

# CLARKSON PORT SERVICES B.V.

## General Sales and Service Conditions

V:2:23MAY2024

Effective 23 May 2024

## 1. Definitions

1.1. In these terms and conditions, the following terms shall have the following meanings:

**Clarksons:** the private limited company Clarkson Port Services B.V., established in Den Helder, registered under the Dutch Chamber of Commerce number 37078316 as well as a subsidiary or affiliated company that chooses to use these conditions;

**Client:** any natural or legal person who gives an order to Clarksons to perform Services and Activities and enters into an Agreement to this end, regardless of the agreed method of payment;

**Agreement:** the agreement concluded between Clarksons and the Client regarding the Services and Activities to be performed by Clarksons, of which these Terms and Conditions form part;

**Services:** all acts and activities, in whatever form and by whatever name, which Clarksons performs for or on behalf of the Client;

**Activities:** the handling of shipping and transport matters for shipowners, carriers, time charterers and/or masters of ocean-going vessels, the receipt and delivery of incoming cargo and outgoing cargo, the handling of cargo for others and everything related to this such as unloading, entry, storage, removal, loading, stowage, stock management, assembly, order processing, order picking, preparation for shipment, invoicing, exchange of information and management, ship management, providing mediation in concluding (transport) agreements including charters for air transport, all this insofar as directly or indirectly a means of transport is involved, arranging for the transport of persons and Goods and filing customs declarations;

**Good/Goods:** the goods made available or to be made available to Clarksons or its Third Parties/Servants and Agents by or on behalf of the Client for the purpose of executing the Agreement;

**Third Party (ies)/Servant(s)/Agent(s):** all those, not being employees, with whom Clarksons has contracted on behalf of the Client and who are used by Clarksons in the performance of its Services and Activities, regardless of whether Clarksons has committed itself in its own name or in the name of the Client;

**Force Majeure:** all circumstances which Clarksons could not reasonably avoid and the consequences of which Clarksons could not reasonably foresee and prevent. Force Majeure is in any case understood to mean: fire, explosion, war, natural disasters, exceptional weather conditions, floods, riots, strikes, unexpected government measures, burglaries, computer and electricity failures, hidden defects in the materials used by Clarksons, quarantines and epidemics; and

**Terms and Conditions:** the conditions applicable to the Agreement, including these terms and conditions, which will be referred to hereinafter in each case as "these Terms and Conditions" or "the present Terms and Conditions".

## 2. General

- 2.1. These Terms and Conditions govern all offers, Agreements, legal acts and acts without an intended legal effect relating to the Services and Activities to be performed by Clarksons, insofar as they are not governed by mandatory law and/or insofar as these Terms and Conditions are not deviated from with the express, written consent of Clarksons' management. In that event, the deviating conditions only apply to the order for which such deviation has been made. The legal relationship between the parties shall be governed by these Terms and Conditions, even after the Agreement has ended.
- 2.2. Clarksons explicitly rejects the applicability of any other (standard) terms and conditions of the Client.
- 2.3. Clarksons is entitled to engage Third Parties/Servants/Agents for the performance of its Services and Activities and to use Third Parties' and/or Servants' and Agents' goods when carrying out its tasks. Clarksons is authorised to accept the (standard) terms and conditions of such Third Parties/Servants and Agents at the Client's risk and expense and shall, upon request, provide the Client with (a copy of) the (standard) terms and conditions under which Clarksons has contracted with the Third Parties/Servants/Agents. Clarksons is entitled, but not obliged, to invoke such (standard) terms and conditions, including any arbitration or jurisdiction clauses contained therein, against the Client.

- 2.4. If Clarksons' managers or other employees, or Third Parties/Servants/Agents engaged by Clarksons are directly sued extracontractual, it has been stipulated on their behalf that they are entitled to invoke all of the provisions contained in these Terms and Conditions and the Agreement.

#### ***Agent/Shipbrokers' activities***

- 2.5. The Standard Terms and Conditions of Dutch Shipbrokers and Agents in the version as filed with the registry of the District Court in Rotterdam and the Chamber of Commerce in Rotterdam shall additionally be applicable to all Services and Activities performed and to be performed by Clarksons which form part of shipbroker's work and/or activities carried out by Clarksons as agent for shipowners, transporters, time charterers and/or captains of sea-going vessels, with the exception/exclusion of the arbitration clause contained in therein ('the Standard Terms and Conditions of Dutch shipbrokers and Agents', attached as **APPENDIX 1**).

