MEC Container Safety Systems GmbH,
Friesenweg 4, Haus 4
D-22763 Hamburg
Business Conditions (Edition August 2018)
Conditions of Sale (Translation of Buyers Responsibility)

I. Validity

The following terms of trade are valid for all our agreements, supplies and rendered services as far as they are not, without our specific written agreement, changed or invalidated. The requirements are deemed to have been accepted, at the latest, with our order acceptance, delivery or other rendered services. Any conditions made by the buyer are not binding, even if we do not explicitly contradict them.

II. Quotation and Finalisation

1) Our quotations are subject to alteration. Quotations are not binding. An agreement is deemed to have been finalised with our written order confirmation.
2) Any details given in leaflets, catalogues, circulars, advertisements, price lists or information given in our quotation concerning drawings, pictures, technical data, weight, dimensions and performance aspects are not binding, as far as they have not been written in the accepted order.
3) Agreements must be made in written form in order to be effective, also any deviating requirements to our conditions in the agreement shall be given in written form to be effective.
4) Any verbal promises or assurances require our written confirmation to be effective. 5) If the order is placed in the name and for invoice of another (e.g. the holding company orders for the subsidiary), the orderer will be liable as joint debtor in addition to the recipient of benefit in case that our existing claims are not fulfilled by the recipient of benefit.

III. Price, Payments, Delivery

1) We are obliged to keep the price for non-commercial buyers as given in our order confirmation up to the agreed delivery date if the delivery is to be within 4 months of the agreement finalisation date, and that we, if through no fault of our own, are unable to keep the delivery date. As far as paragraph 1 is not binding, as for buyers, our prices are valid on the day of delivery.
2) The payment has to be made as given in the order confirmation or bill, and in such a manner that the sum required for the bill's settlement is available, at the latest, on the agreed due date. We accept a bill of exchange only if previously explicitly agreed, invariably with the proviso of later redemption. The buyer bears all costs incurred by the bill of exchange. All bill of exchange agreements are invalid in the event that the bank refuses to discount the given bill of exchange from the customer. All arrears are promptly to be paid, even if they are explicitly deferred or we have received a bill of exchange for this purpose. The latter is also applicable, in the event that an incoming bill of exchange to us has not been redeemed.
3) Payments of the buyer are invariably used to offset the oldest debt. The latter also applies if we erroneously confirm an incoming payment or the buyer determines explicitly a other charge.
4) All our claims, irrespective of the duration of the incoming and credited bills of exchange, must be settled directly, if the conditions of payment are not met or we discover conditions, which in our commercially based opinion are suitable to reduce the credit worthiness of the buyer. It is then within our rights, without prejudice and within the law, to make outstanding deliveries against advance payment only or to demand appropriate guaranties or safeguards or after suitable payment extension period also agreement rejection or claim damages due to non-compliance.
5) In the event of payment arrears the buyer is committed to pay interest arrears at the overdraw current base rate at our Bank, but at least 8% over the base interest rate of the Deutsche Bundesbank.
6) Any delay of payments or settling of accounts due to eventual disputed counter claims from the buyer are not valid.
7) We deliver directly ex-Works unless explicitly stated otherwise by us. In the event of deliveries in foreign countries, the buyer is responsible for all custom formalities and payments. The goods are deemed to be delivered in accordance to the agreement as soon as the hauler receives the goods. In the event that the buyer gives us an order to arrange the transport of the goods, we are willing to help and will decide to the best of our knowledge, without any liability for the cheapest or quickest transportation, the type of transport and the transport route. The transportation costs of the selected transportation firm will be borne by the buyer, unless otherwise explicitly agreed. The buyer is responsible for the transport insurance. The selection for the transport media, size and weight of the packaging units, unless otherwise agreed - without consideration of the unloading methods - is decided at the receiving point. If it is agreed to transport the goods in an ISO-container, no special packaging is used and without any consideration with respect to later unloading methods. The stipulated unloading point, especially at construction sites, must be accessible for trucks over hard road surfaces. The buyer can be charged in the event that waiting periods for unloading exceed 30 minutes.
8) The goods, unless otherwise explicitly agreed, are delivered without packaging or protection against adverse weather conditions. In the event that packaging or conservation form part of the agreement, the buyer bears the normal commercial cost for this service. We are not responsible for the disposal of normal packaging material and shall not be returned to us for disposal. Commercial quality returnable packages (Euro-boxes, Euro-pallets) can be exchanged through similar returned empties at the time of loading, or may be returned free of charge within 7 days. In the event that the return or exchange has not taken place, we reserve the right to charge the buyer for new packages of equal quality.
9) In the event that, after finalisation of the agreement, carrier costs, fees, miscellaneous charges or customs charges are raised or introduced, we are entitled, also by freight-free or paid custom fees, to change our price correspondently. Commercial restrictions such as import restrictions or import stops are the sole responsibility of the buyer. We reserve the right of compensation by the customer in any of the cases above.
10) All miscellaneous costs and fees, e.g. Bank charges, accredit costs, security (guarantor) charges, consular charges, attestation fees, charges for testimony certificates or similar which are necessary for the commercial transaction are borne by the buyer, also in the event when the latter has not previously been explicitly agreed or confirmed by us.

