

General Terms and Conditions for Cargobull Trailer Store GmbH

1. Scope, conclusion of contract, transfer of Buyer's rights and obligations

1.1 The present General Terms and Conditions apply to all offers issued by the company Cargobull Trailer Store GmbH (referred to hereinafter as "Seller") and any contracts concluded with the latter in relation to used vehicles (semitrailers, trailers, and truck bodies). We herewith object to any terms and conditions of the ordering party or buyer (referred to hereinafter as "Buyer"). Deviations from the present Terms and Conditions shall be effective only if such deviations are expressly confirmed by the Seller in writing.

1.2 The present Terms and Conditions apply exclusively vis-à-vis companies, legal entities under public law, and special funds under public law, as defined under Sect. 310 (1) BGB (German Civil Code).

1.3 Transfers of the Buyer's rights and obligations created under the purchase contract shall be effective only if the Seller's prior written approval is obtained.

1.4 Offers and quotes are subject to change and non-binding.

1.5 The Buyer is bound to the order for a period of time of 2 weeks.

The purchase contract is concluded on the Seller's written confirmation of acceptance of the order for the object of purchase specified in the order form (referred to hereinafter as "Purchased Object") or within the time limits specified above, or on completion of delivery.

1.6 All agreements must be made in writing. This applies equally to side agreements, guarantees of durability and/or of quality, and to subsequent alterations of the contract.

1.7 Drawings, illustrations, measurements, weight, and any other performance specifications, shall be binding only if so expressly agreed in writing; such data shall not be deemed guaranteed qualities.

1.8 References to the application of legal provisions shall be for purposes of clarification only. Thus, the statutory provisions shall apply even without such clarification, unless they are directly amended or expressly excluded in these terms and conditions.

2. Prices

2.1 The price (Purchase Price) of the Purchased Object is ex works without discounts or any other rebates, plus sales tax. Any side services agreed, e.g. transfer costs, will be billed separately.

In the case of deliveries and services performed inside the EU, the Buyer, before carrying out the transaction, shall provide the Seller with the former's VAT ID no. under which the Buyer pays income tax inside the EU. In the case of deliveries and services performed from within the Federal Republic of Germany to outside the EU that are not carried out and initiated by the Seller, the Buyer shall provide the Seller with the export certificate required for tax purposes. If such certificate is not provided, the Buyer shall pay in addition the sales tax levied in Germany on the amount invoiced for the service/product.

2.2 The deduction of a discount requires a special written mutual agreement.

3. Payment/late payment/offsetting

3.1 The Purchase Price, and the prices for additional services, and any advance costs incurred shall be due payable in full and without deduction upon delivery of possession of the Purchased Object – at the latest however

8 days from the date of receipt of the notification that the goods are ready for collection and the handing over or sending of the invoice.

3.2 Payment orders, cheques, and bills of exchange, will be accepted only on special agreement and only *in lieu* of payment. Any discount and bank charges shall be for the Buyer's account.

3.3 The Buyer is entitled to offset only if his counter claims are non- appealable *res judicata*, undisputed, or acknowledged by the Seller.

Furthermore, the Buyer is only entitled to exercise a right or retention if and to the extent that his counter-claim is based on the same contractual relationship.

3.4 In the event that the Buyer is in default on payment, the Seller is entitled to charge interest for late payment in the amount of 9 percent above the base rate of *Deutsche Bundesbank*.

4. Delivery and default on delivery

4.1 Delivery dates or periods, which may be agreed with binding or non-binding effect, shall be stated in writing. The dates or periods stated by the Seller are non-binding, unless otherwise agreed in writing. Delivery periods shall commence no earlier than on the conclusion of contract. If subsequent changes of the contract are mutually agreed, any agreed delivery dates or delivery periods shall be appropriately extended; if necessary, new delivery dates or delivery periods shall be mutually agreed concurrently.