#### ***Transportation***

- 2.6. In the event that Clarksons explicitly undertakes to have Goods and people transported, whether or not on certain routes or in relation to certain modes of transport the Dutch Forwarding Conditions (FENEX standard terms and conditions) in the version filed with the Registrar's Office of the District Courts of Amsterdam, Arnhem, Breda and Rotterdam at the time of the formation of the Agreement shall additionally apply, unless another version has been agreed, with the exception/exclusion of the arbitration clause contained therein ('the Dutch Forwarding Conditions', attached as **APPENDIX 2**).

#### ***Storage***

- 2.7. In the event that Clarksons explicitly undertakes to have Goods stored the FENEX Dutch Warehousing Conditions, in the version filed with the Court at Rotterdam on 15 November 1995 will apply additionally, unless another version is agreed, with the exception/exclusion of the arbitration clause included therein ('the Dutch Warehousing Conditions', attached as **APPENDIX 3**).

#### ***Customs and tax services***

- 2.8. In the event that Clarksons undertakes to perform customs formalities (including formalities relating to storage in a bonded warehouse) and/or to provide fiscal representation, the Dutch Forwarding Conditions shall additionally apply, in the version filed with the Registrar's Office of the Courts of Amsterdam, Arnhem, Breda and Rotterdam at the time of the formation of the Agreement, unless another version is agreed, with the exception/exclusion

of the arbitration clause therein ('the Dutch Forwarding Conditions', attached as **APPENDIX 2**).

- 2.9. In the event of a conflict between the provisions of the (other) additional terms and conditions referred to in paragraphs 2.5, 2.6, 2.7 and 2.8 above and the provisions of these Terms and Conditions, the relevant provisions of these Terms and Conditions shall prevail.
- 2.10. If one or more provisions of these Terms and Conditions should at any time be wholly or partially void or voidable, the remaining provisions of these Terms and Conditions shall remain fully enforceable. Furthermore, such a clause shall be deemed applicable that, being legally permissible, comes closest to the object and purport of the void provision.
- 2.11. The latest version of these Terms and Conditions shall be applicable, or the version that was valid at the time the Agreement was concluded.
- 2.12. In the event of inconsistencies with the translated version of these Terms and Conditions, the Dutch version of these Terms and Conditions shall prevail.

### 3. Offers and quotations

- 3.1. All Clarksons' quotations and offers are without obligation, unless the quotation stipulates a term for acceptance and explicitly states otherwise.
- 3.2. Agreements, as well as amendments and additions thereto, come into effect if and insofar as Clarksons has confirmed these in writing or if Clarksons has commenced with the execution of the Agreement.
- 3.3. Providing Clarksons with information, which is reasonably required for the performance of customs formalities, shall constitute an order to that effect, unless otherwise agreed in writing. Clarksons is never obliged to accept an order to perform customs formalities.

### 4. Remunerations

- 4.1. Prices are always quoted on the basis of the prices applicable at the time of the offer (quotation). If, between the time of the offer and the time of execution of the Agreement, one or more cost factors (including tariffs, wages, costs of social measures and/or laws, freight and exchange rates etc.) increase, Clarksons is entitled to pass on this increase to the Client.

- 4.2. If Clarksons charges all-in rates or fixed rates, these rates shall be deemed to include all costs that are generally borne by Clarksons when handling the order. In any event, all-in prices and fixed prices do not include duties, taxes and levies, consular and authentication charges, costs for drawing up bank guarantees and insurance premiums.
- 4.3. In the event of circumstances of such a nature that they did not need to be taken into account when the Agreement was concluded and which cannot be attributed to Clarksons and significantly increase the cost of performing the Services and Activities, Clarksons shall be entitled to an additional payment. In this case, the additional payment shall consist of the extra costs Clarksons has had to incur in order to perform the Services and/or Activities, plus an additional payment -deemed fair and equitable- for the Services and/or Activities to be provided by Clarksons.
- 4.4. Unless there is intent or deliberate recklessness on the part of Clarksons, in the event of insufficient loading and/or unloading time, all resulting costs, such as demurrage, waiting costs, etc. shall be for the account of the Client, even if Clarksons has accepted the bill of lading and/or the cargo from which the additional costs arise, without complaint. Clarksons shall endeavour to avoid these costs.

