

## **GENERAL TERMS AND CONDITIONS CARU CONTAINERS B.V.**

These general terms and conditions (“General Terms and Conditions”) are used by CARU Containers B.V., established in Moerdijk, Graanweg 11, 4782 PP, The Netherlands (“CARU”).

### **Article 1 - Definitions**

<i>Customer</i>	the party with which CARU contracts;
<i>Parties</i>	CARU and Customer jointly;
<i>Agreement</i>	the sale or lease agreement between CARU and Customer;
<i>Container(s)</i>	the container(s), office units and other container applications, its construction, components, inventory and installations and all thereto related products and services as specified by CARU in the (attachments to the) Agreement;
<i>Delivery</i>	the moment on which the possession or the user right of the Container(s) is transferred by CARU to the Customer under the sale or lease Agreement, or when the Container(s) is being offered for or is on stand by for such a transfer;
<i>Lease period</i>	the period between the date of Delivery and the first day following on the day on which the Container(s) is received back by CARU;
<i>Container projects</i>	the realization or building of special applications of the Container(s) by Customer by order of CARU, amongst which the design, the construction or the conversion, placement, connecting of the Container(s) or making it suitable or available for certain purposes;

### **Article 2 - General**

1. These General Terms and Conditions govern each offer, agreement, and other legal relationship between CARU and Customer with regard to the sale and lease of Container(s) by CARU. CARU rejects the applicability of the general terms and conditions of Customer, unless Parties expressly agree otherwise in writing.
2. These General Terms and Conditions also apply to all Agreements with CARU for which performance third parties are being (or should be) used.

### **Article 3 – Offers and Agreement**

1. All offers and bids of CARU are without obligation, unless the offer or bid specifies a term for acceptance and Customer confirms the acceptance in writing within the set term. The illustrations, specifications, descriptions and numbers in the bids and offers are not binding. In the case of Container(s) and components manufactured by third parties, CARU explicitly reserves the applicable tolerances and guarantees that the manufacture can enforce toward CARU.
2. An Agreement is only concluded if the Customer signs the order confirmation that was sent by CARU or if Parties sign a Sale or Lease Agreement.
3. If a Customer desires special qualities and/or (technical) specifications with an order, Customer needs to expressly agree this with CARU in writing. In all other cases, CARU delivers in accordance with the quality as described in these General Terms and Conditions.
4. A mixed offer does not obligate CARU to any partial delivery of the Container(s) mentioned in the offer or bid for a corresponding part of the stated price.
5. CARU has the right, at its own discretion, to have third parties perform certain work.

### **Article 4 – Delivery, Inspection and Transfer of risk**

1. The delivery periods stated in CARU’s offers are indicative, unless expressly agreed otherwise, and do not give Customer the right to terminate the Agreement or claim damages in case of exceeding these delivery periods.
2. Delivery and returning the Container(s) takes place at the office of CARU in Moerdijk, the Netherlands, unless Parties agree otherwise in writing.
3. If the Container(s) is delivered at another location, CARU is entitled to charge transport and delivery cost. Customer needs to provide CARU or its transporter with unhindered access to the delivery location concerned and Customer needs to take care of safe (working) conditions at the location. The CMR convention applies and

the General Transportation Conditions 2002 additionally apply to all transport of the Container(s) by or by order of CARU.

4. If Customer refuses or is in breach of its obligation to take possession of the Container(s) within the agreed term after Delivery, CARU is entitled to store the Container(s) at the expense and risk of Customer.
5. CARU is entitled to part deliveries of the Container(s), unless agreed otherwise. CARU is entitled to invoice the thus delivered Container(s) separately.
6. Customer is obligated to inspect the Container(s) at the time of Delivery, but at least within 2 days after delivery, and to investigate if the quantity and quality of the Container(s) correspond with what was agreed to. In case of a container interchange, a Container Interchange Report ("CIR") will be drawn up at each transfer (therefore intake as well as issue). If Customer does not perform the inspection, the Container(s) is considered to be delivered in good condition, or at least in accordance with the concerned CIR. Inspections performed by a third party that was appointed by Parties in joint consultation are binding between Parties.
7. In joint consultation with CARU, Customer is entitled to inspect the Container(s) (or have them inspected) prior to delivery at the location specified by CARU. This inspection will be considered to be the delivery inspection as meant in paragraph 6 of this article.
8. CARU needs to be notified in writing of possible deficits and visible defects within 3 days after delivery or inspection. Deficits and defects which are not visible at the time of inspection need to be notified to CARU in writing within 14 days after discovery but at least within 3 months after delivery.
9. If Customer desires to return faulty Container(s), this is only done after prior written consent of CARU and in the way as indicated by CARU.
10. This risk of loss of or damage to the Container(s) that is subject of the Agreement, like as a result of fire, theft, improper use or management is transferred to Customer at the time on which the Container(s) are legally and or actually delivered, or in accordance with the applicable Incoterm delivery category.