4.2 The commencement of the delivery period stated by the Seller is subject to the prior clarification of all technical questions and the due and proper fulfilment of the Buyer's obligations. The right to object that the contract is not performed is reserved.

4.3 Four weeks after exceeding a non-binding delivery date or a non- binding delivery period, the Buyer may request in writing that the Seller deliver. This time limit is reduced to 2 weeks in the case of vehicles that are already available at the Seller's. On receipt of such request the Seller is in default. If the Buyer is entitled to compensation for damage caused by default, such compensation in the case of slight negligence is limited to no more than 5% of the agreed Purchase Price.

4.4 If, in addition, the Buyer wishes to withdraw from the contract, and/or claim damages instead of performance, he must, after expiry of the period defined under No. 4.3 Sentence 1 or 2, grant the Seller a reasonable period of time for delivery. If the Buyer is entitled to damages instead of performance, his claim in the case of slight negligence shall be limited to no more than 25% of the agreed Purchase Price.

4.5 If at a time when the Seller is in default, performance becomes impossible to the Seller due to fortuity the Seller shall be liable subject to the limitations of liability agreed herein-above. The Seller shall not be liable if the damage would have occurred despite punctual delivery.

4.6 If a binding delivery date or a binding delivery period is exceeded the Seller shall already be in default on exceeding the delivery date or the delivery period. In that event, the Buyer's rights shall be defined by clause 4.3, sentence 3, and clause 4.4.

4.7 In the case of *force majeure* or any disruptions in business operations that occur in the Seller's or its suppliers' companies and temporarily prevent the Seller through no fault of his own from delivering the Purchased Object at the agreed date or within the agreed period of time, the dates and periods specified under clauses 4.1 to 4.6 of the present paragraph shall be altered by the duration

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of the disruptions in performance caused by such circumstances. If such disruptions lead to a delay in performance exceeding 4 months the Buyer may withdraw from the contract. Other rights of withdrawal shall not be affected.

5. Payment claims of companies in the Schmitz Group

5.1 If the Buyer is obliged under other contracts to make payments to other companies belonging to the Schmitz Group, in particular Schmitz Cargobull AG, Schmitz Cargobull Gotha GmbH, Schmitz Cargobull Mecklenburg GmbH & Co. KG, Schmitz Cargobull Mitarbeiterbeteiligungs-GmbH, Cargobull Cool GmbH & Co. KG, Cargobull Customer Center GmbH, Cargobull Finance GmbH (CBF), Cargobull Logistik und Service GmbH, Cargobull Parts & Services GmbH (CPS), Cargobull Telematics GmbH (CBT), KUBIKx GmbH, TSE Trailer System Engineering GmbH & Co. KG or Schmitz Cargobull Overseas GmbH, the Buyer shall settle such payment claims at the latest by the date on which possession of the Purchased Object is delivered. The Seller is entitled to subject surrender of the Purchased Object to the Buyer to the condition of the prior settlement of such payment claims.

5.2 The Seller is entitled furthermore to offset any claims of the Buyer, which the latter obtained against companies of the Schmitz Group through deliveries and services, against the Seller's own Purchase Price claim.

6. Terms of acceptance / default on acceptance

6.1 In the event that the Buyer has defaulted on acceptance of the Purchased Object for a period exceeding 14 days from receipt of the notification that the Purchased Object is ready for collection, the Seller is entitled to claim damages instead of performance; the Seller's other rights shall not be affected; in particular, the risk of accidental loss and/or accidental deterioration of the Purchased Object shall pass to the Buyer no later than from the moment the latter defaults on acceptance.

6.2 If the Buyer defaults on acceptance of the Purchased Object, the Seller, without prejudice to the Seller's other claims, may charge storage charges in the amount of Euro 20 per day. This amount shall be raised or reduced if the Seller furnishes evidence of greater, or the Buyer of lesser, damage.

