance or handover of the object of the order.
2. Exercising a right of retention against our invoice claims as well as offsetting are excluded, unless the client's claim is undisputed or has been legally established.



3. If circumstances arise after the conclusion of the contract that jeopardise the solvency of the purchaser, we can demand appropriate securities or advance payments.

V. Delivery time and deliveries

1. The delivery time shall be established on the basis of the scope of work known at the time the order is placed, to the extent foreseeable, but without obligation, unless otherwise expressly agreed in writing. In the event of subsequently agreed additions to the original scope of the order, the delivery time shall be extended by a correspondingly reasonable period of time.

2. Should we be responsible for any other delay in delivery or impossibility of performance, the customer is only entitled to withdraw from the contract after having granted a reasonable grace period. Claims of the customer for damages are based on section VII. nos. 1 through 4 of these terms and conditions.

3. We shall not be held liable for the impossibility of performance or for delays in performance if these are caused by force majeure or other incidents not foreseeable at the time of conclusion of the contract (e.g. operational disruptions of any kind, difficulties in procuring materials or energy, transport delays, strikes, lawful lock-outs, shortage of labour, energy or raw materials, difficulties in procuring necessary official permits, official measures or the failure of, incorrect or untimely delivery by suppliers) for which we are not responsible (together referred to as "force majeure"). Should any such incidents make it considerably more difficult or even impossible for us to provide our services and should the hindrance not only be of a temporary nature, we shall be entitled to withdraw from the contract. In the event of hindrances of a temporary nature, the service deadlines shall be extended or the service dates postponed by the period of the hindrance as well as a reasonable start-up period. If the customer cannot be expected to accept the service as a result of the delay, the customer may withdraw from the contract by means of an immediate written declaration addressed to us. In the event of withdrawal from the contract on the grounds of force majeure, whether exercised by the customer or by us, the customer is obliged to reimburse us for the costs incurred up to that point, but at least 10% of the confirmed order value.

VI. Notice of defects, warranty

1. Upon handover of the object of the order, the customer or a third party employed by the customer must immediately inspect our work and report any visible defects immediately, i.e. within 3 working days at the latest, in writing (e-mail is sufficient) in an adequately precise manner. If this is not done or the defects are remedied without us having had the opportunity to examine and rectify them, warranty claims based on these defects are excluded. Defects which cannot be detected immediately even after careful examination must be notified in writing and in concrete terms immediately after their detection.

2. In the case of properly notified and proven defects, we shall be obliged to remedy the defects free of charge, unless the remedy would be unreasonable for us in the specific case. The rectification of defects shall be deemed to be unreasonable if the expenditure required for this exceeds the value of the original object of delivery and service. Should the rectification of defects be defective, we shall only be obliged to repeat it once. In the event that we culpably fail to comply with this obligation in spite of a reminder and the setting of a reasonable deadline, or if rectification of the defect is impossible or unreasonable for us, the customer may demand a reduction in price or withdrawal from the contract. In the event of a solely negligible breach of contract, in particular in the event of only minor defects, the customer shall not be entitled to withdraw from the contract.

3. Further liability claims shall be governed by the provisions in section VII. nos. 1 to 4 of these terms and conditions.

4. For third-party products and services, the warranty shall be limited to the assignment of the warranty claims to which we are entitled against the respective third parties.



5. The aforementioned exclusions or limitations of the customer's rights due to a defect shall not apply if we have fraudulently concealed the defect or have assumed a guarantee for the quality of the object of the order.

VII. Liability, force majeure, lien

1. In the event of intent and gross negligence, we will accept liability in accordance with the pertinent statutory provisions.
2. In the event of simple negligence, we shall only be liable to the extent that it is a breach of a material contractual obligation. In this case our liability shall be limited to the foreseeable damage typical for the contract. An essential contractual obligation is an obligation the fulfilment of which makes the proper execution of a contract possible in the first place and on the observance of which the other party may regularly rely.
3. The limitations of this clause VII. also apply equally in favour of our legal representatives, employees and vicarious agents.
4. Liability claims under the Product Liability Act and in the event of injury to life, limb or health and the provisions of §§ 444 and 639 BGB (German Civil Code) as well as liability under other guarantees shall remain unaffected by the above limitations of liability.
5. In the event of maintenance, production, repair and assembly work, we shall be entitled to a contractual lien on the object of the order which has come into our possession as a result of the order due to our claims from the order. The contractual lien can also be asserted for claims arising from work carried out earlier, spare parts deliveries and other services, insofar as they are connected with the subject of the order. For other claims arising from the business relationship, the contractual right of lien shall only apply insofar as these are undisputed or a legally binding title exists.

VIII. Limitation of actions

All claims of the client, regardless of the legal basis, shall become statute-barred one year after the transfer or delivery of the subject of the order.

IX. Miscellaneous, final provisions

1. In the event that we subcontract the order to a third party, these terms and conditions shall also apply in the relationship with the customer on behalf of this third party.
2. Any amendments, additions and rescission of these terms and conditions must be made in writing.
3. Should parts of these terms and conditions be or become invalid, the validity of the remaining terms and conditions shall remain unaffected by this. In the event that one or more provisions of these general terms and conditions should be or become invalid, the contracting parties shall agree on a legally effective replacement provision that comes as close as possible to the economic purpose of the invalid provision.
4. The law of the Federal Republic of Germany shall apply. If the customer is a merchant, legal entity under public law or special fund under public law, the place of jurisdiction shall be the registered office of our company or, at our discretion, the registered office of the customer.