#### **Article 5 – Prices and Payments**

1. All prices stated by CARU are exclusive of VAT, changed exchange rates, costs for shipping, transport, packaging, storage and security, levies and taxes, amongst which import and export duties and clearance costs. In case of sale the previous applies in full force with regard to import duties, other taxes and costs that are involved with the import by Buyer of the Container(s) which had free movement at the time of the conclusion of the Sale Agreement.
2. If CARU and Buyer agreed on a fixed price, CARU is nevertheless entitled to charge Buyer with any structural change of factors that have an influence on the price, regardless if these changes were foreseeable or unforeseeable at the time of the conclusion of the Agreement. CARU will notify Customer prior of such price changes.
3. Payments need to take place within 30 days after the invoice date or within the payment term as agreed by Parties (hereinafter both to be referred to as: "Payment term"), in the way indicated and in the currency invoiced by CARU. Objections of Customer with regard to the amount of the invoices do not suspend the obligation to pay.

#### **Article 6 – Payment and Default**

1. If Customer is in default of payment within the Payment term, Customer is in default *ipso jure*. In that case and until the moment of complete payment of the amount due, interest of 1.5% per month (part of a month will be considered to be a full month) over the payable amount is due by Customer, unless the statutory interest is higher, in which case the statutory interest is due by Customer.
2. If the Customer remains in default to fulfill one or more of its (payment) obligations, Customer is liable to forfeit an immediately payable penalty of 15% over the payable amount, with a minimum of EUR 250.00 and Customer is furthermore charged with all judicial and extrajudicial collection costs.
3. CARU is entitled to have the payments done by Customer reduce the costs in the first place, and next the interest due and finally the principal and the current interest.
4. Customer may not compensate any amount due by Customer to CARU with any amounts that might be due by CARU to Customer. Customer is also not entitled to suspend payment under the Agreement in connection to any other agreement concluded with Customer.

#### **Article 7 – Warranty and Limited Warranty**

1. CARU warrants that the Container(s) will meet the specifications as stated in the concerned offer and the accepted requirements and standards within the branch and that they will have no defects (the "Warranty") at

the time of Delivery. CARU warrants expressly no specific quality, function, purpose or application of the Container(s).

2. The Warranty is expressly limited to the time of Delivery and, if applicable, to the scope and duration that is given by the manufacturer of the Container(s).

3. The Warranty does not apply to: (i) separate components or installations belonging to the Container(s); (ii) with regard to defects arisen as a result of normal wear, improper or illegitimate use or management; (iii) with regard to delivered, used, or at least not new, Container(s). These will be delivered in the state and condition they were in at the time of the conclusion of the Agreement;

4. If the delivered Container(s) do not meet the Warranty and if Customer complained within the term set by these General Terms and Conditions, CARU will replace or repair the Container(s), at CARU's choice.

### **Article 8 – Liability and Indemnification**

1. Any liability of CARU against Customer is limited to the liability for direct damages, which is limited to, at CARU's free choice, replacement of the possibly faulty Container(s) or to pay back the agreed lease price or a proportional part thereof. CARU's total liability is limited at all times to a maximum of the amount that CARU's insurer pays in this case.

2. If any stipulation of treaty law with regard to the maritime or road transportation of goods charges compensation in whole or in part to CARU, this compensation will be calculated using the economic value of the Container(s) at the place and the time of Delivery.

3. In no case shall CARU be liable for indirect damages, amongst which consequential damages, loss of profit, loading damages or loss, missed savings or loss due to business interruption.

4. Customer indemnifies CARU for all claims of third parties with regard to the (performance of) the Agreement and the use and destination of the Container(s), in whatever way caused and by whomever, amongst which claims with regard to the transportation of the Container(s) and their content on the public road, the water and the open sea.

