



## **General Terms and Conditions of Schulte bagtainer systems GmbH**

### **Section 1 General provisions**

The following Terms and Conditions form the basis of all commercial relationships between Schulte bagtainer systems GmbH (hereafter "bagtainer") and our contractual partners provided these are entrepreneurs within the meaning of section 14 German Civil Code [BGB] and are deemed to be agreed upon conclusion of the contract. They shall apply to future transactions even if this is not expressly agreed once again in each individual case. Unless otherwise agreed in writing, the following provisions shall be deemed to have been accepted upon receipt of our goods or service at the latest. General terms and conditions of our contractual partners shall only apply if and when we have expressly agreed to them. The fact that the contractual partner's General Terms are not objected to does not therefore make them valid.

### **Section 2 Creation of contracts**

If an order qualifies as an offer within the meaning of section 145 BGB, we may accept this within four weeks by sending an order confirmation or by sending the ordered goods, even including at an earlier point in time.

### **Section 3 Delivery, packaging**

- (1) Partial deliveries shall be permitted provided these are feasible for the business partner.
- (2) The contractual partner shall be obligated to check the received goods immediately and notify us promptly in writing of any complaints (fax or email will suffice), i.e. immediately in the case of obvious defects and at the latest within 5 working days after receipt of the delivery, and in the case of latent defects immediately the defect is discovered.
- (3) In the event that agreed delivery dates are not complied with, we shall be obligated to compensate the contractual partner for the loss caused by the delay unless we are not responsible for the delay. The loss due to delay shall, however, be limited to typical foreseeable loss. No compensation shall be paid, in particular, for loss of profit or the costs of production down time.
- (4) Unless specially agreed, the determination of a delivery period does not mean that this is the kind of specified date which, if not adhered to, grants the contractual partner the right to revoke the contract under section 323 (2) No. 2 BGB.
- (5) If the contractual partner does not within two weeks after the agreed delivery date accept products that were part of a firm order, bagtainer may for each month or portion thereof charge a storage fee of 0.5% of the price of the products not accepted, but no more than 5% in total, unless higher storage costs can be proved. The contractual partner may put forward proof that no storage costs arose at all or were incurred in an amount significantly lower than the flat fee.
- (6) Unless mandatory provisions of the Packaging Regulation or other statutory rules provide otherwise, the packaging needed for the shipment are billed at the original cost price and are neither taken back nor credited.

### **Section 4 Impediment to performance in the case of force majeure**

In cases of force majeure, the Parties agree as follows:

- (1) "Force majeure" means the occurrence of an event or circumstance ("event of force majeure") which prevents one party from fulfilling one or more of its contractual obligations under the contract if and to the extent that the party affected by the obstacle ("affected party") proves that:
  - (a) the said impediment is not within its reasonable control.
  - (b) at the time the contract was entered into it could not be reasonably foreseen and
  - (c) the effects of the impediment could not have been prevented or overcome by the affected party.
- (2) Until the contrary is proved, in the case of the following events affecting either party the assumption is that the events meet the preconditions for assuming force majeure. The affected party must in this

case only prove that the precondition under paragraph 1 letter (c) has actually been met:

- (a) War (whether or not it is declared), hostilities, attack, actions of foreign enemies, extensive military mobilization;
  - (b) Civil war, uprising, rebellion and revolution, military or other seizure of power, insurgency, terrorist acts, sabotage or piracy;
  - (c) Currency and trade restraints, embargo, sanctions;
  - (d) Lawful or unlawful official acts, compliance with laws or government orders, expropriation, confiscation of works, requisition, nationalization;
  - (e) Epidemic, pandemic, natural disaster or extreme natural event;
  - (f) Explosion, fire, destruction of equipment, lengthy outage of means of transport, telecommunications, IT systems or power;
  - (g) General labor unrest such as boycott, strike and lock-out, work-to-rule, occupation of factories and buildings and other similarly fundamental operational disruptions.
- (3) A party who successfully invokes this clause shall be exempt from the obligation to fulfill its contractual obligations and from any obligation to pay damages or from any other contractual legal redress for breach of contract, but only if it notifies this immediately. If, however, the notification is not made immediately the exemption shall only be effective from the time at which the notification reaches the other party. The other party may suspend performance of its obligations as of the time of this notification if force majeure must in fact be assumed.
- (4) If the effect of the impediment or event that is asserted is temporary, the consequences described in letter (c) shall apply only as long as the impediment that has been asserted prevents the affected party from fulfilling the contractual obligations. The affected party must notify the other party as soon as the obstacle no longer prevents the performance of its contractual obligations.
- (5) The affected party shall be obligated to take all reasonable measures to limit the effects of the event invoked regarding contractual performance.
- (6) If the duration of the obstacle that is asserted results in the contractual parties essentially being deprived of what they were entitled to expect under the contract, the respective party shall be authorized to terminate the relevant contract by notifying the other party within a reasonable period. Unless otherwise agreed, the Parties expressly agree that the contract may be terminated by either party if the impediment has lasted more than 60 days.

