

## **General Conditions**

### **R.C.C. Containers B.V.**

filed at the Registry of the District Court in Rotterdam on 19 April 2012

Westgeulstraat 6

3197 LD Rotterdam-Botlek

KvK reg. no 24247009

BTW no. NL 008496213B01

### **Article 1: Application**

1.1. These conditions apply to all offers made by R.C.C. Containers B.V., referred to below as R.C.C. Containers B.V., and to all agreements it concludes and to all agreements that may be the result thereof.

1.2. R.C.C. Containers B.V. is the party who uses these conditions. The other party is designated as the customer, a term which is deemed in these standard conditions to include the owner and/or user of the goods or the persons or businesses used by him or on his behalf.

1.3. These terms and conditions relate to the following activities: handling, storage, repair and sale of containers in all their representative forms.

1.4. With regard to handling, consisting of loading into ships and unloading from ships, the general terms and conditions of the 'Vereniging van Rotterdamse stuwadoors' shall apply (VRS, 12 August 1976), except for art 13 (arbitration). It is understood that loading and unloading means the movement from the ships hold to the quay/pier and vice-versa.

1.5. Insofar as the container rental is concerned the terms and conditions of the rental contract shall prevail over these standard conditions, which will be only applicable additionally.

1.6. In these conditions 'repair' shall also be deemed to mean 'maintenance, cleaning, modification, adjustment and/or inspection' and 'the repaired goods' shall also be deemed to mean 'that which is being or has been maintained, cleaned, modified, adjusted and/or inspected'.

1.7. The standard conditions of the customer shall not apply and are expressly rejected.

### **Article 2: Offers**

2.1. All offers are made without obligation.

2.2. If the customer supplies data, drawings etc. to R.C.C. Containers B.V., R.C.C. Containers B.V. may assume them to be correct and may base his offer upon them.

2.3. The prices referred to in the offer are based on delivery ex works (excluding loading on means of transport) in accordance with Incoterms 2000. The prices are exclusive of VAT and packaging.

2.4. If his offer is not accepted, R.C.C. Containers B.V. has the right to charge the customer for all the costs incurred in making his offer.

### **Article 3: Intellectual property rights**

3.1. Unless agreed otherwise, R.C.C. Containers B.V. retains the copyright and all industrial property rights to the offers made by him and of all designs, illustrations, drawings, models, test models, software etc. supplied by him.

3.2. The rights to the data referred to in paragraph 1 shall remain the property of R.C.C. Containers B.V. irrespective of whether costs are charged to the customer for their production. Such data may not be copied, used or shown to third parties without the express consent of R.C.C. Containers B.V.. If this provision is infringed, the customer shall owe R.C.C. Containers B.V. a penalty of EUR 25,000. This penalty may be claimed in addition to any legal compensation.

3.3. The customer must return the data supplied to him as referred to in paragraph 1 at the first request of R.C.C. Containers B.V. within the period specified by R.C.C. Containers B.V.. In the event of an infringement of this provision the customer shall owe R.C.C. Containers B.V. a penalty of EUR 1,000 per day. This penalty may be claimed in addition to any legal compensation.

#### **Article 4: Advice, designs and materials**

- 4.1. The customer cannot derive any rights from advice and information obtained from R.C.C. Containers B.V. if they do not relate directly to the order.
- 4.2. The customer is responsible for the drawings and calculations made by him or on his behalf and for the functional suitability of the materials prescribed by him or on his behalf.
- 4.3. The customer shall determine and is responsible for the extent and effectiveness of the repair(s) and/or other work to be carried out. The customer shall decide on the (technical) specifications by reference to which the repair(s) and/or other works are ultimately carried out.
- 4.4. The customer shall indemnify R.C.C. Containers B.V. against any claim by third parties relating to the use of drawings, calculations, samples, models and so forth supplied by or on behalf of the customer.
- 4.5. The customer may, at his own expense, examine (or arrange for the examination of) the materials which R.C.C. Containers B.V. wishes to use before they are processed. If R.C.C. Containers B.V. suffers damage as a result, this shall be borne by the customer.