### **Article 9 - Nondisclosure**

Parties are obligated to maintain confidentiality of all confidential information that they have received from each other or from another source in the framework of the Agreement. Information is considered to be confidential if one party has notified this or if this follows from the nature of the information or Agreement. The obligation under this article applies except for obligatory disclosure of confidential information under any legal stipulation or judgment.

### **Article 10 – Suspension, Notice of termination and Termination**

1. CARU is entitled to suspend the performance of an obligation under the Agreement or to give notice of termination of the Agreement with immediate effect or to terminate the Agreement and to take the Container(s) back if: (i) Customer is in default to (completely) fulfill any of its obligation under the Agreement or the law; (ii) facts or circumstances that CARU has learned of after the conclusion of the Agreement give CARU reasonable fear that Customer will not fulfill its obligations; (iii) Customer is in default to give the agreed securities for the fulfillment of its obligations under the Agreement; (iv) Customer is in breach of any legal obligation; (v) Customer is declared bankrupt or if a moratorium is granted or if Customer submits a request thereto, or if Customer's property or the Container(s) is seized; (vi) Customer uses the Container(s) or let's the Container(s) being used for another purpose than intended; (vii) if the Container(s) were lost, regardless the cause;

2. CARU is furthermore entitled to terminate the Agreement (or have it terminated) if there are circumstances that are of such a nature that the performance of the Agreement can no longer be required with due observance of the principle of reasonableness and fairness or if there are otherwise circumstances that are of such a nature that unaltered maintenance of the Agreement can not be expected in reasonableness.

3. If the Agreement is terminated, CARU's claims against Customer will become immediately payable. If CARU suspends the performance of the obligations, it will maintain its claims under the law and the Agreement.

### **Article 11 – Force Majeure**

Parties are not obligated to fulfill any obligation under the Agreement if they are hindered to do so as a result of a circumstance that is not attributable to their fault nor is attributable to them under the law, legal act or generally accepted practices, including all outside causes, foreseen or unforeseen. If CARU has already partly fulfilled its obligations under the Agreement or if it can partly fulfill these at the time of the occurrence of such a circumstance and the already performed or to be performed part can be independently valued, CARU is

entitled to invoice the already performed or to be performed part separately. Customer is obligated to pay this invoice as if it was a separate Agreement.

### **Article 12 - Disputes and Applicable Law**

Only the judge in the place of establishment of CARU has jurisdiction over all disputes concerning the Agreement. CARU has nevertheless the right to submit the dispute to another judge competent under the law. Parties will first submit their dispute to the judge after they have done everything to amicably solve the dispute in joint consultation. Netherlands Law applies to each Agreement between CARU and Customer.

### **Article 13 – Applicability and Source**

These General Terms and Conditions are filed with the Chamber of Commerce of Rotterdam in a Dutch and English version. The Dutch text is decisive as to the explanation of the content and meaning of these General Terms and Conditions. The last filed version of these General Terms and Conditions always applies.

*As far as the Specific Terms and Conditions below do not stipulate more or otherwise, the stipulations of the General Terms and Conditions remain in full force.*

### **Article 14 – Specific Stipulations Container Projects**

1. CARU can never considered to be a contractor in the sense of Book 7, Part 12 of the Dutch Civil Code with the performance of the Container Projects, unless expressly agreed otherwise between CARU and Customer
2. Container Projects will only be carried out by CARU if the specifications of the Container(s) to be delivered are, in CARU's view, sufficiently specified in a separate agreement. CARU can never be obligated to more or something else than what is expressly specified and agreed in such an agreement.
3. Unless otherwise agreed between Parties, the stipulations of the General Terms and Conditions with regard to delivery, inspection, claims and warranties will apply equally with the performance of the Container Projects. CARU will more specifically not provide delivery and or maintenance warranties that are wider in their scope and duration than the general product warranties that are described in the General Terms and Conditions.

