

**THIELMANN US, LLC**  
Terms and Conditions of Sales & Services  
Edition: 29.12.2022

**GENERAL**

1. The following terms and conditions (hereinafter referred to as the “**Terms and Conditions**”) apply to all present or future offers/quotations, for the (i) supply of containers including without limitation: Steel Kegs, Small Industrial containers, Intermediate Bulk Containers, Powder Handling systems, Beverage containers and Portable Tanks (hereinafter the “**Goods**”); (ii) second-hand containers, and/or (iii) services (hereinafter the “**Services**”) carried out by **THIELMANN US, LLC**. (Hereinafter referred to as “**THIELMANN**”, “**we**,” “**our**” or “**us**”) to merchant customers (hereinafter referred to as the “**Customer**”). THIELMANN and the Customer may hereinafter be referred to jointly as the “Parties” and individually as the “Party”. THIELMANN hereby expressly objects to and rejects conflicting terms and conditions of the Customer. Furthermore, the Customer’s standard terms of purchase or any other documents or conditions - regardless of the timing and the format — shall not be applicable, unless otherwise expressly agreed in writing by the Parties, and, barring such express agreement, THIELMANN expressly rejects any conflicting terms therein. In the event of conflict between or among these Terms and Conditions and any purchase order, Order Confirmation, acknowledgement, other ordering documents or other communications submitted pursuant to their commercial relationship, the Parties agree that the terms of these Terms and Conditions will control. These Terms and Conditions shall be deemed accepted by the Customer through receipt of the Goods or second-hand containers delivered by THIELMANN or acceptance certification of the works or Services produced or rendered by us, also in case of partial deliveries or partial Services.
2. Thus, these Terms and Conditions and the purchase order accepted by us (excluding Customer’s terms and conditions) shall constitute the entire agreement (hereinafter the “**Contract**”) between THIELMANN and the Customer on the Goods, second-hand containers, or Services being sold or rendered, and shall supersede all prior proposals, negotiations or communications, oral or written, regarding the same. Unless written confirmation from THIELMANN by a duly authorized representative, all prior or subsequent oral or written communications between the parties shall not be binding.
3. No purchase order shall be binding unless it has been accepted in writing by THIELMANN’S duly authorized representative (the “**Order Confirmation**”).
4. Samples, models, drawings, manuals, and other documents made available to the Customer remain THIELMANN’S property.
5. Nothing in these Terms and Conditions shall be deemed or construed as creating a legal entity, a joint venture, or a partnership between the Parties. Neither Party is authorized to act as the agent, employee or legal representative of the other Party and the relationship between the Parties is and will continue to be that of independent Parties. Neither Party may commit in the name or on behalf of the other Party.
6. THIELMANN as part of the HERITAGE B GROUP has a zero-tolerance policy towards bribery and corruption, including facilitation payments/grease payments and has internal compliance regulations that any Customer is aware of and agrees to comply with.

**I. Prices**

1. Unless otherwise stipulated in writing by the Parties in the Order Confirmation, Prices shall apply in US Dollars (\$) from the respective THIELMANN’S delivery plant, factory or warehouse and only for the Goods, second-hand containers, or Services specified in the quotation or Order confirmation, whereby the list price applicable on the date of delivery shall be charged unless a fixed price had been assured by us.
2. Unless otherwise stipulated in writing by the Parties in the Order Confirmation according to the agreed Incoterm, all attendant expenses, fees, public charges, taxes (particularly value added tax on the day of delivery), customs duties, freight, consular expenses, acceptance certification expenses and insurance premiums as directly or indirectly impact deliveries and Services and render them more expensive/cheaper shall be at the expense of/ shall be credited to the Customer.
3. In case deliveries or Services cannot be executed within 2 months of the date specified in the Contract, for reasons beyond THIELMANN’S control, THIELMANN shall have the right to increase the agreed prices for the part of consignments that are yet to be delivered if circumstances occur to significantly raise the costs of production or purchase of the affected Goods, second-hand containers, or Services as compared to the status of such costs at the time of the price agreement.
4. THIELMANN shall further have the right to raise agreed prices if one of the following circumstances occurs:

- a. If the delivery deadline is subsequently extended for one of the reasons specified in Clause IV below.
- b. If changes to products or designs have to be carried out because documents or instructions provided by the Customer failed to match real conditions or were incomplete.
- c. If the information required, for THIELMANN to execute the order, failed to reach in good time, or Customer changed the information or instructions subsequently and thus, caused a delay in delivery.

