

Standard Terms & Conditions for the Performance of Services and Repairs of German Lashing Robert Böck GmbH

To be used with businesses

I. Scope of Application

1. Our Standard Terms and Conditions shall apply to any order to be fulfilled by us, in particular for the manufacture of individual container securing systems for ships of any kind (hereinafter referred to as "Ships").
2. Any deviating agreements, in particular any conflicting terms and conditions of the customer (hereinafter the "Customer") or side agreements shall only become an integral part hereof if we have agreed to their inclusion in writing to the Customer.
3. These terms and conditions replace and exclude any and all current and future terms and conditions of our Customers.

II. Formation of Contract

1. Our offers and cost estimates are always non-binding. They include only those goods and services that are expressly specified in the offer. Purchase orders deviating therefrom or changes to orders are not covered thereunder. The same applies to additional costs due to changes to orders.
2. Order are binding only after our written acknowledgment of order. Receipt of a confirmation email confirming receipt of the order of the Customer shall not be deemed to constitute acceptance of the order. An acceptance of order will always come in the form of an acknowledgment of order specified as such.
3. Our offers are valid for one (1) month since their preparation, unless provided otherwise in the offer.

III. Contract Terms

1. Upon entering into the contract, the Customer must provide us with all necessary documents of the Ship that are required and essential for the calculation and installation of the systems. The Customer must provide this documentation and this information completely and free of charge. The Customer alone is liable for any incomplete, incorrect or faulty documents submitted to us. The Customer is also liable if a defect or planning error is based on incomplete or misleading items provided by it, including but not limited to a defective plan transmitted by the Customer, and the system delivered by us is therefore flawed or defective.
2. The Customer is obligated to advise us of special characteristics and special properties, or previous events impacting the Ship or similar things that could have an effect on the functionality and safety of the container securing systems to be delivered by us.
3. The Customer is responsible for determining structural compatibility between the systems prepared by us and their respective place of use. Any required adjustment shall be at the Customer's expense.
4. Any modification of the systems by the Customer's own or third party employees shall result in the immediate loss of any claims for damages or warranty claims. In the event that modifications are made, they must be agreed with us in writing. We are not liable for any loss or damage of any kind directly or indirectly caused by the omission of information.

IV. Cancellation of Contract

1. If we become aware after having entered into the contract of which these terms and conditions are an integral part that insolvency proceedings have been instituted in court regarding the Customer's assets, or if the Customer has suspended payments to a significant extent, we shall be entitled to request the provision of security for our remuneration up to the full amount thereof, or to terminate the contract for cause with immediate effect and charge the Customer our expenses after expiration of a reasonable period to provide such security.
2. The statutory rights of termination for contracts for work and services pursuant to Sections 630 et seq. German Civil Code [*Bürgerliches Gesetzbuch*; "BGB"] shall remain unaffected.
3. If we are in default with the ordered contractual performance, the Customer may, if it has demonstrably suffered loss or damage, and notwithstanding its right to rescind the contract entered into with us if the prerequisites for such rescission are met, claim—while maintaining the contract—default damages in the amount of 0.5% of the contract price per full calendar week of default but no more than 5% of the contract price per Ship set. This shall apply subject to the exclusion of any further claims for damages and/or rights. The aforesaid limitation shall not apply if the default is based on gross fault (intent or gross negligence). This shall also apply to the violation of ancillary obligations.

V. Prices

1. All prices apply in accordance with the agreed-upon international trade terms / Incoterms or the acknowledgment of order, respectively. Other than that, all prices are ex works and are exclusive of packaging, freight, postage, shipping costs, insurance of value, and assembly. This shall also apply to agreed-upon partial deliveries. The value-added tax and any customs or import/export duties will—if they are incurred—be calculated and shown separately on our invoice.

2. If cost increases occur (for example for taxes, etc.) between the signing and the performance of a contract of which these terms and conditions are an integral part, we shall be entitled at our reasonably exercised discretion to charge an adjusted price to reflect these increases not exceeding our generally applicable prices at the time of performance of the contract if the period between the signing and the performance of the contract exceeds six months.

