

## **xChange Standard Container Sale Agreement**

### **1. Preamble**

This xChange Standard Container Sale Agreement (“Standard Sale Terms”) serves as the default terms for Transactions on The Trading Platform. While all commercial details (e.g., sale price, free storage period, etc.) are negotiated and agreed on The Trading Platform, the terms below govern the process and responsibilities around the transaction. These terms have been designed with the objective of maximum neutrality and fairness between Buyer and Seller, both parties are free to agree on deviations as part of their negotiation on The Trading Platform.

### **2. Deviation from Standard Sale Terms**

**(a)** The Buyer and The Seller are free to mutually agree on modifications and alterations of the Standard Sale Terms as part of their negotiation on The Trading Platform. These mutually agreed terms will then prevail over these Standard Sale Terms.

**(b)** If The Buyer opts into the xChange Buy Now Pay Later offering, two separate agreements come into effect automatically, which complement and add to these Standard Sale Terms.

**(i)** Firstly, a separate agreement between The Seller and xChange comes into effect, based on the agreed terms between The Seller and The Buyer on The Trading Platform.

**(ii)** Secondly, a separate agreement between xChange and The Buyer comes into effect, based on the agreed terms between The Seller and The Buyer on The Trading Platform and complementing Buy Now Pay Later offering terms, resulting in The Buyer ultimately becoming the owner of the Equipment.

**(iii)** In case of a contradiction between the Standard Sale Terms and the separate agreements specified in (i) and (ii), the separate agreements shall have exclusive authority.

### **3. Payment**

**(a)** If not otherwise specified the payment agreed upon in the Negotiated Sale Terms is due latest 7 days after the receipt of invoice and prior to delivery of any Equipment to The Buyer.

**(b)** The Seller or its nominated agent is entitled to raise the invoice at the time the Transaction is concluded and both parties agree on The Negotiated Sales Terms.

**(c)** Containers remain the property of The Seller until payment is received by The Seller or its nominated agent in full.

### **4. Taxes, Duties, Charges**

**(a)** The Sale Price negotiated in the Transaction does not (unless otherwise specified) include taxes of any kind or other amounts. The Buyer agrees to assume exclusive liability for and to pay, indemnify and hold The Seller harmless for all sales or use taxes, transfers, titles and registration fees, VAT, domestications, personal property taxes or other taxes, tolls, levies, imposts, duties or governmental charges imposed in connection with the sale of Equipment covered by the invoice, or any services rendered by The Seller in connection with this invoice, including any penalties, fines or interest thereon.

**5. Domestication, Customs**

- (a)** Unless otherwise specifically agreed with The Seller in the Negotiated Sale Terms, The Buyer is aware that, at the time of transfer of ownership the Container(s) has not been brought into free circulation and all Container(s) remain as “non-domesticated goods”. The Buyer agrees that the Equipment will not be resold or otherwise disposed of unless The Buyer pays all applicable customs or/and other taxing authorities including any VAT or other taxes and import duties due upon import and/or domestication of the Equipment, or any services rendered by The Seller in connection with this invoice, including any penalties, fines or interest thereon.
- (b)** If The Buyer chooses to import Equipment in order to convert it to domestic use, then The Buyer agrees to do so at their own costs including any customs and/or import dues and taxes upon domestication. The Seller makes no representation as to the prior payment or current application of import duties or other taxes. The Buyer shall provide The Seller with proof of payment of any such taxes, duties or other charges upon The Seller’s request.
- (c)** For Transactions of Container(s) as “non-domesticated goods” The Buyer shall provide The Seller or its nominated agent with a proof of export upon The Seller’s request. The request for a proof of export has to be made in writing on The Trading Platform and no later than 365 days after the Acceptance Date. The Buyer is not liable for charges that arise from a missing proof of export, if the proof of export has been requested later than 365 days after the Acceptance Date.

**6. Transfer of ownership**

- (a)** Ownership to the Equipment passes to The Buyer after payment of the amount stated on the Invoice to The Seller or the nominated agent or clearance by The Seller or the nominated agent that The Buyer’s credit is sufficient for this purchase.
- (b)** The Seller shall, to enable an orderly pick-up or delivery process:

  - (i)** inform The Buyer of the earliest pickup date when the Equipment is available or in case of delivery of the Equipment, inform The Buyer about the planned delivery date.
  - (ii)** provide The Buyer and the depot with a release reference which details Equipment Type, Equipment Quantity, Depot Name, Depot Address, Local Contact Phone Number, Local Contact Email Address. In case The Seller has nominated specific containers for the Transaction, the Container ID also needs to be included. The release reference shall be valid for 30 days after the earliest pickup date unless otherwise negotiated between the parties. In case the Equipment is delivered to The Buyer a release reference is not required.
  - (iii)** object to pick up notice by The Buyer in case the equipment is not available within 24 hours. If The Seller fails to object a notified pickup, The Seller has to bear reasonable costs incurred to The Buyer for unsuccessfully trying to pick up the Equipment 24-96 hours after the notice by The Buyer.
  - (iv)** inform xChange about any Container IDs that have been picked up or delivered in writing (or forward the gate-out message from the depot).
  - (v)** In case the Equipment is delivered to The Buyer, notify The Buyer’s depot and The Buyer at least forty-eight hours prior to delivery and only after a drop-off reference has been provided by The Buyer. Failure to contact The Buyer and The Buyer’s depot at least forty-eight hours prior to delivery shall result in a waiver of claims for damages against The Buyer or its affiliates or agents relating to inability to deliver the Equipment.
- (c)** The Buyer shall, to enable an orderly pick-up or delivery process:

(i) notify The Seller's depot and The Seller at least twenty-four hours prior to pick up to verify availability of the Equipment and ability to retrieve. Failure to contact The Seller and the depot at least twenty-four hours prior to pick up shall result in a waiver of claims for damages against The Seller or its affiliates or agents relating to unavailability of Equipment. Objection by The Seller or the depot to a pickup notice by The Buyer, shall result in a waiver of claims for damages against The Seller or its affiliates or agents relating to unavailability of Equipment.

(ii) pick up the equipment 24-96 hours after the notice. Failure to pick up the equipment 24-96 hours after the notified pickup time shall result in a waiver of claims for damages against The Seller or its affiliates or agents relating to unavailability of Equipment.

(iii) In case the equipment is delivered: Provide The Seller and the depot with a Drop-Off Document which details Equipment Type, Equipment Quantity, Depot Name, Depot Address, Local Contact Phone Number, Local Contact Email Address. The Drop-Off Document shall be valid for 30 days.

(iv) object to delivery notice by The Seller in case the equipment cannot be delivered within 24 hours. If The Buyer fails to object a notified delivery, The Buyer has to bear reasonable costs incurred to The Seller for unsuccessfully trying to deliver the Equipment 24-96 hours after the notice by The Seller. In any objection to the delivery notice The Buyer has to cover reasonable costs for the storage of the Equipment resulting out of the objection.

(v) inform The Seller and xChange about any Container IDs that have been picked up or delivered in writing.

The Seller and The Buyer may also agree on immediate availability of the containers. In this case, The Seller has to bear reasonable costs incurred to The Buyer for unsuccessfully trying to pick up the Equipment within the period agreed with The Buyer.

## **7. Substitution of Equipment**

- (a) The Buyer understands and agrees that the specific piece of Equipment requested for purchase may not be the specific Equipment ultimately released to The Buyer.
- (b) The Buyer may decline pickup and cancel the deal when the Equipment to be picked up does not meet the agreed condition within reasonable limits and The Seller is not able to offer a like piece of Equipment at the same location. The Buyer may also decline the pickup and cancel the deal when specific Container IDs have already been agreed on in the Negotiated Sales Terms but are not available for pick-up. In those cases, The Buyer can cancel according to section 9. (d) (iii) of this document. Reasonable costs incurred to The Buyer for unsuccessfully trying to pick up the Equipment or reasonable repair costs to establish the agreed condition are to be borne by The Seller.

## **8. Condition of Equipment on Delivery**

- (a) In the event Equipment is delivered in a condition that was not agreed upon in the Negotiated Sale Terms, the Buyer shall within 5 working days give notice to the Seller by providing a detailed estimate of repairs.
- (b) Damages below the agreed upon DPP should be paid for by the Buyer. If no specific value has been agreed upon as DPP it should be 100USD per piece of Equipment. Damages exceeding the DPP shall be paid for by the Seller.
- (c) If the Seller does not respond to the Buyer within the number of working days stated in Sub-clause 8 (a) of receiving the detailed estimate of repairs, the Seller shall pay for the said repairs, which shall not exceed the Sale Price agreed upon in the Negotiated Sales Terms.
- (d) If the Seller disagrees with the estimate of the repair costs or that any item therein should be for the Seller's account, the Seller shall detail its objections by notice to the Buyer within the number of working

days stated in Sub-clause 8 (a) in writing on The Trading Platform. In the event of a continuing dispute the parties shall within 10 working days of the date of that notice appoint a joint surveyor who will survey the Equipment and review the estimate of repairs. The Buyer and the Seller agree to be bound by the decision of the joint surveyor as to the extent of the repairs payable by the Seller and the reasonable cost thereof and to share the cost of the survey.