IV) Delivery periods and Delivery dates

1) Agreed delivery periods and delivery dates are considered as approximate dates or periods, unless otherwise explicitly agreed or stated by us. Delivery dates or periods commence with our confirmation of the order, but under no circumstance before all type or design particulars are known and the availability of eventual required certificates from the buyer. Delivery dates and periods have been adhered to when the goods leave the store or supplier within the delivery period or delivery date. Furthermore, delivery dates and delivery periods are adhered to with the notice that the goods are ready to be despatched, if the goods without any fault of our own or fault of our supplier, cannot be despatched on time. Pledged delivery dates or periods are additionally delayed by a given period in which the buyer has not met his commitments with respect to this agreement, or any delay in another agreement.
2) We are entitled to partial delivery and, as in this branch accepted, to minor deliveries. Minor deliveries are considered to be more or less deliveries of 15%. This also applies to agreed smaller not rouded-up quantities of delivered parts.
3) By agreement finalisation with sequential delivery, call-up and part type arrangement for approximately monthly quantities must be supplied in good time, without special reminder from us. We are entitled, to deny any demand for subsequent delivery of parts which have not been called-up in good time, this applies also to acceptance of quantities which have not been called-up in good time. We are not committed to deliver additional quantities, in the event that the agreed quantities, due to individual call-up from the buyer, are exceeded. We are entitled to charge current prices for additional quantities or quantities which have not been called-up in good time. The latter applies for called-up or delivered quantities.
4) Events out of our control entitle us – also within the period of delay – to delay the delivery for the interval in question plus adequate time for re-startup, or complete or partial withdrawal from the agreement due to an unfulfilled or partly fulfilled section of the agreement. Events out of our control are defined as strike action, shut-out, mobilisation, war, blockades, export and import ban, deficit in raw materials and fuel, fire, road blockages, work's interruption, transport interruption, and other circumstances over which we have no influence; no matter whether the foregoing make it difficult or impossible to fulfil the contract of delivery for us or at our supplier or at one of their sub-contractors. The buyer can ask us for an explanation, whether we want to withdraw from the contract or deliver the goods within a given period of time. In the event that we offer no explanation, the buyer can withdraw without any obligations.
5) In the event that the buyer refuses to accept the goods after expiration of the delivery time, he is considered to be in default of acceptance. In the event of acceptance default the contract has been entirely fulfilled with delivery of the bill for payment. The goods which the buyer has not accepted will be stored in our work's store or in an external store up to a period of 12 months. The goods may also be stored outside in free space. We accept no liability for any damage or loss which occurs during storage. The storage costs are to be paid by the customer. In the event that the goods are not accepted within a period of 12 months, we are entitled to break up or scrap the goods.

V. Quality, Dimensions, Weights and Acceptance

1) Quality and dimensions of the supplied materials from us are exclusively determined by details given in the forwarded order and our confirmed drawings and technical description. In the event that no drawings or other manufacturing details are included, the delivery will ensue in accordance to earlier supplied drawings or as a result of earlier orders without regard to validity. For dimensions without given tolerances, material composition, surface grade, surface finish, material structure, material tests and other technical parameters, unless otherwise agreed, the corresponding current DIN standards or the EN standards are applicable in their salient form. In the event that an applicable standard cannot be found, then DIN 2768 is roughly applicable for dimensions, otherwise accepted trade usage. Standards, other than DIN or EN are acceptable only if explicitly agreed in writing. Any resulting manufacturing faults due to unclear or confusing drawing details are alone the responsibility of the customer.
2) We accept no liability for the correct function or loading capacity, or life duration for parts which have been made in accordance to drawings or details from the buyer. The latter also applies to our products in as far as they have been changed by explicit order by the buyer. Minimum loading capacity values which have been quoted for our produced goods, apply only to new products.
3) Roughly quoted number of parts, packaging units, dimensions or similar declarations in our despatch papers are without guarantee, as far as they differ from the dimension of the charged amount.
4) Unless otherwise explicitly agreed, all deliveries are without documentation or technical acceptance. In the event that no heat treatment for the material has been agreed in writing, the delivery is invariably sent in the untreated condition.