**II. Terms of payment**

1. Payment shall be made without deductions within 30 days of the date of invoice. In case THIELMANN had agreed expressly to any cash discount, the pre-requisite for its utilization shall be the complete settlement of all prior invoices for which Customer had no right of withholding or set-off of accounts. THIELMANN may execute deliveries by cash-on-delivery in case of individual and small-scale orders. With regard to second-hand containers, advance payment before delivery is required, unless otherwise agreed in writing by THIELMANN.
2. Should dispatch prove impossible EX-Works or should warehouse or shipment be hindered because instructions are not issued or documents are not available, or should delivery be delayed for reasons that are outside of the scope of THIELMANN’S responsibility, the complete invoice amount shall be due for payment 30 days after notification of readiness for dispatch.
3. Bills of exchanges or cheques shall only be accepted for the sake of payment and in case of a corresponding agreement. Credit notes for bills of exchange or cheques will be issued subject to the receipt and at the presented invoice’s value, less the outlays on the day when we can dispose of the equivalent value.
4. THIELMANN’S claims will also be due for immediate payment in the case of granting deadlines for payment, irrespective of the term (for instance, received and credited bills of exchange), if Customer does not culpably comply with the terms and conditions of payment, or if circumstances occur that raise justified doubts on the Customer’s creditworthiness. THIELMANN shall also have the right to make pending deliveries only against advance payment or ask for a deposit in this respect. Moreover, THIELMANN shall be entitled to prevent Customer from the further disposal and processing of the delivered Goods and claim them back at the expense of Customer and revoke any direct debit instruction convened in accordance with Clause III. 7 below.
5. The Customer hereby empowers THIELMANN, to enter its business premises in the above captioned cases, take possession of the Goods delivered by it and dispose of them in the best possible manner for the set-off of unsettled claims minus expenses incurred.
6. Any amount payable by the Customer to THIELMANN hereunder, if not paid when due, shall bear interest from the due date until the date payment is received at an annual rate (based upon the actual number of days in the relevant calendar year) equal to the rate of two (2) percentage points above the prime rate of interest effective for the payment due date as published in the Wall Street Journal under “Money Rates”. If there is no publication on the payment due date, then the most recent preceding day’s publication will be used. The interest rate shall not be more than the lawful maximum rate of interest. The Customer shall pay any interest due within three (3) New York Banking Days following notice from THIELMANN that such interest is due. The amount of interest payable to THIELMANN shall be engrossed for withholding tax, if any, such that the net amount received by THIELMANN after the deduction of any such withholding tax shall be equal to the full amount of interest due. The provisions of this clause shall not be construed as an indication of any willingness on the part of THIELMANN to provide extended credit as a matter of course and shall be without prejudice to any rights and remedies which THIELMANN may have under the Contract or otherwise. Any expenses incurred by THIELMANN, including but not limited to reasonable legal fees, court costs and collection agency fees, caused by delayed or non-payment by the Customer of the amount(s) due shall be for the account of the Customer and payable upon demand with supporting documentation.
7. Given the authorization issued to THIELMANN by its affiliated companies, it shall have the right to set-off accounts against all such claims as are due to Customer and owed by THIELMANN or by any of said affiliated companies without regard to the underlying legal basis. This shall also apply if one Party agreed on cash payment and the other Party on payment in bill of exchange or other means. If necessary, such agreements shall be based on the balance of account. Should the claims be due for payment on different dates, THIELMANN’S claims and the claims of its affiliates shall insofar be due for payment latest on the due date of THIELMANN’S debt and shall be settled with the value date. Sureties given to THIELMANN or to any of its affiliated companies shall respond for the claims of all said companies, respectively.