## **Section 5 Transfer of risk (handover)**

- (1) Risk shall pass when the goods are collected or in the case of a mail-order purchase when they are transferred to the shipper (forwarding agent, carrier, or other person designated for delivery). At the request and expense of the contractual partner, the deliveries shall be insured by us for the standard transport risks.
- (2) Risk shall similarly pass to the contractual partner if and as soon as the collection or delivery of the consignment is delayed for reasons attributable to it or it is in default with acceptance for other reasons.

## **Section 6 Prices, payment terms**

- (1) Our prices are to be understood to be ex works excluding packaging, plus the respectively applicable value added tax.
- (2) If the cost factors (production material, energy, consumables, wages and salaries) relevant to pricing materially change in the period between the conclusion of this Agreement and the time of delivery, in order to balance out such cost increases bagtainer is authorized to request the purchaser's agreement to new prices in lieu of the agreed prices. If no agreement is reached, bagtainer is authorized to rescind the agreement. If the aforementioned cost factors are reduced, the purchaser, applying the preceding provision mutatis mutandis, shall be entitled to have a corresponding price reduction agreed to and, if no agreement is reached, shall be authorized to rescind the contract. Essentially according to sentence 1, a change in the cost factors if a cost difference of more than 10% has occurred between the time this Agreement is entered into and the time of delivery.
- (3) Payments shall be made by bagtainer free of transaction charges. The payments must be made in cash within 30 days after invoicing.
- (4) If a payment is agreed by Letter of Credit (LC), bagtainer shall specify the formalities of the LC. The costs of the LC shall be borne by the contractual partner. In the case of delays in the service for which bagtainer is not responsible, the contractual partner must renew the LC in relation to

bagtainer. bagtainer shall specify the renewal period. The costs arising due to the renewal shall similarly be borne by the contractual partner.

- (5) If bagtainer learns after the contract is entered into that our right to the consideration is jeopardized as a result of the insolvency of the contractual partner, we may refuse performance until the contractual partner effects payment in full or has furnished security for it. The same shall apply if the contractual partner is in default with a payment.
- (6) In the case of payment default, bagtainer shall be authorized to charge late interest of 9% above the base rate applicable in each case.

### **Section 7 Offset, rights of retention**

- (1) Offsetting against claims of bagtainer is only permitted with undisputed or final non-appealable counterclaims.
- (2) Similarly, the contractual partner shall only have rights of retention in the case of undisputed or final non-appealable counterclaims. The contractual partner, however, shall have no rights of retention arising from previous or other transactions of the current commercial relationship.

### **Section 8 Warranty**

- (1) If delivered items are defective, the contractual partner shall have the rights under section 437 BGB. To the extent that there is a statutory obligation to bear expenses necessary for the purpose of remediation, the contractor shall not be obligated to bear them to the extent that they are increased due to the fact that the delivery item is taken to a place other than the customer's establishment. Irrespective of any further claims of the contractor, the customer must in the case of an unjustified defect notification compensate the contractor for the expenses for inspecting and, where requested, for remedying the defect.
- (2) All warranty claims shall expire in one year after delivery. This period shall not apply to the extent that the law mandates that there must be no reduction in the warranty period.
- (3) The warranty shall not extend to natural wear and tear or loss or damage occurring after risk has passed due to incorrect or negligent handling or excessive use.
- (4) Unless otherwise specified below, bagtainer shall be liable in connection with the contractual warranty for damages (except for damages for death, physical injury or impairment of health) only for willful intent and gross negligence, including willful intent and gross negligence by its representatives and vicarious agents. Liability for simple or ordinary negligence is excluded unless it involves the breach of an essential contract duty within the meaning of the case law of the German Federal Court of Justice. Insofar as the aforesaid disclaimer of liability does not take effect due to breach of an essential contract duty, bagtainer shall be liable only for typical, foreseeable contract damages. These limitations and exclusions of liability shall not apply to the breach of pre-contractual notification and disclosure obligations.

### **Section 9 Non-warranty related liability**

bagtainer shall similarly be liable for damages apart from Section 8 (Warranty) (except in the case of damages for physical injury, death or impairment to health) only for willful intent and gross negligence – only in accordance with section 8 (4).

### **Section 10 Product liability**

This is without prejudice to liability under the German Product Liability Act (Produkthaftungsgesetz) (ProdHaftG).

### **Section 11 Cancellation in the event of the insolvency of a contractual partner**

If insolvency proceedings are opened relating to the assets of a partner, or the opening of such proceedings is denied due to lack of assets, the other party shall be authorized to rescind this Agreement in respect of the scope of delivery that is not yet fulfilled at that time.

### **Section 12 Retention of title**

- (1) Our delivery items remain our property until all claims we have against the contractual partner under the commercial relationship are fulfilled completely (goods subject to retention of title). To the extent that the value of all security rights that we have exceeds the amount of all secured claims by more than 20%, we shall at the request of the contractual partner release a corresponding share of the

security rights.