#### **Article 5: Receipt and (re)delivery and estimation of damage**

- 5.1. Receipt and delivery will be confirmed by means of I/R receipt.
- 5.2. On redelivery and/or transfer of a damaged container; providing that the redelivery of the container was previously notified, an I/R receipt will be supplied, with the notification 'damaged', upon receipt of which the driver/shipper may leave the depot.
- 5.3. At a later date the customer concerned will be informed by means of a damage report (estimation) of all missing parts and necessary repairs. The customer is then free to authorise the repair on this basis or he may wish to carry out a survey inspection on the container to control the estimation and come to an agreement regarding the damage as reported by R.C.C. Containers B.V.. Authorisation can only be accepted in writing and by EDI.
- 5.4. By accepting these terms and conditions the customer authorises a third party to redeliver or transfer the container on his behalf, as well as giving him the legal right to sign the I/R receipt.

#### **Article 6: Delivery and/or repair period**

- 6.1. The period within which an estimate is provided shall be approximately 5 working days and the period within which delivery will be effected or a start made on the repair shall be approximately 10 working days.
- 6.2. In fixing the period within which an estimate is provided or in fixing the delivery and/or repair period R.C.C. Containers B.V. shall assume that he can execute the order in the circumstances known to him at that time.
- 6.3. Any fluctuation in the supply of containers in relation to the average number of containers supplied by the customer over a preceding period of 12 months may result in a derogation from the periods referred to in paragraph 1.
- 6.4. Derogations as referred to in paragraph 3 shall be notified by the customer to R.C.C. Containers B.V. within a reasonable period after the customer becomes aware of them or could reasonably be expected to have become aware of them.
- 6.5. The periods referred to in paragraph 1 shall start when agreement has been reached on all technical details, all necessary data, final drawings etc. are in the possession of R.C.C. Containers B.V., the agreed payment or instalment has been received and the necessary conditions for execution of the order have been fulfilled.
- 6.6. (a) If circumstances occur other than those known to R.C.C. Containers B.V. when he determined the delivery and/or repair period, R.C.C. Containers B.V. may extend the delivery and/or repair period by the time necessary to execute the order in the circumstances. If the work cannot be fitted into the planning schedule of R.C.C. Containers B.V., it shall be completed as soon as R.C.C. Containers B.V.'s planning schedule permits this.  
(b) If there is extra work, the delivery and/or repair period shall be extended by the time that is necessary to supply (or arrange for the supply of) the materials and parts for this purpose and to carry out the additional work. If the extra work cannot be fitted into the planning schedule of R.C.C. Containers B.V. it shall be completed as soon as his planning schedule permits this.  
(c) If there is a suspension of obligations by R.C.C. Containers B.V., the delivery and/or repair period shall be extended for the duration of the suspension. If continuation of the work cannot be fitted into the planning schedule of R.C.C. Containers B.V., the work shall be completed as soon as his planning schedule permits this.

## **Article 7: Transmission of risk**

7.1. In the case of delivery ex works, in accordance with Incoterms 2000, the risk in relation to the goods shall pass at the moment when R.C.C. Containers B.V. makes them available to the customer.

7.2. Irrespective of the provisions of the previous paragraph, if the customer and R.C.C. Containers B.V. agree that R.C.C. Containers B.V. will arrange for the carriage, the risk of storage, loading, carriage and unloading shall be borne by the customer in this case too. The customer may insure himself against these risks.

7.3. Even if R.C.C. Containers B.V. installs and/or assembles the goods sold, the risk in relation to the goods shall pass at the moment when R.C.C. Containers B.V. makes them available to the customer at the business premises of R.C.C. Containers B.V. or at another agreed place.

7.4. If a purchase involves a trade-in and the customer continues to use the goods to be traded in pending delivery of the new goods, the risk in relation to the goods to be traded in shall continue to be borne by the customer until the moment that he transfers them to the possession of R.C.C. Containers B.V..

## **Article 8: Price changes**

8.1. If price increases have occurred since the date on which the agreement was concluded, for example as a result of changing legislation or regulations, and performance of the contract has not yet been completed by R.C.C. Containers B.V., R.C.C. Containers B.V. may pass on an increase in the price-determinants to the customer.

8.2. If the customer is a consumer, i.e. a natural person not acting in the course of an occupation or business, and the price increase referred to in paragraph 1 occurs within three months after the date on which the agreement is concluded, the customer has the right to terminate the agreement.

8.3. Payment of the price increase as referred to in paragraph 1 shall take place together with payment of the principal or the last instalment.

8.4. If goods are supplied by the customer and R.C.C. Containers B.V. is prepared to use them, R.C.C. Containers B.V. may then charge a minimum of 20 percent of the market price of the delivered goods.

## **Article 9: Impossibility of performance**

9.1. R.C.C. Containers B.V. shall be entitled to suspend performance of his obligations if he is temporarily prevented from performing them by circumstances that could not be foreseen at the time of the conclusion of the agreement and which are beyond his control.