### **Article 15 – Specific Stipulations Sale**

1. The delivery period will start at the moment on which CARU received payment of the purchase price, unless otherwise stated by CARU in writing.
2. Delivery and returning the Container(s) takes place Ex Works at CARU Moerdijk and in accordance with the Incoterms 2000, unless agreed otherwise by Parties in writing.
3. Payment of the full purchase price needs to take place prior to the delivery, unless CARU specifies otherwise.
4. Customer is obligated to remove the BIC (Bureau International des Containers, Paris, France) alpha code as well as other (property) features of CARU of the container (or have this removed) no sooner than, but also no later than Customer has fulfilled all its (payment)obligations under the Agreement.
5. All delivered Container(s) by CARU remain the property of CARU until Customer has completely fulfilled all obligations from the Agreement concluded with CARU. Customer is not authorized to pledge or otherwise encumber the Container(s) that are subject to the retention of title. In case CARU wants to exercise the ownership rights mentioned above, Customer gives CARU or a third party appointed by CARU, at this time irrevocable and unconditional consent to enter all those places where CARU's property is located and to repossess such properties.

### **Article 16 – Specific Stipulations Lease**

1. It is possible, in consultation with CARU, to make reservations to lease the Container(s) during a certain period, which then also obligates Customer to lease the Container(s) during the reserved period, except in case of timely cancellation. A made reservation can only be cancelled in writing, in which case Customer owes CARU in respect of compensation of costs made by CARU or suffered damages:

- (i) 50% of the lease price if the cancellation date is less than 4 weeks before the start of the Lease Period;
- (ii) 80% of the lease price if the cancellation date is less than 2 weeks before the start of the Lease Period;
- (iii) 100% of the lease price if the cancellation date is less than 1 week before the start of the Lease Period;

2. It is the intent of Parties to only provide Customer with a temporary right to use through the Agreement. The ownership of the Container(s) will remain at all times with CARU. It is Customer prohibited to give the Container(s) in use by third parties, to pledge or otherwise encumber for the benefit of third parties, unless prior written consent was given by CARU.

3. Customer is obligated to treat the Container(s) during the Lease Period with all due care, at the risk and expense of Customer and to keep the Container(s) in proper and operational condition, which means, amongst others, that Customer:

- (i) only uses the Container(s) within the Customer's normal business operations and for the purpose for which it was leased and according to the nature it is suitable for;
- (ii) uses the Container(s) with due observance of the instructions that CARU gives the Customer;
- (iii) is obligated to manage and transport the Container(s) as recognizable property of CARU and not to remove CARU's (property) features on the Container(s) (or have this removed), amongst which it's BIC alpha code;
- (iv) continually inspects the Container(s) on their proper and safe functioning and, as far as not agreed otherwise, timely provides for necessary daily maintenance to preserve this proper and safe functioning, such in accordance with the specifications of the manufacturer, if available;
- (v) takes all reasonable measures to prevent damage to or loss of the Container(s);
- (vi) is obligated to observe all current national and international legal, treaty or other regulations with regard to the Container(s), as well as their use, transport and destination;
- (vii) makes sure that ground on which the Container(s) needs to be placed is level, paved and also otherwise suitable for placement as well as presence of the Container(s) and takes care of receiving consent for placement from the owner of the location where the Container(s) will be placed;
- (viii) will not place or use the Container(s) on locations where there is chemical or different contamination of the soil or groundwater. If the Container(s) is placed on chemically or otherwise contaminated ground in spite of the stipulations above, Customer is obligated to take care of complete cleaning of the Container(s) before returning them. This obligation also applies if Customer learns of the contamination after start of the Lease Period;

4. In case of Lease by CARU of Container(s) that are indented for accommodation and residence by persons, such as, but not limited to, so-called office unites, the following stipulations apply in addition to these general lease conditions:

- (i) Customer is independently responsible and obligated for its own account and risk to determine a location for placement of the Container(s) which is, in connection and in conformity with the intended use of the Container(s), suitable, properly prepared, sturdy and safe for the users of the Container(s) and third parties;
- (ii) Customer is obligated to inspect the Container(s), its construction, foundation, use and application with adequate regularity for defects and safety for users and third parties and furthermore to take for its own account and risk all (maintenance)measures which are necessary to guarantee the absence of defects or to immediately repair arisen defects or defaults in the safety;
- (iii) Customer or a third party appointed by Customer takes care, at the account and risk of Customer, of assembly, construction, use and disassembly of the Container(s), unless otherwise agreed by parties in writing; (iv) Customer takes care of all necessary permits and/or consents, for its own account and risk, for the installation, construction, existence, use and disassembly of the Container(s) and during the Agreement and as long as in effect afterwards;

5. If the Agreement does not see in Container(s) indented for transportation by road, water or open sea, Customer is not entitled to move the Container(s), unless CARU has given written consent. In the event of movement of the Container(s), Customer is always obligated at CARU's first request to immediately notify the destination and/or location of the Container(s).