6.3 If the Seller claims damages under clause 6.1 hereinabove such damages shall amount to 15% of the Purchase Price. The amount of damages shall be raised or reduced if the Seller furnishes evidence of greater, or the Buyer of lesser, damage.

6.4 If the Seller chooses not to exercise its rights under Nos. 6.1 and 6.3 hereinabove it may dispose freely of the Purchased Object and may deliver an identical purchased object in its place at the contractual terms and conditions and within a reasonable period of time, without prejudice to other statutory and/or contractual claims, e.g. in particular damages claims.

7. Reservation of ownership

7.1 The Seller reserves ownership of the Purchased Object until all payments resulting from the business relationship with the Buyer have been received.

7.2 During the term of the reserved of ownership, the right to possess the vehicle licence part II (vehicle title) shall be vested in the Seller. The Buyer shall apply in writing to the registration authority for the issuance of the vehicle licence part II to the Seller.

7.3 On the Buyer's request, the Seller shall release securities of the Seller's choice if their realisable value exceeds 10% of the Seller's claims to be secured.

7.4 If the Seller merely delivers bodies, ownership of the Purchased Object is reserved if the body in question can be removed from the vehicle's undercarriage by loosening screwed and bolted connections.

The Buyer accepts and agrees that the Purchased Object is not or will not become an integral part of the vehicle.

7.5 If the Seller delivers bodies that are connected with the undercarriage and/or the remaining vehicle in such a manner that they cannot be removed by loosening screwed or bolted connections, or if the Seller supplies accessories (tail lifts, cooling units, fifth wheel couplings, etc.), the following shall apply:

7.5.1 If the vehicle intended for mounting the body or installing the accessories is subject to the reserved ownership of a third party: The Buyer shall ensure that the third person grant the Seller reserved ownership, co-ownership, or co-ownership as collateral. The Buyer shall present the third party's written declaration thereof. The Seller shall obtain sole reserved ownership on termination of a third party's right. The Buyer shall ensure that the third party surrender the vehicle or trailer licence directly to the Seller. The Seller is entitled to directly contact the third party to agree and subsequently implement the reservation of ownership, resp. co-ownership as collateral.

7.5.2 If the vehicle intended for mounting the body or installing the accessories is owned by the Buyer:

The Buyer shall transfer ownership of the total vehicle, including the body, to the Seller as collateral and shall use it solely on loan in relation to the Seller. Transfer of ownership as collateral and the agreement of a loan relationship is deemed completed only on delivery of possession of the vehicle to the Buyer, whilst retaining the vehicle licence or trailer licence.

7.6 During the term of the reservation of title, or the collateral, the Buyer may possess and use the Purchased Object, resp. the object that is subject to the reserved ownership, or the collateral, as set forth hereinabove, provided and for as long as the Buyer fulfils its obligations resulting, in particular, from the reserved ownership, or the collateral, in accordance with the provisions of the present section herein-below and is not in arrears with payment. The Seller may demand surrender of the Purchased Object if the Buyer fails to fulfil its contractual obligations despite a warning notice.

7.6.1 Repossession of the Purchased Object does not constitute withdrawal from the contract unless the Seller so declares expressly and in writing.

7.6.2 In the even that the Buyer is in arrears with payment, the Seller may withdraw from the purchase contract by written declaration and without prejudice to any other statutory claims. If, in addition, the Seller claims damages instead of performance and repossesses the Purchased Object, the Seller and the Buyer mutually agree that the Seller shall pay compensation for it in the amount of the market value of the Purchased Object as at the time of repossession. On the Buyer's request, that may only be made immediately upon the Seller's repossession of the Purchased Object, a publicly appointed and sworn expert of the Buyer's choice, e.g. *Deutsche Automobil Treuhand GmbH (DAT)*, shall determine the usual market value. The Buyer shall bear all costs of repossession and exploitation of the Purchased Object. The cost of exploitation, without any evidence thereof being furnished, shall be 5 percent of the usual market price. It shall be set at a higher or lower amount if the Seller furnishes evidence that higher costs

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were incurred, or the Buyer furnishes evidence that lower costs, were incurred.