VI. Terms of Payment

1. The remuneration is due immediately upon acceptance/taking receipt of the order by the Customer and the issuance of a final invoice in accordance with the purchase contract, without any deduction. The same shall apply to progress payments.
2. Checks and bills of exchange shall be accepted only on account of performance (i.e. the check or bill of exchange shall not operate as a discharge until honored) with the acceptance of bills of exchange also being subject to a prior agreement. If a check or bill of exchange is not honored, this shall be at the Customer's expense.
3. We shall be entitled to interest of 5% p.a. starting upon maturity of our entitlement to remuneration, and of 9% percentage points above the base rate as applicable from time to time, once the Customer is in default. We shall be entitled to assert further claims and rights in connection with the Customer's default in payment. This shall include but not be limited to a levy of attachment and the placement of a lien/security interest and right of retention.
4. The Customer may set off with legal effect only against uncontested claims, claims that have been established as final and binding and no longer subject to ordinary legal remedies, or claims that are ripe for judgment (i.e. that have been proven).
5. The Customer shall have a right of retention only if and to the extent its counter-claim is based on the same legal relationship or such counter-claim has been established by a court or is undisputed.
6. If the Customer is in default of payment of the remuneration, we may postpone any action required for the fulfillment of our obligations until the outstanding remuneration (including default interest, if applicable) has been settled.
7. The Customer is not entitled to assign claims to third parties or to offset claims against those of third parties without our prior consent.

VII. Shipment

1. The shipment of the order items shall be for the account and at the risk of the Customer. This shall also apply if the transport is carried out by our own means of transportation. In the event where free delivery has been agreed upon, this delivery shall also be at the risk of the recipient. Delivery dates shall be deemed to have been met if the order items have left our facilities by the end of the deadline.
2. The Customer is responsible for taking out proper transport insurance and for the clearance of the shipment through customs. The Customer must ensure that upon shipment all relevant export and import rules and regulations applicable at the destination specified by the Customer are being complied with. Should the Customer be at fault in this respect, any claims for damages due to late delivery shall be excluded.
3. In the event of transport damage, the Customer must—prior to taking receipt of the object of the contract—have the operator/driver of the train, postal delivery services or truck confirm the damage in writing. Transport damage must be reported to us immediately upon its discovery.

VIII. Delivery Period and Delivery

1. Delivery periods and delivery dates shall be binding on us only if they have been expressly agreed upon in writing. If no delivery periods or delivery dates have been agreed in writing, the periods and dates notified by us in accordance with the acknowledgment of order shall apply.
2. Timely delivery and/or performance of work shall be subject to the complete and timely fulfillment of the Customer's duties and obligations to cooperate, including specifically the timely delivery of the records to be provided by the Customer, and the clarification of all commercial matters (including binding agreement on prices) and technical questions. Any agreed delivery periods and delivery dates shall be extended by the duration of the delay in receiving due payments by us. This shall also apply to any arrival/departure times and the provision of labor and working capacity. The aforesaid shall also apply in cases where we do not expressly invoke a right of retention and/or right to withhold performance.
3. Force majeure and any other circumstances beyond our control—regardless of whether they affect us or our supplier—shall release us from our obligation to deliver items and perform work for the duration of the effects thereof, and, if they result in the impossibility of our performance, from all of our delivery/performance obligations. This shall also apply to measures taken in compliance with the International Ship and Port Facility Security (ISPS) Code. If we are aware of any of the aforementioned events, we are obligated to notify the Customer thereof without delay.

IX. Defects

1. The Customer shall inspect our deliveries and services immediately after handover for completeness (or agreed partial performance) and freedom from defects. A notice of defects must be given immediately and in writing, without culpable delay. If the notice of defect is not given in due time, the (partial) performance shall be deemed to have been accepted as complete and free from defects. Subject to Clause X.4 hereof, we shall not be liable for any deterioration of a defect caused by late notice of defect.