9.2. Circumstances which could not be foreseen by R.C.C. Containers B.V. and are beyond his control include, but are not limited to, the failure of suppliers and/or subcontractors of R.C.C. Containers B.V. to fulfil their obligations or to fulfil them on time, weather conditions (in particular a storm with a wind speed of at least fourteen metres per second as determined by the Royal Netherlands Meteorological Institute (KNMI) or a branch thereof), earthquakes, fire, acts of terrorism, vandalism, loss or theft of tools, the loss of materials to be processed, road blocks, strikes or stoppages and import or trade restrictions.

9.3. R.C.C. Containers B.V. shall not be entitled to suspend performance if performance is permanently impossible or if a temporary impossibility has lasted for longer than six months. The agreement may then be terminated in respect of such part of the obligations as have not yet been performed. In that case the parties shall not be entitled to compensation for damage suffered or yet to be suffered as a result of the termination.

## **Article 10: Scope of the work**

10.1. The customer shall ensure that all licences, exemptions and other decisions that are necessary in order to carry out the work are obtained in good time.

10.2. The customer shall be responsible for performing the requisite formalities when containers are removed from international circulation in the context of performance of the present agreement and these containers no longer leave the Netherlands. The customer shall also arrange for payment of any import duties and/or taxes owed on the value of these containers to the Dutch tax authorities.

## **Article 11: Execution of the work**

11.1. The customer shall ensure that R.C.C. Containers B.V. can carry out his activities without interruption and at the agreed time and that, when executing work at a location other than his own business premises, he has access to the requisite facilities such as:

- gas, water and electricity;
- heating;
- a lockable and dry storage room;
- facilities provided pursuant to legislation and regulations on health and safety at work and/or the environment.

11.2. The customer shall be liable for all damage as a result of the loss, theft or burning of or damage to tools, materials and other property of R.C.C. Containers B.V. located at the place where the work is performed.

11.3. The customer shall ensure that documents (including, but not limited to, the documents required for both receipt and dispatch), instructions and so forth are in the possession of R.C.C. Containers B.V. in good time. R.C.C. Containers B.V. accepts no liability whatever for the incorrectness, inaccuracy or incompleteness of these instructions and/or documents.

11.4. If the carrier used by the customer refuses to sign a receipt for steel parts and/or their technical condition, R.C.C. Containers B.V. shall not be liable for the consequences in terms of the number and/or technical condition thereof. Subject to proof to the contrary, the number and/or technical condition as referred to in the records of R.C.C. Containers B.V. shall be deemed to be correct.

11.5. If there are unworkable conditions, including unworkable weather conditions, the periods referred to in article 5, paragraph 1, shall be extended by the resulting period of delay.

11.6. Unworkable conditions shall be deemed to include all conditions, including unworkable weather conditions (such as precipitation, wind and frost) which are responsible for causing an (unsafe) working situation which does not comply with the relevant requirements of legislation and regulations and as a result of which the work cannot be carried out in accordance with the requirements of good craftsmanship.

11.7. If the customer fails to discharge his obligations as referred to in the previous paragraphs and the work is delayed as a result, the work shall be executed as soon as R.C.C. Containers B.V.'s planning schedule permits this. In addition, the customer shall be liable for all loss or damage suffered by R.C.C. Containers B.V. as a result.

## **Article 12: Completion / acceptance of the work and claims**

12.1. If the customer wishes to carry out an inspection, he shall give notice of this in writing to R.C.C. Containers B.V. within 2 working days of being notified that the goods are ready. R.C.C. Containers B.V. shall present on one occasion the repaired goods and/or other work that has been carried out for inspection at the expense of the customer.

12.2. If the customer does not approve the work, he shall be obliged to give written notice of this to R.C.C. Containers B.V., specifying the reasons, within 2 working days of the date on which the inspection referred to in paragraph 1 has taken place, and to give R.C.C. Containers B.V. the opportunity to repair any defect or carry out the repair or other work again or to redeliver the rejected part of the work. The provisions of this article shall apply once again to this delivery.

12.3. The work shall be deemed to have been delivered and accepted when:

- (a) the customer has approved the work;
- (b) the container has been used by the customer, which is deemed to include the removal of the container from the depot of R.C.C. Containers B.V. by or on behalf of R.C.C. Containers B.V.; if the customer uses part of the work, that part shall be deemed to have been delivered;
- (c) the customer does not approve the work owing to minor defects or missing parts which can be repaired or supplied within 48 hours (provided that this is on normal working days) and which do not prevent such use of the work.

