



# Container Certification & Testing, LLC

700 Union Landing Road, Cinnaminson, NJ 08077 • Phone (856) 735-2974 • [www.containertesting.com](http://www.containertesting.com)

## TERMS AND CONDITIONS OF SALE

### 1. APPLICABILITY:

These Terms and Conditions of Sale (“Terms”) apply to the purchase of services (“Services”) from Container Certification & Testing, LLC (“Seller” or “CCT”) by the purchaser (“Buyer”). These two parties shall hereinafter be identified collectively as “the Parties”, or individually as a “Party”. These Terms along with Seller’s quotation and comprise the entire agreement between the Parties (collectively, the “Agreement”), except as hereafter agreed to and modified by Seller in writing and signed by its authorized representative. Buyer accepts this Agreement by either (1) signing and returning Seller’s quotation or (2) by Buyer’s written instructions to Seller to perform such Services as described in the Seller’s quotation (the “Sales Confirmation”). No terms, conditions, or warranties other than those identified in the quotation and these Terms shall apply. No agreement or understanding, oral or written, in any way purporting to modify Seller’s quotation and/or these Terms, whether contained in Buyer’s own issued purchase order or confirmation to Seller, or elsewhere, shall be binding on Seller unless hereafter accepted in writing and signed by Seller’s authorized representative. Buyer is hereby notified of Seller’s express rejection of any terms, conditions, or provisions inconsistent with this Agreement or to any other terms proposed by Buyer in accepting Seller’s quotation. Neither Seller’s subsequent lack of objection to any terms, nor the providing of the Service, shall constitute an agreement by Seller to any terms or conditions other than Seller’s. If Seller’s quotation includes separate changes for parts, testing supplies and/or transportation, such parts, testing supplies and/or transportation shall also be covered under this Agreement to the extent consistent with its intent. The term “Services” herein shall thus also include, as appropriate, parts, testing supplies and transportation.

### 2. CANCELLATION:

Cancellation or modification of all or any part of any Agreement for Services are subject to Seller’s prior written consent in each instance. If cancellation or modification is allowed, Buyer agrees to pay to Seller all expenses incurred and damages sustained by Seller on account of the cancellation or modification, unless otherwise agreed by the Parties. Buyer’s deposit, if any, shall be credited towards the amount due under this Section 2.

### 3. FEES PAID; TAXES:

All fees quoted for container, shelter, or other product (collectively, “Unit” or “Units”) testing or inspection to be performed by Seller are quoted for a pass/fail certification. In the event a Unit fails testing, there will be no refund of any fees paid related to that specific test. In the event Buyer wishes to have their Unit retested at a later date following a failed test, a new Agreement must be entered into and a new agreed upon fee paid.

All stated prices are exclusive of any taxes, fees, duties, and levies, however designated or imposed, including but not limited to sales, value-added and withholding taxes that are levied or based upon the amounts paid under this Agreement (collectively, “Taxes”). Any Taxes, where applicable, related to the Services purchased pursuant to this



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Agreement are the sole responsibility of Buyer unless Buyer presents an exemption certificate acceptable to Seller and the applicable taxing authorities. If possible, Seller will charge and bill Taxes as a separate invoice item. If any exemption certificate presented by Buyer is subsequently held to be invalid, then Buyer will reimburse and pay Seller the amount of the Tax and any penalties and interest related thereto.

#### **4. PAYMENT:**

Unless otherwise set forth in Seller's quotation or Sales Confirmation, Buyer will pay all invoiced amounts within thirty calendar days following the date of Seller's invoice or date the Services have been provided, whichever is later. All quoted prices for Services under this Agreement require a 50% deposit prior to the providing of any Services to Buyer, with such deposit to be paid within thirty calendar days of invoicing. Upon completion of Services, the remaining 50% of the originally quoted prices plus any agreed upon change orders for additional work performed, are required to be paid to Seller prior to the release of Buyer's Unit(s) or other equipment. Unpaid amounts (but not the deposit) will accrue interest at a rate equal to the lesser of one and one-half percent (1.5%) per month or the maximum rate permitted by applicable law, from due date until paid, plus Seller's reasonable attorney's fees and costs of collection, if required.

Seller reserves all other rights granted to a seller under the Uniform Commercial Code ("UCC") for Buyer's failure to pay for the Services or any other breach by Buyer of these Terms. In addition to all other remedies available to Seller (which Seller does not waive by the exercise of any rights hereunder), Seller may suspend the delivery of any Services if Buyer fails to pay any amounts when due and the failure continues for five (5) business days following Buyer's receipt of notice thereof.