8. THIELMANN shall have the right, at its own discretion, to set-off payments of the Customer against interests and costs respectively and then, against the oldest due claims, even if Customer intended to use payment to settle another debt. Customer shall not be allowed to set off THIELMANN's claims unless the claim that is made for the set-off is undisputed by THIELMANN or it has been legally established. Customer shall only be allowed to assert a right to refuse payment or a right of retention vis-à-vis THIELMANN's claims if the claim on which the right is based is undisputed by us or it has been legally established.

9. If payment of invoices is not received, THIELMANN reserves the right to recover any costs, commissions, legal fees, judicial costs, or similar, incurred for the collection of payment including those which may be incurred by using a debt collection agency.

### III. Security Agreement

1. To secure the performance of the payment terms provided herein, the Customer hereby grants to THIELMANN a security interest in the Goods/second-hand containers described in the Order Confirmation. Until full payment is made, the Customer (1) shall maintain the Goods/second-hand containers free from any liens, security interests, and encumbrances, other than those in favour of THIELMANN; (2) shall not sell, transfer, lease, or allow the property to be sold, transferred, or leased, except in the ordinary course of business; and (3) shall keep the security in good condition, and protect it from loss, damage and deterioration. A default shall occur if any of the following shall occur: (i) failure to comply with any of the terms and conditions of the purchase; (ii) failure to pay the purchase price when due; (iii) loss or substantial damage to, or destruction of the collateral; or (iv) sale or transfer of the collateral. Upon the occurrence of any default, THIELMANN may exercise all and any rights, remedies and actions as a seller under the Uniform Commercial Code (UCC) as enacted in the State of Texas.

### IV. Delivery deadlines and schedules

1. Delivery deadlines shall begin on the date of THIELMANN's Order Confirmation but not before providing the documents, consents and approvals that must be obtained by Customer, as well as not before the receipt of any agreed advance payment. Delivery deadlines and schedules are referred to the time of the provision of the Goods from the works or warehouse. If the Goods cannot be sent for any reason that is not attributable to THIELMANN, the delivery deadlines will be deemed complied with upon the report of readiness for delivery. THIELMANN shall not be held liable for delayed or non-executed deliveries caused by its upstream suppliers. In case Customer fails to comply with his obligations under these Terms and Conditions, the delivery deadlines shall be extended by the period in which Customer is in default with its obligations. The foregoing shall apply to delivery schedules accordingly. Unless otherwise expressly indicated in writing by THIELMANN, performance time frames are merely indicative. Delivery or intervention delays cannot justify the Contract's cancellation, nor can it give rise to the payment of penalties and/or damages. Even in the case of written acceptance of commitments on time frames, THIELMANN, regardless of the circumstances, shall be automatically released from such commitments in the following cases: unforeseeable technical problems, failure to perform by THIELMANN's suppliers, force majeure event, inaccurate or lack of information provided by the Customer, time frame deferred at the request of the Customer; and/or delays associated with supplies, subcontractors, or customs formalities.

2. THIELMANN shall not be held liable for failure or delay in performing obligations in occurrence of an event or incident, which qualify as *Force Majeure*. Events of *Force Majeure* shall give THIELMANN the right to postpone the delivery date during the existence of the event of *Force Majeure* plus an adequate preparatory period. THIELMANN will have the right to withdraw partially or completely from the Contract. *Force Majeure* means all such circumstances that render the delivery of goods significantly difficult or impossible such as mandatory actions, strikes, lockouts, disruption of operations (e.g. fire, breakdown of machinery, shortage of raw materials and energy) as well as inoperability of traffic routes whether or not such circumstances occur to THIELMANN or to one of his sub-suppliers. Customer shall have the right to ask THIELMANN for a declaration to clarify if we intend to withdraw from the Contract or make delivery within an adequate period. Should THIELMANN fail to make such any declaration, Customer shall have the right to withdraw from the Contract. THIELMANN shall not be under any other obligation to specific perform by using channels other than the ones envisaged by it.

3. In case THIELMANN is in default, Customer shall have the right to withdraw from the Contract after the expiration of a subsequent deadline set to THIELMANN, only if the consignment is not reported to Customer as ready for shipment before the expiration of that deadline.