7.7 Subject to the following clause 7.11, the Purchased Object may, for as long as ownership is reserved, be sold, pledged, transferred as collateral, let, or otherwise disposed of, or changed, in a manner that impairs the Seller's security interest, only with the Seller's prior written consent.

7.8 In the case of third party intervention, in particular in the case of an attachment of the Purchased Object, or in the case that a garage/service station exercises its contractor's lien, the Buyer shall immediately notify the Seller in writing and immediately inform the third party of the Seller's reserved ownership. The Buyer shall bear all costs that must be incurred in order to cease such intervention or to recover the Purchased Object or collateral, unless such payments can be collected/recovered from third parties.

7.9 If the Parties agreed on comprehensive insurance coverage, the Buyer shall take out such insurance without delay for the term of the reserved ownership with an appropriate deductible and under the condition that the rights created under the insurance policy shall be vested in the Seller. The Buyer authorises the Seller to apply for a risk coverage certificate (German: *Sicherungsschein*) for the Seller's benefit in relation to the comprehensive vehicle insurance and to obtain information about the aforesaid insurance. If the Buyer fails to meet this obligation despite receiving a written warning notice from the Seller, the Seller may take out comprehensive insurance at the Buyer's expense, advance the insurance premium, and collect it as part of the receivables under the purchase contract. The benefits from the comprehensive insurance shall be used fully – unless otherwise agreed – for repairing the Purchased Object, resp. the collateral. If, in the case of severe damage, the Seller waives such repairs, the insurance benefits shall be used for paying the Purchase Price, the prices of side services, and any costs advanced by the Seller.

7.10 The Buyer shall keep the Purchased Object in the due and proper condition for the term of the reserved ownership and arrange for all maintenance works and services, and all necessary repairs required by the Seller, to be carried out without delay - except in cases of emergency - by the Seller or by a garage/service station approved by the manufacturer for servicing the Purchased Object.

7.11 If the Seller permits the Buyer to resell, the Buyer is entitled to resell the Purchased Object, the ownership of which is reserved under clause 7.1 herein-above, in the course of proper business proceedings; however, the Buyer already herewith assigns to the Seller all claims, irrespective of whether the Purchased Object was resold without or after processing, the former may obtain against its buyers or third parties from reselling, namely in the amount of the final invoice (including VAT) issued for the Seller's claims. The Buyer shall remain entitled to collect such receivables even after said assignment. The Seller's right to collect receivables itself shall not be affected. The Seller however agrees to not collect the receivables for as long as the Buyer meets its payment obligations from the proceeds it generated, does not default on payment, and provided, in particular, that no application for opening insolvency proceedings is filed or no payments are suspended. Should this, however, be the case, the Seller may demand that the Buyer disclose to the Seller all claims assigned and their debtors, provide all information required for collection, surrender the related documents, and inform the debtors (third parties) of the assignment.

8. Defects in quality

8.1 The sale takes place under exclusion of any claims for material defects. The Buyer's claims based on defects in quality are subject to the condition that the Buyer has duly

and properly fulfilled its duties to inspect the goods and give notice of defects pursuant to Sect. 377 HGB (German Commercial Code).

8.2 The exclusion of claims for material defects in clause 8.1 does not apply to claims for damages due to material defects which are based on a grossly negligent or intentional breach of obligations of the Seller, his legal representative or his vicarious agent as well as in the case of injury to life, body or health. Irrespective of any fault on the part of the Seller, any liability of the Seller in the event of fraudulent concealment of a defect, arising from the assumption of a guarantee or arising from a procurement risk and in accordance with the Product Liability Act shall not be affected.

8.3 Information relating to performance, e.g. speeds, cooling capacities, operating costs, dimensions, and/or weight etc. of the Purchased Object shall be regarded as approximates; they shall not be deemed guaranteed qualities, save where an express guarantee of quality has been given in writing.