#### **5. TITLE; RISK OF LOSS; STORAGE:**

Except in cases of Seller's own gross negligence or willful misconduct, risk of loss or damage and title of any Unit(s) provided by Buyer to Seller as part of an Agreement for Services, remains with Buyer.

Buyer may store any Unit(s) presented for testing at Seller's testing facility for up to ten (10) calendar days following the completion of testing after which time, a \$10 per day storage fee will apply, unless prior arrangements with the Seller have been made and agreed to.

#### **6. INSPECTION; TESTING OF UNITS:**

Seller will exercise its experience and professional judgement when evaluating and testing all Unit(s) provided to it by Buyer. While not possible in all scenarios, prior to subjecting any Unit to physical testing, Seller will, where reasonably possible, evaluate the physical appearance of such item and in its professional opinion, inform Buyer if Seller believes physical testing may potentially lead to the damaging or destruction of such Unit. All testing is done on a pass/fail basis and while Seller will use its best efforts, where possible, to minimize or avoid damage to any Unit submitted for testing, other than as a result of Seller's own gross negligence or willful misconduct in carrying out and conducting such testing, and then only to the proportionate extent of Seller's own gross negligence or willful misconduct, Seller assumes no responsibility for either a failing test result, or the overall failure and destruction of the Unit itself.



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In the event of a failing test result, Buyer will be informed by Seller of the reason(s) for the failure and provided with, where possible, a proposed remedy (or remedies) for consideration. In the event Seller provides Buyer with a potential proposed remedy (or remedies) for consideration, Seller does not warrant or guarantee the success of any such proposal(s), and any final decision(s) with respect to the implementation of any possible remedies discussed, including, but not limited to any additional costs to research, develop and/or implement such proposed remedies are the full and sole responsibility of Buyer. Buyer hereby waives any and all potential claims against Seller for any direct or indirect costs incurred by Buyer related to Buyer's research, development and/or implementation of any Seller proposed remedy.

### **7. LIMITED WARRANTY:**

Seller makes no representations and provides no warranties (explicit or implied) to Buyer, its employees, agents or transferees/customers (i.e., the Units' ultimate end users) with respect to any actual Unit Seller may test on Buyer's behalf, or on any Unit Buyer may subsequently produce for sale to its customers, based upon any test results provided under these Terms and corresponding Agreement for Services. Unless Seller agrees in a writing signed by its authorized representative, no agent, employee, or other representative of Seller has any authority to bind Seller to any affirmation, representation, or warranty except as stated in this Agreement.

### **8. AFFIDAVITS AND CERTIFICATIONS:**

Following testing and certification, upon payment of the final invoice by Buyer, Seller agrees to use best efforts to furnish to Buyer within thirty calendar days, all affidavits and certifications as may be required under this Agreement. Seller will notify Buyer as soon as reasonably possible in the event such affidavits and/or certifications cannot be provided within thirty calendar days, the reason(s) for such delay and the anticipated timeframe for furnishing such documentation.

### **9. INDEMNIFICATION:**

(a) Buyer will defend, indemnify, and hold harmless Seller, its owners, directors, officers, members, shareholders, employees, representatives and agents from and against any loss, injury, death, damage, liability, claim, deficiency, action, judgment, interest, award, penalty, fine, cost, fees (including import and export customs fees), or expense (including reasonable attorney and professional fees and costs, and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers) (hereinafter, "Claims") arising out of or occurring in connection with (i) Buyer's breach of any provision hereof and the warranties made herein; (ii) the wrongful, negligent or willful misconduct of Buyer or its employees, subcontractors, agents or transferees/customers (i.e., the Units' ultimate end users), including but not limited to: (A) any misuse or modification of the Buyer's Unit(s) by them, (B) any act (or failure to act) by them in contravention of any safety procedures or instructions that Seller may have otherwise provided to Buyer or its employees, subcontractors, agents or transferees/customers at any time, or (C) the failure to store, install, operate, or properly maintain the Unit(s) in accordance with normal industry practices and guidelines.

Notwithstanding the foregoing, while Seller agrees it will apply its experience and professional judgement when providing its testing and inspection Services to Buyer, Buyer acknowledges that any Unit or Units presented to Seller



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for testing and/or visual inspection, whether presented by Buyer to Seller physically or via remote video (in the case of visual inspections only), have been designed, developed and/or manufactured directly by Buyer or on Buyer's behalf by Buyer's agents, assigns and/or third party vendors (collectively "Buyer's Manufacturers") and Buyer agrees to indemnify and hold Seller harmless for and against any and all claims related to the design, development and/or manufacturing of such Unit or Units submitted to Seller for testing or inspection, in addition to any Unit(s) Buyer or Buyer's Manufacturers may subsequently produce for sale to Buyer's customers in the future.