2. Prior to exercising the right of rescission or potential claims for damages, we must first be provided with the opportunity to cure the defect within a reasonable period of time. We have the option to either remedy the defect or produce new work.
3. Ships must be made available to us for the purpose of cure at the place of performance or at an agreed location. If this is unreasonable from an economic point of view, the Customer shall be entitled after coordination with us to have the work performed by another supplier. In this case, we shall reimburse the Customer the proven necessary expenses incurred for such work.
4. Any claims of the Customer for reimbursement of expenses for the purpose of enabling the cure, including but not limited to the costs of making the Ship or other objects available at the place of performance within the meaning of these terms and conditions, shall be excluded unless we are liable under the Product Liability Act or if we have caused the defect by willful misconduct or gross negligence.
5. Any claims for cure or claims for damages against us shall be excluded if the defect was caused by the fault of the Customer or any of its agents, or if the Customer could have prevented such defect.
6. If the cure ultimately fails, or if it is deemed unconscionable to both us and the Customer, or if the costs connected thereto are unreasonably high and is therefore rejected by us, the Customer shall have the right—subject to the legal requirements being met—to rescind the contract or to demand a reasonable reduction of the purchase price. This shall not affect the right to claim damages.
7. Our obligation to pay damages shall also be governed by these terms, including but not limited to Clause X.
8. Parts that have been replaced shall become our property.
9. Subject to Clause X. 4 hereof, the Customer's rights and claims due to defects shall be void if the items delivered or services performed have been altered, treated or processed, handled improperly, or repaired by the Customer or any third parties not authorized by us. Furthermore, no claims for a cure and no claims for damages may be asserted against us in the aforementioned cases where the defects result from the Customer's or its agent's conduct.
10. Unless agreed otherwise with the Customer, the Customer's claims due to defects shall become statute-barred one year after the start of the statutory limitation period. This shall not apply to the fraudulent concealment of defects or to the cases of liability mentioned under Clause X.4 hereof.
11. Furthermore, we shall not be liable for faulty calculation bases or faulty transmission from classification societies commissioned by the Customer.

X. Liability

1. Any and all work, services or supplies (including but not limited to the Ship) shall be provided exclusively at the Customer's risk and responsibility. This shall also apply to supplies provided by us that neither concern the design nor the production of our contractual performance.
2. Subject to Clause X.4 hereof, we shall not be liable for any loss or damage resulting from faulty documentation that was available or was provided to us.
3. Any claims other than those provided for in these terms and conditions or the contracts entered into with the Customer shall be excluded unless they arise from the provisions of the Product Liability Act, from willful or grossly negligent violations by our corporate bodies or our executives. Injury to health and physical injury of the Customer or its employees due to a violation of a duty for which we are responsible shall also be excluded from this rule, as are the violation of essential contractual obligations. Obligations that are essential to the contract are those the fulfillment of which allows us to properly perform our primary contractual obligations in the first place and the observance of which the Customer regularly trusts and may trust as a matter of course. Regardless of the cases of liability stated above and unless essential contractual obligations have been violated, we shall not be liable for any loss or damage suffered by the Customer resulting from a gross negligent violation of duty, including, but not limited to, the violation of the duty of care and supervision by non-managerial persons employed by us in the performance of our obligations.
4. If we violate an essential contractual obligation, the Customer's claim for damages shall be limited to the foreseeable damage typical of this type of contract. This shall not apply to willful or grossly negligent violations of obligations as well as to injury to health and physical injury of the Customer or its employees. A loss or damage that must be typically expected when the essential contractual obligation has been violated is deemed typical of this type of contract and/or foreseeable.
5. In order to protect itself against the consequences of the aforementioned exclusions and limitations of liability, the Customer must provide cover against these risks by taking out an appropriate insurance policy. The Customer shall include us as well as our corporate bodies, our executives, and agents employed by us in the performance of our obligations by way of co-insurance. This shall apply in particular to structural changes to the Ship.