9. Liability for other damage/loss

9.1 Liability for default on delivery is conclusively regulated in clause 4 "Delivery and default on delivery".

9.2 For other claims for damages against the Seller, which are not regulated in clause 8 "Defects in quality", the following shall apply:

If the Seller is liable for damage caused by slight negligence, the Seller's liability shall be limited: he shall be liable only in the event of a breach of a contractual obligation that is essential to the contract, such as those which the purchase contract is meant to impose on the Seller according to its content and purpose, or the fulfilment of which is essential for the proper execution of the purchase contract and the observance of which the Buyer regularly relies on and may rely on.

This liability is limited to the typical damage foreseeable at the time of conclusion of the contract.

9.3 The personal liability of the legal representatives, vicarious agents and employees of the Seller for damages caused by them through slight negligence is excluded.

9.4 The provision in clause 8.2 shall apply *mutatis mutandis*.

10. Export control/embargo clause

10.1 Purchasers of the Seller's goods must comply with EU export control and embargo regulations as well as the EU sanctions lists in addition to the export regulations of their own country, even if they are neither resident in nor a citizen of the EU. They may also be required to comply with the relevant U.S. regulations and U.S. sanctions lists if there is a U.S. nexus. In the case of onward deliveries or re-sales, Purchasers must check whether any trade restrictions relating to goods or persons exist under the above export regulations and comply with any such trade restrictions.

10.2 The Purchaser shall obtain all export licenses required under clause 10.1 above for the export or use of the Purchase Object.

10.3 If the Purchaser violates export regulations under clauses 10.1 and 10.2, the Seller shall be within its rights to refuse the contractually agreed performance or, after having given notice of intent to refuse performance setting a grace period, to rescind the agreement. The foregoing shall apply regardless of any violation by the Purchaser if the Seller would at some point violate export regulations under clause 10.1 by performing the agreement. In such cases, the Purchaser shall not be entitled to any claims for damages

or other claims in connection with the legitimate exercise of the right to refuse performance or the right of rescission by the Seller.

10.4 In the event of intentional or negligent breaches of the obligations set out in clauses 10.1 and 10.2 above, the Purchaser shall indemnify the Seller in full against any and all claims asserted against the Seller by authorities or other third parties due to the Purchaser's failure to comply with the obligations set out in clauses 10.1 and 10.2 above, and shall reimburse the Seller for any and all loss, damage and expenses incurred in this connection. The Purchaser shall provide the Seller with all documents and information necessary in order to mount a defence against such claims without undue delay. If the Seller is requested by a competent authority to submit documents that require the Purchaser's cooperation (e.g., end-use declarations, import certificates), the Purchaser shall provide the documents or other information required for this purpose at the Seller's request and hand them over to the Seller in good time.

11 Place of performance, place of jurisdiction, and governing law

11.1 The place of performance is at the Seller's registered headquarters.

11.2 The competent court for all present and future claims arising from the business relationship with businessmen, legal entities under public law, or special funds under public law, including claims resulting from bills of exchange and cheques, shall be the local court *Amtsgericht Steinfurt*, resp. the district court *Landgericht Münster*. In addition, the Seller may raise its claims before the courts at the Buyer's general place of jurisdiction.

11.3 All legal relationships between the Seller and the Buyer shall be governed exclusively by the laws of the Federal Republic of Germany. The application of the UN Convention on Contracts for the International Sale of Goods (CISG) of 11 April 1980 (UN-Contact law; BGBl. 1989 II. p. 588 et seq.), and of the UNCITRAL Convention on international drafts and international promissory notes of 09 December 1988, is excluded.

11.4 In the event that one of the provisions of the present Terms and Conditions, or one of the provisions of other agreements, is or becomes invalid, the validity of the remaining provisions or agreements shall not be affected.