6. CARU is always entitled to inspect the Container(s) (or have them inspected) for correct observance of the Agreement by Customer. Customer is obligated to give its cooperation to all these inspections.

7. From the time of Delivery of the Container(s), the whole risk of loss, perish, damage, recovery and/or repair of the Container will be for Customer's account during the Lease Period, regardless as to the origin of the event or cause, therefore also in case of force majeure and for instance in case of fire, water, storm, molestation, theft, embezzlement or improper use or management of the Container(s).

8. Customer is obligated to compensate CARU for all damages to the Container(s) arisen from the risks mentioned in the previous paragraph, without prejudice to Customer's obligation to continue to pay the lease price until Customer compensates CARU completely for the damages.

9. Customer needs to properly insure the Container(s) and keep the Container(s) properly insured for the damages and losses stipulated in paragraph 7 of this article. Customer is obligated to assign its rights against the insurance company to CARU, at CARU's first request.

10. Customer is obligated to immediately notify CARU of any damage, loss or perish of the Container(s) and furthermore to give CARU all cooperation that CARU might need in this regard. There is a case of "perish" if the cost of repair of damage to the Container(s) exceeds, in CARU's opinion, the lease market value of the Container(s) at that time. The Agreement terminates in that case, unless CARU puts equivalent replacement Container(s) at Customer's disposal after the notice of loss or perish of the Container(s).

11. With regard to the existence of damage to the Containers, as well as its scope and repair measures, CARU uses the IICL (Institute of International Container Lessors, Briarcliff Manor, NY, U.S.A.) Standards for Repair and Cleaning as a minimum standard, but CARU is entitled at all times to establish otherwise if the damage is larger or if the cost of repair are higher than according to the applicability of the IICL standard.

12. The lease price is payable by Customer as of the date of Delivery, regardless if the Container(s) were picked up or received at the date of Delivery by Customer, regardless of the reason. When the Container(s) is returned before the end of the agreed Lease Period, the lease price over the whole agreed Lease Period is payable by Customer. If the Agreement is renewed after the end of its term, this renewal takes place for the same period of time and under the same conditions as the original Agreement.

13. The lease installments are payable on the first day of the month prior to the month to which the lease installments relate to. Customer is obligated to pay the lease installments to CARU no later than 5 days after this is due (hereinafter: "Payment Term") in the way and currency as indicated by CARU. CARU is entitled at all times to claim that Customer provides proper security or surety for the payment of the lease price. In case of default in payment, CARU is entitled to choose any of the following options, without prejudice to its right to claim payment of the unpaid Lease Installments increased with interest and costs;

- (i) to take measures that result in Customer not being able to use the Container(s) until the arrears of payments of the due lease installments are paid off completely;
- (ii) to consider the Agreement immediately terminated *ipso jure* and to take back the Container(s) (or have them taken back) at Customer's costs;

14. Customer is obligated to notify CARU a minimum of two working days before returning the Containers, at which time CARU will determine the place and time of returning, in the absence whereof the Container(s) shall be returned at the location of CARU in Moerdijk, the Netherlands.

15. Customer is obligated to return the Container(s) at the end of the Lease period completely clean and in the same condition as the start of the Lease period. In case of a difference of opinion with regard to the condition the Container(s) were in, Customer has the burden of proof that the Container(s) were delivered back in proper condition.

16. Returned Container(s) are inspected by CARU and will be repaired and cleaned if and as far as CARU deems this necessary. All costs in connection thereto will be for Customer's account and will be invoiced separately.

17. Customer is liable for all costs which arise from not returning the Container(s) in a timely manner, calculated pro rata the amount of days that the lease price is due in accordance with the agreed lease price, increased with a penalty payable by Customer of € 250.00, immediately due and payable which is not open to mitigation, for each day per Container until the date on which the Container(s) are returned to CARU. All this without prejudice to the other rights that CARU has, amongst which the right to compensation.

## **CARU CONTAINERS B.V.**

**Date: ..... June, 2008**

(signature)

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**Name:**  
**Title: Director**

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**Name:**  
**Title: Director**