**9. Cancellation**

- (a)** The Buyer and The Seller may cancel the contract or single pieces of Equipment within 12 (twelve) hours from the Accepted Date without any penalty.
- (b)** The Buyer may cancel the contract or pieces of Equipment if The Seller does not fulfil a Main Obligation of Section 9. (d) which is due, or does not render it in conformity with the contract. The Seller may cancel the contract or pieces of Equipment if The Buyer does not fulfil a Main Obligation of Section 9. (c) which is due, or does not render it in conformity with the contract.
- (c)** Main Obligations of The Buyer that, if not fulfilled, allow a cancellation by The Seller are:
  - (i)** Payment of the agreed sales price by The Buyer to The Seller or its nominated agent latest after a 3 day deadline given in writing by The Seller. The deadline can only be given after the due date of the invoice.
  - (ii)** If a pick-up of pieces of Equipment at The Sellers nominated Depot has been agreed on in the Negotiated Sale Terms: Picking up of Pieces of Equipment latest after a 14 day deadline given in writing by The Seller. The deadline can only be given after the Free Storage Period has ended.
  - (iii)** If a delivery of pieces of Equipment to The Buyers nominated Depot has been agreed on in the Negotiated Sale Terms: Providing a Drop-Off Document and enabling the delivery of the pieces of Equipment to the designated Depot latest 72 hours after a Drop-Off Document has been requested by The Seller but earliest 14 days before the start of the delivery period agreed upon in the Negotiated Sale Terms.
- (d)** Main Obligations of The Seller that allow, if not fulfilled, a cancellation of The Buyer are:
  - (i)** Providing the Equipment in the condition agreed upon in the Negotiated Sale Terms.
  - (ii)** If a pick-up of pieces of Equipment at The Sellers nominated Depot has been agreed on in the Negotiated Sale Terms: Provide a Pick-Up reference and allow The Buyer to pick-up the Equipment after a pick-up notice according to Section 6. (c) (i).
  - (iii)** If a delivery of pieces of Equipment to The Buyers nominated Depot has been agreed on in the Negotiated Sale Terms: Deliver the Equipment latest after a 14 day deadline given in writing by The

Buyer. The deadline can only be given after the delivery period agreed upon in the Negotiated Sale Terms has ended.

- (e) After a cancellation according to section 9. (c) or (d) the party that did not fulfil a Main Obligation has to pay 1.95% cancellation fee of the purchase price per cancelled piece of Equipment to the cancelling party. The cancellation fees have to be paid on top of other fees that are due according to this contract.
- (f) Cancellations have to be communicated in writing on The Trading Platform.

**10. Refunds and Payment of cancellation fees**

- (a) All cancellation fees are due immediately.
- (b) Overpaid amounts and refunds due to cancellations are due immediately.

**11. Cost for Storage, Handling and Pickup**

- (a) The Buyer shall pick up all Equipment within the Free Storage Period indicated in the Negotiated Sale Terms.
- (b) The starting day of the Free Storage Period, unless otherwise indicated in the Negotiated Sales Terms, shall be the Release Date.
- (c) The storage costs are calculated per piece of Equipment and per day that the piece of Equipment is not picked-up after the Free Storage Period has ended.
- (d) Costs for handling the equipment are borne by The Seller unless otherwise indicated in the Sale Terms. Examples for such costs are Lift on Lift of Charges, stacking move charges, depot handling charges.
- (e) The Buyer agrees to accept The Equipment in the condition that it leaves from the depot. In the event that incorrect Equipment is picked up by The Buyer's negligence, The Buyer must by all means return incorrect Equipment to the location where it was picked up at his own expense or The Buyer and The Seller agree on a financial compensation for the equipment that is fair and comparable.
- (f) The Buyer may appoint a surveyor to inspect the Equipment prior to the pickup. The costs of such surveyor shall be for The Buyer's account. The Seller shall make the Equipment available for this inspection. Shifting and stacking charges for surveys go to The Buyers account.

**12. Neutralization of Equipment**

- (a) The Buyer agrees and is responsible at his expense, for the "neutralization" i.e. removal of all prefixes, identification system check digits, names and addresses, logos, decals, markings, designs, symbols or like items, as well as ACEP markings (as appropriate) of Equipment immediately after the transfer of ownership. The Buyer is aware that Equipment is not subject to any 'fit-for-purpose' warranty claim even if the Equipment has a CSC plate. The Seller reserves the right to repossess the Equipment in case it is not neutralized in breach of this clause.

**13. Liability**

- (a) Unless otherwise defined in this Standard Sale Agreement or the Negotiated Sale Terms, The Seller shall under no circumstances be liable for any loss of profits or consequential, special, incidental,

indirect or punitive damages, whether based upon breach, negligence, strict liability, tort, breach of contract or any other theory, or for failure to perform their obligations. The Seller's sole liability hereunder for any and all loss or damage to The Buyer based upon breach of contract or tort shall be limited to and shall in no event in the aggregate exceed The Buyer's purchase price of the particular Equipment with respect to which losses, damages, expenses or costs are claimed.