12.4. R.C.C. Containers B.V. shall deal with a complaint only if the customer has already fulfilled all his obligations to R.C.C. Containers B.V.

12.5. Defects shall in any event not be dealt with by R.C.C. Containers B.V. if they are a consequence of:

- normal wear and tear;
- deterioration in quality due to storage;
- injudicious use;
- maintenance that is not carried out or not carried out properly;
- installation, fitting, alteration or repair by the customer or by third parties;
- use of materials, choice of materials or method of repair prescribed and/or supplied by or on behalf of the customer;
- emergency repair(s) carried out at the request of the customer.

### **Article 13: Storage**

13.1. R.C.C. Containers B.V. is entitled to store the goods of the customer in the open air before, during and after repair and/or other activities. Storage is deemed to mean the keeping of goods belonging to or under the management of the customer at the time of the order, whether or not in exchange for payment, for a fixed or indeterminate period.

13.2. The storage shall start on the day that the goods are delivered by or on behalf of the customer and shall end on the day that the goods are collected by or on behalf of the customer. For this purpose, part of a day shall count as a full day. The storage rates charged by R.C.C. Containers B.V. shall apply to storage by R.C.C. Containers B.V..

### **Article 14: Liability**

14.1. R.C.C. Containers B.V. is liable for damage which the customer suffers and which is the direct and sole result of a failure attributable to R.C.C. Containers B.V., on the understanding that in respect of damage caused by faults or omissions of its subcontractors or agents, R.C.C. Containers B.V. shall only be liable to the extent that the subcontractors or agents are liable to R.C.C. Containers B.V.. However, only loss or damage for which R.C.C. Containers B.V. is insured will be legible for compensation.

14.2. If there is no insurance cover and R.C.C. Containers B.V. is nonetheless liable, for example in the case of gross negligence or intent on the part of R.C.C. Containers B.V. or his subordinates, his liability shall be limited to the repair of the damage without charge.

14.3. If the estimated costs of repair or the amount of the damage exceed(s) the economic value of the relevant container, the maximum liability of R.C.C. Containers B.V. shall be the economic value.

14.4. The following are not eligible for compensation under any circumstances:

(a) consequential loss or damage, including for example loss or damage due to business standstills and loss of profit;

(b) damage to goods which are in the vicinity of the place where the work is being carried out;

(c) damage which arises as a result of:

– the manner and place of storage, including but not limited to damage caused by weather conditions, in particular storm, when there is a wind speed of at least fourteen meters per second as measured by the Royal Netherlands Meteorological Institute (KNMI) or a branch thereof, or by water levels, earthquake, fire and explosion;

– acts of terrorism or vandalism; the nature and natural state of the goods in storage.

– war risk, armed conflict, civil war, revolution, civil unrest, riots, rebellion

– nuclear reaction

14.5. The customer shall indemnify R.C.C. Containers B.V. against all third party claims in respect of any damage which is the result of the fact that, at the request of the customer, the technical specifications have been changed, the repair and/or other work proposed by R.C.C. Containers B.V. in the quotation is not executed or not executed in its entirety or is executed differently and, as a result, the repaired or otherwise modified goods do not fulfil or no longer fulfil the relevant statutory requirements.

14.6. The customer shall indemnify R.C.C. Containers B.V. against any damage caused by cargo residues, whether or not visible, remaining in the container presented for repair and/or storage, including any radiation and gases, if and in so far as R.C.C. Containers B.V. was unaware of its harmfulness and could not reasonably be expected to have known of its harmfulness. R.C.C. Containers B.V. undertakes, in the case of doubt as to the harmfulness of the cargo residues found in the container, to report this immediately to the customer.

14.7. The customer shall indemnify R.C.C. Containers B.V. in respect of any claims whatsoever of third parties against whom R.C.C. Containers B.V. might not be entitled to invoke these standard conditions insofar as such claims would have been excluded if such third parties were bound by these conditions.

### **Article 15: Payment**

15.1. Payment shall be made at the place of business of R.C.C. Containers B.V. or by remittance to an account designated by R.C.C. Containers B.V..

15.2. Unless agreed otherwise, payment shall be made as follows:

(a) cash in the case of an over-the-counter sale;

(b) if payment in instalments has been agreed:

40% of the total price at the time the order is placed;

40% of the total price after inspection when repair is finished;

20% of the total price after delivery;

(c) in all other cases: within 30 days of the date of the invoice.