### V. Acceptance certifications. Weights. Tolerances

1. Acceptance certification for Goods with special quality specifications shall be done in THIELMANN's factory; they will be deemed delivered in a contract-conforming manner upon leaving THIELMANN's factory, whether acceptance certification has been done or not. If Goods are sent directly to third parties, delivery shall be deemed performed in compliance with agreed terms even if not acceptance certification was done in THIELMANN's factory.

2. If prices are agreed on kilogram basis, only the weight determined in THIELMANN'S factory shall apply. THIELMANN reserves the right to take the tolerances determined by the metal rolling mill in the rolling of metals into due consideration.

### VI. Shipment, Risk Transfer, Partial delivery and Continuous delivery

1. Shipment shall be done, insofar as possible, without unreasonable delay after the completion of Goods, whereby THIELMANN shall determine the channel and means of shipment as well as the transport company and haulage contractor at our own discretion without commitment to the cheapest means of freighting. Even if free delivery has been agreed, consignments shall be shipped at Customer's own risk. In such case, prepayment of shipment costs shall be regarded as bills paid in advance by THIELMANN on behalf of the Customer.

2. Goods reported as ready for shipment at agreed schedule shall be called up immediately, otherwise or in case of the impossibility of shipment, THIELMANN shall have the right to store them at Customer's risk and expense at our own discretion and the goods shall be invoiced immediately as delivered from factory.

3. Risk – including the impoundment of materials or Goods, in all transactions, including delivery on construction site or warehouse - shall pass to the Customer upon when Goods are handed over to the carrier or freight-forwarder, or at the latest, when they leave the warehouse or when they leave the factory in case of direct dispatch ex-works.

4. THIELMANN shall have the right to perform partial supplies in a reasonably acceptable scope. Partial deliveries shall be regarded as independent transactions.

### VII. Goods Warranty. Notice of defects. Defect related claim

#### **GUARANTEE: 2-year guarantee for defects resulting from production faults for Goods used under normal working conditions.**

THIELMANN'S warranty shall only cover the situations established in the present Clause. The time of departure of the Goods from our factory/warehouse shall be determinant to the contract-conforming state of the Goods:

1. The Customer shall be under the obligation to examine the Goods for visible defects immediately. If defects are detected, Customer must send the corresponding notification to us to report this without delay. Should Customer fail to duly report, the Goods delivered shall be deemed accepted unless the defect is such that could not be detected during examination.

2. The time of receipt by duly representatives of THIELMANN of the notification will be a determining factor to the timeliness of such notification. Customer has the obligation to describe the type and scope of such defects. To the effects of verification, the Customer shall provide THIELMANN with all the necessary documents and proof regarding the type and occurrence of the defect as well as the faulty Good if required by THIELMANN.

3. **In case of defects in the Goods delivered, THIELMANN, at its own discretion and at no expense to the Customer, shall correct the defect or supply a substitute. If THIELMANN cannot correct the defect or is unable to supply a substitute or if the correction of the defect or the substitute fails in any other way, Customer shall be entitled to withdraw from the Contract or to demand the corresponding reduction of the purchase price.**

4. In accordance with the foregoing, should the Customer opt for withdrawal from the Contract following the failure of subsequent fulfillment, the Customer shall not be entitled to claim compensation as a consequence of the defect.

5. If the Customer opts for compensation after the failure of subsequent fulfillment, the Goods shall remain with the Customer. Compensation shall be limited to the difference between the purchase price and the value of the defective Good. This will not apply if there is proof of fraudulent intent against THIELMANN.

6. Defects on a part of the order shall not lead to a rejection of the entire order as long as a separation of the defect-free from the defective Goods is possible with reasonably acceptable means. THIELMANN shall be given the opportunity of verifying the defects at the location of delivery. THIELMANN shall be entitled to send an expert or a sub-supplier to examine the Goods. If after examining the Goods, no defect is verified, THIELMANN shall have the right to claim compensation for the costs incurred thereby.