(b) Seller will defend, indemnify, and hold Buyer harmless from and against any Claims arising out of or occurring only in connection with the gross negligence or willful misconduct of Seller or its employees or agents in performing the Services in connection with this Agreement, and then only to the proportionate extent of Seller's own gross negligence or willful misconduct.

### 10. LIABILITY:

(A) BUYER ACKNOWLEDGES THAT THIS AGREEMENT AND ANY POTENTIAL LIABILITY ARISING UNDER IT COVERS ONLY THE TESTING OR VISUAL INSPECTION OF THE SPECIFIC UNIT(S) PRESENTED TO SELLER BY BUYER, WHETHER PRESENTED PHYSICALLY OR VIA REMOTE VIDEO (IN THE CASE OF VISUAL INSPECTIONS ONLY). BUYER FURTHER ACKNOWLEDGES THAT ANY UNIT(S) PRESENTED TO AND TESTED OR VISUALLY INSPECTED BY SELLER HAVE BEEN DESIGNED, DEVELOPED AND/OR MANUFACTURED DIRECTLY BY BUYER OR BUYER'S MANUFACTURERS AND IN NO EVENT WILL SELLER BE LIABLE TO BUYER, ITS AGENTS, ITS ASSIGNS, ITS THIRD PARTY VENDORS OR ITS TRANSFEREES/CUSTOMERS (I.E., THE UNITS' ULTIMATE END USERS) FOR ANY DIRECT, INDIRECT, SPECIAL, LIQUIDATING, INCIDENTAL, EXEMPLARY, CONSEQUENTIAL OR PUNITIVE DAMAGES. SUCH DAMAGES INCLUDE, BUT ARE NOT LIMITED TO, ANY LOSS OF USE OR UNDER-UTILIZATION OF LABOR OR FACILITIES, LOSS OF REVENUE OR ANTICIPATED PROFITS, LOST DATA, AND COSTS OF PROCUREMENT OF SUBSTITUTE GOODS, WHETHER OR NOT THE POSSIBILITY OF SUCH DAMAGES HAVE BEEN DISCLOSED IN ADVANCE BY BUYER OR COULD HAVE BEEN REASONABLY FORESEEN BY BUYER AND/OR SELLER, REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

(B) IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT AND THE SERVICES PROVIDED HEREUNDER, REGARDLESS OF THE THEORY [CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE], EXCEED THE TOTAL PURCHASE PRICE PAID BY BUYER FOR THE SERVICES PROVIDED BY SELLER UNDER THESE TERMS. NOTWITHSTANDING THE FOREGOING, THE AMOUNT OF SELLER'S AGGREGATE LIABILITY IN ALL INSTANCES INVOLVING TORT WILL BE CALCULATED BASED UPON THE PROPORTIONATE EXTENT OF SELLER'S OWN GROSS NEGLIGENCE OR WILLFUL MISCONDUCT AS IT RELATES TO THE CLAIM, NOT TO EXCEED THE MAXIMUM AMOUNT ALLOWABLE IN ACCORDANCE WITH THIS SECTION 10(B)

### 11. NO LICENSE:

Seller's sale of the Services will not confer upon Buyer any license, express or implied, under any patents, trademarks, trade names, or other proprietary rights owned or controlled by Seller, its subsidiaries, affiliates, or suppliers; it being specifically understood and agreed that all the rights are reserved to Seller, its subsidiaries, affiliates, or suppliers. Without limiting the foregoing, Buyer will not, without Seller's prior written consent, use any trademark or trade name



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of Seller in connection with any of Buyer's Units, whether submitted for testing to Seller in accordance with the Terms of this Agreement or not.

### **12. TERMINATION:**

In addition to any other remedies that Seller may have, Seller may terminate this Agreement with immediate effect upon ten (10) calendar days written notice to Buyer, if Buyer: (i) fails to pay any amount when due under this Agreement and the failure continues for five (5) business days after Buyer's receipt of written notice of nonpayment; (ii) has not otherwise performed or complied with any of these Terms, in whole or in part; or (iii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.