15.3. Regardless of the agreed terms of payment, the customer shall be obliged, at the request of R.C.C. Containers B.V., to provide such security for the payment as R.C.C. Containers B.V. deems sufficient for the payment. If the customer fails to do so within the specified period, he shall be deemed to be in immediate default. R.C.C. Containers B.V. shall in this case have the right to terminate the agreement and recover his loss or damage from the customer.

15.4. The customer does not have the right to set off claims against R.C.C. Containers B.V., unless R.C.C. Containers B.V. has been declared bankrupt.

15.5. The full claim for payment shall be immediately due and exigible if:

(a) a payment period has been exceeded;

(b) the customer has been declared bankrupt or has applied for a suspension of payments;

(c) the property or accounts receivable of the customer are seized;

(d) the customer (being a legal entity) is wound up or liquidated;

(e) the customer (being a natural person) is made the subject of a guardianship order or dies.

15.6. If payment has not been made within the agreed period for payment, the customer shall immediately owe interest to R.C.C. Containers B.V.. The interest shall be 10% per year or the statutory rate of interest, whichever is the higher. For the purpose of calculating the interest, part of a month shall be treated as a full month.

15.7. If payment has not been made within the agreed period for payment, the customer shall owe R.C.C. Containers B.V. all extra-judicial costs of recovery, subject to a minimum of EUR 150. The costs shall be 15% of the payment which is due. If the extra-judicial costs actually incurred exceed the amount as calculated above, the costs actually incurred shall be owed.

15.8. If R.C.C. Containers B.V. is deemed to be the party in the right in legal proceedings, all costs which he has incurred in connection with the proceedings shall be borne by the customer.

15.9. Without prejudice to the above provisions, payment shall be deemed to have been made in the first place to satisfy older claims which are still outstanding, irrespective of whether different instructions are given with the payment.

## **Article 16: Reservation of title and right of pledge**

16.1. After delivery of the goods R.C.C. Containers B.V. shall retain title to them as long as the customer:

(a) fails or subsequently fails to perform his obligations under this agreement or other similar agreements;

(b) fails or subsequently fails to pay for work performed or yet to be performed under such agreements;

(c) has not paid claims such as damage, penalties, interest and costs that result from the non-observance of the above-mentioned agreements.

16.2. As long as title to delivered goods is retained by R.C.C. Containers B.V., the customer may not encumber them other than in the normal course of his business.

16.3. After R.C.C. Containers B.V. has invoked his reservation of title, he may retake possession of the delivered goods. The customer shall allow R.C.C. Containers B.V. to enter the place where the goods are situated.

16.4. R.C.C. Containers B.V. has a pledge and a lien, against any person who requires the handing over of goods, documents and moneys which R.C.C. Containers B.V. has or will have in his possession on any account and for any purpose whatever, on all containers of the customer which he has in his possession for all claims which R.C.C. Containers B.V. has or may obtain against the customer or owner.

16.5. The person who has made available the said goods, documents and moneys to R.C.C. Containers B.V. shall be deemed to be competent for this purpose. The customer accepts full responsibility for the consequences – whatever they may be – of any lack of competence.

16.6. The said things, documents and moneys shall serve as collateral for R.C.C. Containers B.V. for all claims which he has or will obtain against the customer.

16.7. If the claim(s) is/are not paid or not paid in time, the collateral shall be sold in the manner determined by law or – if the parties agree – by agreement under hand.

**Article 17: Termination**

If the customer wishes to terminate the agreement in circumstances where R.C.C. Containers B.V. is not in default and R.C.C. Containers B.V. agrees to this, the agreement shall be terminated by mutual consent. R.C.C. Containers B.V. shall in that case be entitled to compensation for all pecuniary damage, such as any loss suffered, loss of profit and costs incurred.

**Article 18: Applicable law and choice of forum**

18.1. The law of the Netherlands is applicable.

18.2. The Vienna Convention on Contracts for the International Sale of Goods (CISG) is not applicable, nor is any other international regulation the exclusion of which is permissible.

18.3. Any and all disputes between the customer and R.C.C. Containers B.V., howsoever arisen under, in relation to, or in connection with the contract or the services performed by R.C.C. Containers B.V., shall, except for appeal, exclusively be brought before competent Court in Rotterdam

18.4. The parties may agree a different form of dispute resolution such as arbitration or mediation.

R.C.C. Containers B.V. © Rotterdam, 1 april 2012