- (b) Unless otherwise defined in this Standard Sale Agreement or the Negotiated Sale Terms, The Seller shall not be liable for any damages, costs or expenses paid or incurred by The Buyer on account of any imperfections, deviation from specifications or other defects impairing the quality, value or suitability for any purpose of any Equipment sold hereunder, whether caused by The Seller's negligence, strict liability acts or omissions, or otherwise.
- (c) No statement or recommendation made or assistance given by The Seller or their representatives, either orally or written, to The Buyer, its customers or agent or other person in connection with the sale by The Buyer, shall constitute a waiver by The Seller of any provisions hereof or affect The Seller's liability as herein defined.

#### 14. Indemnification

- (a) The Buyer and/or its assignees or successors will indemnify, defend and hold harmless The Seller and its affiliates (including directors, officers, employees and agents thereof) for any damages or liabilities whatsoever incurred in relation to the Equipment subsequent to the time of delivery, including but not limited to property owned or used by, or in the care, custody or control of The Buyer, arising out of or in any manner connected with the ownership, possession, use, maintenance, modification, overhaul, operation of each Equipment after Delivery of such Equipment.

#### 15. Warranties

- (a) All Equipment sold under this agreement is purchased by The Buyer on an "as is, where is" basis without covenant or warranty by The Seller of any kind, expressed or implied including without limitation, warranties of merchantability, fitness for particular purpose or condition of the Equipment, if not otherwise specified in The Negotiated Sale Terms.

#### 16. Notices

- (a) All notices given by either party or their agents to the other party in accordance with the provisions of this Agreement shall be in writing.
- (b) For the purposes of this Agreement, "in writing" shall mean any method of legible communication. A notice may be given by any effective means including, but not limited to, cable, telex, fax, e-mail, registered or recorded mail, or by personal service.

#### 17. Severability Clause

In case of doubt, if a provision of this Agreement is or becomes invalid, contestable and/or unenforceable – for whatever reason – this shall not affect the validity of the remaining provisions. The invalid, contestable and/or unenforceable provisions shall be interpreted, reinterpreted or replaced in such a way that the desired economic success is obtained as closely as possible. The same shall apply if this Agreement has a loophole.

#### 18. Definitions

**"Equipment"** means freight containers as defined by the International Organization for Standardization (ISO) and/or related equipment, such as clip-ons.



“**The Seller**” means the party selling the Equipment.

“**The Buyer**” means the party buying the Equipment.

“**Transaction**” means the specific agreement between The Seller and The Buyer related to the sale of Equipment.

“**The Trading Platform**” means the online Platform operated by xChange Solutions GmbH which The Buyer and The Seller use to facilitate a Transaction.

“**Negotiated Sale Terms**” means the specific financial and conditions details related to the sale of Equipment agreed between The Seller and The Buyer. These Terms are mutually agreed by The Buyer and The Seller for each individual Transaction on The Trading Platform.

“**Acceptance Date**” means the date and time when The Buyer and The Seller have agreed to the Negotiated Sale Terms.

“**Invoice**” means the document containing all agreed Sale Terms of a Transaction between Buyer and Seller and serves as demand for payment.

“**Invoice Date**” refers to the date stated on the Invoice. It marks the date on which the Transaction was concluded.

“**Release Document**” means the document which enables The Buyer to pick up the Equipment of the Transaction at the agreed Depot.

“**Release Date**” refers to the date stated on the Release Document upon which The Buyer can pick up the Equipment

“**Free Storage Period**” means the time after the Release Date in which The Seller covers the cost for storage.

“**Daily Storage after Free Storage Period**” means the storage costs which have to be covered by The Buyer after the end of the Free Storage Period. The Storage Fee is negotiated on a “charge per container per day” basis between The Buyer and The Seller.

“**Drop-Off Document**” means the document that enables The Seller to deliver the Equipment to The Buyers nominated Depot.

“**Equipment Type**” means the size and specification of the Equipment sold in a Transaction.

“**Equipment Quantity**” means the number of containers agreed to be sold in a Transaction.

“**Depot Name**” means the name of the Depot designated for the pickup of the Equipment.

“**Depot Address**” means the city, post code, street name, number and any required driving instructions to the Depot designated for the pickup of the Equipment.

“**DPP**” means damage protection plan.

“**Local Contact**” means the name, phone number, email address of the person nominated by The Seller to serve as point of contact to organize the pickup of the sold Equipment.

“**Container ID**” means the Equipment’s unique container identification. The identification system provides uniform international identification of containers, in documentation and in communication associated with the movement of containers from door to door. It consists of a 3-digit owner code, a 1-digit equipment category identifier, a 6-digit serial number and a 1-digit check digit.

**“Sale Price”** means the amount agreed on by The Seller and The Buyer. It is stated on the Invoice for the sale of the Equipment.