- (2) The contractual partner shall be obligated to store the goods subject to retention of title separately, mark them and treat them with care.
- (3) The contractual partner may only resell goods subject to retention of title in the ordinary course of business on its customary terms and conditions and only as long as it is not in default with its payment obligations to us. It hereby, however, assigns in security its future claims under such resales along with all ancillary rights, including any balance claims, without the requirement of further declarations. If the contractual partner resells the goods subject to retention together with other items without an individual price having been agreed for the goods subject to retention, the contractual partner shall assign to us, with priority over the rest of the claim, the part of the total claim corresponding to the price of the goods subject to retention that is invoiced by us.
- (4) The contractual partner shall, until the right is revoked, be authorized to collect the assigned claims arising under the resale. If there is good cause, in particular in the case of payment default, payment cessation, opening of insolvency proceedings or failure to open such proceedings due to lack of assets, or if there are similar indications that suggest that the contractual partner is insolvent, we shall be authorized to revoke the contractual partner's authority to collect. In addition, bagtainer may in such cases, after giving prior reasonable notice of the disclosure of the security assignment or the realization of the assigned claim, disclose the security assignment, realize the assigned claims and call on the contractual partner to disclose the security assignment to its customers.
- (5) The contractual partner shall be permitted to process or transform goods subject to retention of title or combine them with other items (processing/creation of a new item). The processing shall be effective for bagtainer. The contractual partner shall keep the new item in custody for bagtainer with all due commercial diligence. bagtainer shall have prorated co-ownership in the new item in the proportion the invoice value of the goods subject to retention bears to the invoice value of the other materials used. The processed item (new item) shall be deemed to be goods subject to retention of title.
- (6) In the event of the resale of the new item, the contractual partner hereby assigns in security its claim under the resale against its customers together with all ancillary rights without the need for any further special declarations. The assignment shall, however, only apply in the amount corresponding to the value that bagtainer invoices for the processed goods subject to retention of title. The share of the claim that is assigned to us shall be paid as a prior-ranking claim. Paragraph 3 of this Section shall apply accordingly with regard to the collection authority and the preconditions for its revocation.
- (7) The contractual partner must notify us immediately in the case of garnishments, confiscations or other dispositions or interventions by third parties in respect of the goods subject to retention of title. The contractual partner shall bear all costs that must be incurred to terminate access and to recover the goods subject to retention of title.

### **Section 13 Intellectual property rights and copyright**

(2) Where a third party may file legitimate claims against the contractual partner for infringement of an intellectual property right or copyright (hereafter "Intellectual property right") due to products delivered by us that are used conform to contract, we shall be liable to our contractual partner as follows:

- (a) The provision concerning section 7 (1) of these GTC shall apply subject to the condition that we are obligated, depending on which option the contractual partner chooses, to either obtain a usage right for the product, alter the product in such a way as to stop the infringement of the intellectual property right or replace the product with one that has no defects. Section 7 (2) of these GTC shall apply accordingly.
- (b) Our obligation to pay damages due to the delivery of an item that is subject to intellectual property rights shall be excluded if the contractual partner does not immediately notify us in writing of the claims asserted by a third party, acknowledges an infringement, or not all defensive measures and settlement negotiations remain reserved to us. If the contractual partner suspends use of the product due to loss mitigation or other good reasons, it shall be obligated to point out to the third party that no admission of an infringement of intellectual property rights is associated with the suspension of use.

(3) Claims of the contractual partner shall be excluded to the extent that it, and not we, is responsible for the intellectual property rights infringement.

(4) Claims of the contractual partner are further excluded if the intellectual property rights infringement is due to special requirements of the contractual partner, due to an unforeseeable application or due to the fact that the product is changed by the contractual partner or is used together with products that have not

been delivered by us.

(5) Section 9 of these GTC shall apply in all other respects.

#### **Section 14 Contractual penalties**

We do not acknowledge contractual penalties.

#### **Section 15 Place of performance**

The place of performance for all legal relationships that are subject to these provisions shall be the registered office of bagtainer.

#### **Section 16 Venue, applicable law**

(1) The venue for all disputes arising under this contractual relationship and the deliveries made pursuant thereto shall be the registered office of bagtainer.

(2) The law of the Federal Republic of Germany shall apply; the UN Convention on Contracts for the International Sale of Goods (CISG) shall be expressly excluded.

#### **Section 17 Final provisions, severability**

(1) We shall store the necessary personal data under the commercial relationship in accordance with the requirements of the German Federal Data Protection Act (*Bundesdatenschutzgesetz* (BDSG)).

(2) No verbal side agreements have been made.

(3) Amendments and additions must be made in writing. The same shall apply to any agreement to dispense with the written form requirement.

(4) If a provision of this Agreement or a future provision that is incorporated into it is wholly or partially invalid or unenforceable or later becomes so, or if it should turn out that the Agreement contains a *lacuna*, the validity of the remaining provisions shall not be affected hereby. The invalid or unenforceable provision shall be replaced with, or the *lacuna* that needs to be filled shall be completed by, an appropriate provision that, as far as legally permissible, most closely approximates what the contracting parties intended or would have intended according to the intent and purpose of the Agreement if they had considered the point.

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