5) In the event that a technical acceptance for the delivery is agreed, it will be carried out at the manufacturing works or at another location determined by us after receiving the ready call for the acceptance procedure to take place. The delivery date is valid and finalised with the acceptance readiness. The pertinent and personal costs pertaining to the acceptance procedure are borne by the customer, also all costs for tests pertaining to the delivery and costs for documentation which are in excess to EN 10204/2.2. In the event that no acceptance procedure has taken place, or has not been carried out at the stipulated time or the customer decides to forgo the acceptance procedure, we are entitled to send the goods or store the goods at the risk and cost to the customer. The goods are then considered to have been supplied in accordance to the agreement.
6) In the event that the delivery is to undergo a type test or delivery test by a classification undertaking (GL, LR etc.), it has to be explicitly expressed in written form. In the event that no test has been agreed, no corresponding certificates for the delivery can be demanded at a later date. The customer bears all costs for agreed tests. We do not guarantee, for deliveries without tests, that the material corresponds to the standards laid down by the classification undertakings. In the event that loading tests on a testing bench have been agreed, they can be carried out up to a maximum of 1.000 KN. In the event that the customer orders structural parts with a higher breaking load, then the test is carried out only at the working load or test load. In the event it is agreed that the delivery is to be accepted via a classification undertaking, the delivery is considered to have been technically accepted after the inspection with respect to function, loading capacity and usage. Any complaints from the customer at a later date are invalid. In the event that a classification undertaking at a later point in time recalls its initial type approval for the part, we are not committed, also under current delivery agreements, to deliver the part in question.
7) The mentioned breaking point values in our drawings, leaflets and agreements are only approximate values and not binding.
8) Claims from third parties and costs are the sole responsibility of the customer.

VI. Owners' Rights to Conditional Goods

1) All goods are our property (conditional goods) until all demands irrespective of any legal rights are met, this includes also future or specific demands also from simultaneous or later finalised agreements. The latter also applies to payments made to special specific claims. Under current running accounts the retained property serves as security to our demand as account balance. Payments – also payments made by cheque - which follow one of our made out bills of exchange which have also been accepted by the customer, are only valid as payment when the bill of exchange from the drawee has been redeemed, and we thereby freed from the bill of exchanges liability, so that the agreed property proviso with all their required fixed specially applicable connotations at least up to the redemption of the bill of exchange remains in our favour.
2) Processing of the conditional goods are carried out by us as manufacturer in accordance to § 950 BGB, without any responsibility on our side. The processed goods fall under the category of conditional goods. In the event that the conditional goods are processed with objects which do not belong to us or are mixed as inseparable entities, then we acquire the joint property in this case in the ratio of the calculated value with respect to the other utilised goods at the time of processing or mixing. The thus evolved joint property rights fall into the category of conditional goods in the sense of these requirements. In the event that our goods are tied in with other mobile objects into a single entity and the other part is considered as the main matter, then it is applicable (agreed) that the buyer transfers to us a ratio thereof as joint property in as far as he owns the main part or matter.
3) The buyer keeps the conditional goods with respect to the previous Nr.2 free of charge. He is responsible for the secure and appropriate storage of the goods.
4) The buyer may sell the conditional goods, as long he is not in arrears in the normal commercial way and in accordance to his commercial requirements, if as a basis, he has made an ownership proviso agreement with the customer, and that the demands resulting from the further sale are transferred to us in accordance to the Nr.2 and 3 above. The further sale of the goods whether for installation in the ground or in buildings or in buildings with connected installations or usage to fulfil miscellaneous works or works delivery agreements is the same for the buyer.
5) The required tools and other appliances used to manufacture the goods remain our property, also after the tools and appliances have been paid.