7. THIELMANN'S warranty will not cover defects that occur as a result of wears, external impacts, changes in the Goods supplied or their processing thereof or other faults in operating them or due to non-professional handling, unless defects have not been caused by such external circumstances. If following examination of the Goods, no defect is verified, THIELMANN shall have the right to claim compensation for incurred thereby.

8. THIELMANN shall not be liable for deviations in the Goods that are customary in the trade.
9. **With regard to second-hand containers, and notwithstanding any other terms contained herein, the Customer accepts that (i) they are provided "as is" without any warranty whatsoever, and (ii) THIELMANN disclaims all warranties, whether statutory, express, implied, oral or written, including all warranties of merchantability or fitness for a particular purpose or non-infringement related to such second-hand containers.**

excluding the provisions of any regional or local laws. The provisions of the United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980) shall not apply.

#### **VIII. Exclusion & Limitation of Liability**

1. To the maximum extent permitted by law, THIELMANN shall not be liable to the Customer under or in connection with the present Terms and Conditions whether arising in contract, tort (including negligence), breach of statutory duty or otherwise for any loss of profits (whether indirect or direct), or any type of indirect, consequential or special loss or damage including but not limited to loss or anticipated loss of revenue, business interruption, loss of any contract or other business opportunity.
2. Nothing in these Terms and Conditions shall operate to exclude or limit THIELMANN'S liability for death or personal injury caused by its gross negligence, fraud or fraudulent misrepresentation or any other liability that cannot be excluded or limited under applicable law.
3. THIELMANN shall not be liable for any other defects that are not covered under the warranty provisions in Clause VII. THIELMANN will not be liable for any unforeseeable or indirect damages.
4. THIELMANN's total and accumulated liability under the Contract, regardless of the cause and the number of claims, shall be limited to the amount paid by the Customer to THIELMANN thereunder.

#### **IX. Confidentiality and Intellectual Property**

Nothing in this document can be understood as a transfer or right, title, license, or any other form, of the Intellectual Property rights of THIELMANN. The Customer acknowledges that it shall not use the Intellectual Property, or any other Confidential Information or material received from THIELMANN related to THIELMANN brands or any other Intellectual Property right, including patents, utility models, designs, commercial, technical, or economic information, except with the prior express consent of THIELMANN. Such materials and/or Confidential Information provided by THIELMANN shall be protected by the Customer by restricting unauthorized access or use. In particular, the Customer agrees that it will not use the Intellectual or Industrial Property or the materials received to supply or provide them to any manufacturer, supplier or distributor other than THIELMANN and that, if such use is not made, such unlawful use will result in conduct contrary to the requirements of good faith, misuse of another's effort and flagrant violation of the THIELMANN 'S industrial and business secrets and unfair competition laws, without prejudice to any actions which THIELMANN may have at law against the Customer.

Confidential Information shall remain the exclusive property of THIELMANN. Upon THIELMANN 'S request, all information (including any copies or records made) and materials released shall be promptly and completely returned to it by Customer or destroyed if THIELMANN so requires. THIELMANN reserves all rights in such information and/or materials (including copyright and the right to apply for industrial property rights such as patents, utility models, trademarks etc.).

#### **X. Entire Agreement**

The eventual invalidity of any individual provision(s) of these Terms and Conditions shall not affect the validity of the remaining provisions hereof. The invalid provision shall be substituted by a provision that is closest to the envisaged economic content and objective of the invalid provision.

#### **XI. Data Protection**

Personal data of the Customer will be collected and processed and stored for the purpose of the contract execution. THIELMANN operates in accordance with the Data Protection Regulation and shall take all the reasonable steps as to protect Personal Data against loss, alteration, unauthorized access, or disclosure, including by its data processors to which THIELMANN may give access to its Users' Personal Data.

#### **XII. Place of performance and legal venue. Governing law**

1. The place of performance of the contract and the exclusive legal venue shall be the location of THIELMANN'S respective factory/facility (any disputes resulting in litigation between the Parties shall be conducted in the state or federal courts of the State of Texas).
2. These Terms and Conditions and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with them shall be governed by and construed in accordance with the laws of the State of Texas, expressly