### **13. FORCE MAJEURE:**

Neither Party will be liable for any failure or delay in performing an obligation under this Agreement that is due to any of the following causes, to the extent beyond its reasonable control including, but not limited to: strikes, differences with workers, fires, floods, storms, accidents; pandemics, epidemics or quarantines or the recurrences thereof, or the orders of any governmental authority related thereto; other action(s) of any governmental authority, war, insurrection or riots, or shortages of labor, energy, raw materials, production facilities, or transportation and/or supply chain issues beyond a Party's control. Where delays or failures are caused by labor difficulties, Seller will not be obligated to seek or obtain any settlement that, in Seller's sole judgment, is not in Seller's best interest.

For the avoidance of doubt, Force Majeure shall not include (a) financial distress nor the inability of either party to make a profit or avoid a financial loss, (b) changes in market prices or conditions, or (c) a party's financial inability to perform its obligations hereunder.

### **14. COMPLIANCE:**

Each Party will comply with all applicable laws, regulations, and ordinances, and Buyer will comply with any export and import laws and regulations in effect of any country that may otherwise be involved in the transaction(s) contemplated by the Agreement.

### **15. GOVERNING LAW; VENUE; DISPUTE RESOLUTION:**

(a) The contract for the sale of Services by Seller to Buyer shall be deemed to have been finally executed in New Jersey, regardless of the location from which the sale documents originated. All matters arising out of or relating to this Agreement will be governed by and construed in accordance with the internal laws of the State of New Jersey without giving effect to any choice or conflict of law provision or rule (whether of the State of New Jersey or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of New Jersey. Any legal suit, action or proceeding arising out of or relating to the Agreement will be instituted in the federal or State courts located in New Jersey. Each party irrevocably submits to the exclusive jurisdiction of these named courts in any the suit, action or proceeding.



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(b) Seller will have the sole and exclusive right to determine whether any dispute, controversy or claim arising out of or relating to the Agreement, or the breach thereof, will be submitted to a court of law or arbitrated. The venue for any the arbitration will be in Burlington County, New Jersey and subject to the rules of the American Arbitration Association. There will be one arbitrator and the arbitration will be conducted in the English language. The arbitrator's award may be confirmed and reduced to judgment in any court of competent jurisdiction.

(c) In the event the matter is submitted to a court, Seller and Buyer hereby agree to waive their right to trial by jury and covenant that neither of them will request trial by jury in any litigation.

### **16. SURVIVAL:**

In addition to any other term whose context may so require, Sections 1, 3, 4, 5, 6, 7, 9, 10, 11, 14, 15 and 17 of this Agreement will survive termination or expiration of the order and/or resulting contract.

### **17. MISCELLANEOUS:**

Buyer acknowledges that is has not been induced to purchase any Services from Seller by any representation or warranty not expressly set forth in this Agreement. These Terms and the Sales Confirmation constitute the entire agreement of the parties and supersede all existing agreements and all other oral or written communications between them concerning its subject matter. None of the Terms may be added to, modified, superseded, or otherwise altered, except by a written document signed by an authorized representative of Seller that specifically references these Terms and states that it modifies them. If there is a conflict between the provisions of any Sales Confirmation and these Terms, then the terms of the Sales Confirmation will govern. No waiver by Seller of any of the provisions of these Terms is effective unless explicitly set forth in writing that specifically references these Terms and is signed by Seller. No failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from these Terms operates or may be construed as a waiver thereof. No single or partial exercise of any right, remedy, power, or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

Buyer will not assign any quotation or accepted order for the Services, in whole or in part, without Seller's prior written consent. Buyer shall have no right to set off against its payment obligations under this Agreement any amount owed to it by Seller under any other separate order or agreement between them. Seller's quotations are not binding offers regardless of any validity period stated therein. Acceptance of a Buyer's order by Seller is required to form a valid and enforceable sales contract under these Terms.

### **18. HEADINGS AND CAPTIONS:**

The Section headings contained in these Terms are for convenience only and will not affect the interpretation of any provision. If any provision of this Agreement is held to be prohibited or unenforceable, the provision will be changed and interpreted to accomplish the objectives of the provision to the greatest extent possible under applicable law and the remaining provisions will continue in full force and effect.



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### **19. SEVERABILITY:**

If any of these Terms are held to be invalid or unenforceable for any reason by a court of competent jurisdiction, the remaining provisions will continue to be valid and enforceable. If a court finds that any of these Terms are invalid or unenforceable, but by limiting such provision it would become valid and enforceable, then such provision will be deemed to be written, construed, and enforced as so limited. If the court declines to so modify or supplement such a provision, then it shall be severed from these Terms and the remaining provisions shall continue in force and effect as stated above unless such deletion makes the resulting contract impossible to perform.