VII Complaints regarding defects, Guarantee

1) The delivered goods are to be inspected by the buyer upon receipt of the goods. Apparent defects, e.g. dimensional deviations, form deviations, surface faults, wrong packaging or markings etc. are to be reported in writing within 3 days after delivery. We guarantee that our goods are free from defects within 1 year after the delivery date. The guarantee is void if the buyer reports the defect too late, or uses the goods with the apparent defects. Faults which are not immediately apparent are to be reported in writing immediately on discovery and any eventual further use of the goods stopped. The warrantee is void in the event that the delivery has been inspected and approved by an expert from the buyer or the buyer himself at the seller's premises prior to delivery.
2) Defective goods within the warrantee period (prior to the passing risk stage) which are deemed to be unusable or their use is more than significantly affected will be improved by us, if we are at fault, in such a manner that we provide improvement or replacement in an iterative manner against the return of the defective goods. Any improvement by the buyer requires our explicit written agreement.
3) Supply of replacement parts for the initially supplied part can only be made up to the end of the guarantee period, unless other legal requirement must be met.
4) The guarantee is invalid in the event that the buyer does not give us the opportunity to verify the defect, or does not present the reported defective goods or tests promptly to us. The latter also applies if he refuses to present the goods, as far as they have not been built in, for inspection, in order to get a replacement part and also if he refuses to give details or refuses inspection concerning any defective goods which have not been built in, or refuses upon receipt of the replacement goods to present the reportedly defective goods.
5) We are within our rights to refuse the rectification of defects as long as the buyer is in payment arrears, irrespective of the cause.
6) No guarantee is given for goods provided under special offer or second grade goods, e.g. such as 2a goods.
7) Further demands of the buyer, especially compensation for damages, which have not occurred in our scope of delivery, are void, and are limited in accordance to VIII/3 regulations. Material details and DIN/EN standards are not accepted as characteristics of the goods in the sense of §434 clause I Line 3 BGB.
8) We do not guarantee that our products meet foreign, especially external European legal regulations, environmental regulations, safety regulations or any other regulations.
9) The seller is not responsible for any costs incurred at the buyer's premises. Costs, especially for goods tests, counting, sorting, administration, testing, personnel, documentation and similar, cannot, after confirmation of any defects, be passed onto the seller.

VIII. Withdrawal from the Contract, Compensation

1) Further to the explicitly agreed withdrawal rights from contract, the buyer can only withdraw from the contract in the event that we, in spite of setting an appropriate period of delay, are deemed to have failed in delivering, rectification or if the rectification has been unsuccessful.
2) The buyers right of withdrawal from the contract is limited in every case to the as yet not delivered goods or due to defects in a portion of the goods.
3) In the event that the buyer is entitled to claim damages, either due to a delay in delivery on our side, or through a delivery breach of agreement on our side we will compensate proved damages, but only up to 10% of the buying price in case of delay in delivery and up to 20% for deliveries which are due to a breach of agreement or other breaches of agreement, limited to the delayed delivered part of the entire delivery or the part of the entire delivery which is in breach of agreement. In case that the delivery underlies an approval or certification by a classification society (e.g. Germanischer Lloyd, Lloyds Register, DNV, BV, ABS, Deutsche Bahn) our liability is, apart from intent and gross negligence, limited to the fivefold remuneration rate for single service provided by classification society, whose amount will be revealed by us in case of liability.
4) All demands of the buyer against us, especially compensation claims resulting from obligatory infringement or non- permitted actions, also in as far as these are applicable to guarantee rights for the customer lapse (are void) after one year at the latest after the passing risk stage for the buyer.
5) In the event that we take back delivered goods without legal obligation, we are entitled to charge the buyer besides the cost for transportation also 15% of the value for the goods as damage compensation. Clause 1 is applicable, in the event that we (and as far as) withdraw from the agreement. The buyer is within his right to prove that no damage to us has resulted, or our damages are significantly lower than the lump sum claimed. In the event that we are entitled to compensation from the buyer due to non-compliance, we can claim in as far as no applicable passage is found and proviso for the recognition of higher damages, also 15% of the agreed buying price. The buyer is within his right to prove that no damage to us has resulted, or our damages are significantly lower than the lump sum claimed.
6) In case that during consulting assignments, inclusive static calculations, the buyer suffers losses, which result from a negligent breach of a contractual obligation, the claims for damages are limited to the fivefold remuneration for the respective single service.

IX. Miscellaneous

1) Fulfilment of delivery is ex- works, at the site of delivery premises, delivery ex-stores, at the store site.
2) It is agreed that Hamburg, Germany is the exclusive court of jurisdiction for both parties.
3) It is agreed that German legal rights are binding; the commercial regulations as stipulated in the Hague are not binding.