XI. Retention of Title

1. We reserve the title to the items delivered by us and installed by us ("Retained Goods") until full satisfaction of all claims we are entitled to from the Customer under the order and the business relationship with the Customer, now or in the future, regardless of the underlying cause in law. This shall apply to all claims from the time of entering into the contract or those claims that had arisen prior to the entering of the contract.
2. The Customer shall be entitled to sell, process, mix and/or combine Retained Goods with other goods, and subsequently sell them within the scope of extended retention of title as long as this is done in the ordinary course of business. The Customer may not pledge or transfer ownership of Retained Goods to third parties by way of security, unless we agree thereto in writing. The Customer must notify us without delay in writing about any attachment or seizure of property, or any other disposal by third parties.

3. Any processing or transformation shall be carried out exclusively on our behalf. If the goods are combined or mixed with goods not owned by us, our ownership share in the newly manufactured goods shall accrue to us at the ratio of the item contributed by us. The new products resulting from such processing shall also be deemed to be Retained Goods.
4. The Customer shall assign to us in advance and as a security all claims and accessory rights it has in connection with the resale of Retained Goods as well as any claims it may have against its insurers, and we accept such assignment upon entering into the individual contract of which these terms and conditions are an integral part. If the Retained Goods are sold by the Customer with other goods not owned by us (regardless of any mixing and processing), above claims shall be deemed to have been assigned to us in the amount of the outstanding invoice value of the Retained Goods. Above assignment shall not constitute a deferral of our claim for payment against the Customer.

XII. Extended Contractor's Lien

1. We shall be entitled to a contractual and statutory contractor's lien and right of retention on account of all claims in respect of the commissioned services under each contractual relationship of which these terms and conditions are an integral part. In addition to the rights of retention and liens under the German Civil Code [BGB], this also includes those of the German Commercial Code [*Handelsgesetzbuch*; "HGB"]. The rights of retention and contractor's liens that we are entitled to extend to any and all objects that came into our possession on the basis of the current order.
2. The security provided and rights granted under Clause 1 above shall also secure all current and future claims we are entitled to under the business relationship with the Customer.

XIII. Use of Planning Materials

1. In cases where we perform work using drafts or other documents and specifications provided by the Customer, the Customer shall be obligated to indemnify and hold us harmless against claims of any kind from third parties based on infringements of proprietary rights, copyrights, and industrial property rights as a result of the contractual use of such drafts. This shall apply in particular to the transmission of documents and records on the part of the respective classification societies.
2. We reserve all proprietary rights, copyrights, and industrial property rights in all calculations, drawings, dimensional and weight data, and technical descriptions. This shall apply in particular to the intellectual property rights to all aforementioned documents. The documents prepared by us may not be shared or used in any other manner without our express written consent. The documents prepared by us must be returned to us immediately by the Customer upon our request.

XIV. Place of Performance, Place of Jurisdiction, and Applicable Law

1. Unless provided otherwise in Clause V.1, the place of performance for the performance under each contract of which these terms and conditions are an integral part, shall be our registered office in Bremen.
2. The Local Court and Regional Court [Amtsgericht / Landgericht] in Bremen having jurisdiction at our registered office shall be the exclusive place of jurisdiction for all disputes arising directly or indirectly from the services to be provided and the contractual relationship, respectively, and from all associated documents, etc. Conversely, we shall not be precluded from bringing action before the court having jurisdiction at the place of residence, place of business, or the location of the assets of the Customer. In particular the rules relating to the location of the Ship shall not be deemed invalidated.
3. The laws of the Federal Republic of Germany shall apply exclusively as they are applicable to domestic persons, to the exclusion of the United Nations Convention on the Contracts for the International Sale of Goods.

XV. Miscellaneous / Severability Clause

1. If there are translations of these terms and conditions, the German version shall have priority in case of doubts with regard to the interpretation of such terms.
2. Should any of the provisions contained in a contract of which these terms and conditions form an integral part, be or become invalid, the remaining provisions of that contract shall remain unaffected thereby. In the place of that invalid provision, we shall agree on a provision with the Customer that matches fully—or if this is not legally possible—to the closest possible extent the economic purpose of the invalid one in a legally effective manner. In the event of intersecting standard terms and conditions that we have not expressly opposed, the law shall apply in case of doubt.