## 5. Implementation

- 5.1. The designation of, respectively the order to Clarksons to provide Services or to perform Activities, authorises Clarksons to carry out all usual activities and to enter into agreements, whether or not in its own name, on behalf of the Client, without Clarksons being obliged to do so at any time or in any way. Services and/or Activities may be refused without stating reasons.
- 5.2. Clarksons shall not be obliged to take out insurance of any kind, unless this has been explicitly agreed in writing between the parties.
- 5.3. All calls for cargo against a specific date and/or time by Clarksons are always subject to change of the said date and/or time due to unforeseen circumstances or changes.
- 5.4. If a period has been agreed or specified for the performance of certain Services and/or Activities, or for the delivery of certain Goods, then this shall never be a deadline. The indication by the Client of a delivery time does not bind Clarksons and Clarksons does not guarantee arrival times. If a period is exceeded, the Client must therefore declare Clarksons to be in default in writing and grant it a reasonable period in which to comply with the Agreement.

- 5.5. All information and reports are provided by Clarksons to the best of its knowledge and ability and are non-binding. Clarksons is not responsible for the accuracy of this information.
- 5.6. If, when giving the order, the Client did not provide any instructions regarding the implementation, storage, safekeeping or handling, Clarksons is free to determine how the Agreement is executed and may always accept the documents which are customary for the Third Parties/Servants/Agents it engaged for the execution of the order.
- 5.7. The Client guarantees the Goods it has made available to Clarksons or its Third Parties/Servants/Agents.
- 5.8. The Client shall, at its own expense and risk, make any means of transport and the Goods to be loaded or unloaded from them available in such a way that Clarksons is able to carry out the work safely, responsibly and without delay.
- 5.9. The Client shall make the Goods available, stating a correct and complete description of the Goods and instructions regarding the storage, safekeeping or handling thereof, and furthermore stating all information or details which it knows or should know are important for Clarksons to be able to perform its Services and Activities safely, responsibly and without delay and/or which are of such a nature that the Agreement would not have been concluded or not under the same conditions if Clarksons had known of the true state of affairs.
- 5.10. The Client is obliged to timely provide Clarksons with all documents relating to the Goods, as well as to the storage, safekeeping and handling thereof, which the Client knows or should know are of importance to Clarksons. If the Goods and/or Services and/or Activities are subject to government regulations, including customs and excise regulations and tax provisions, the Client shall timely provide all information and documents necessary for Clarksons to comply with such regulations.
- 5.11. The Client guarantees that the information and documents provided by it are correct and complete and that all instructions and Goods made available are in accordance with the legislation and regulations. Clarksons is not obliged to check whether the statements are correct and complete.
- 5.12. If Clarksons is not provided in time with the documents required to execute the Agreement, Clarksons is entitled to suspend the execution of the Agreement and/or charge the Client for the additional costs resulting from the delay at the then customary rates.
- 5.13. The Client is obliged to make the Goods available to Clarksons or its Third Parties/Servants/Agents in sound packaging at the agreed place, time and manner,

accompanied by the agreed documents and other documents required by or pursuant to government regulations.

- 5.14. The Client guarantees seaworthiness, or the sound packaging (including containers in which the Goods are stowed) required for the modes of transport ("modaliteiten") and/or storage in question, and clearly legible labelling of Goods in accordance with the applicable safety and environmental regulations, and in the absence thereof, in accordance with the commonly accepted standards applicable in this respect.
- 5.15. All manipulations such as checking, sampling, taring, counting, weighing, measuring, repacking, stowing (in containers), splitting and taking delivery of batches under court-appointed expertise shall take place only on the explicit instruction and at the risk of the Client, against payment of the costs.
- 5.16. If a Good or Goods made available to Clarksons or its Third Parties/Servants/Agents is/are in a damaged defective condition, visible from the outside, on arrival or on receipt, Clarksons shall be entitled, but not obliged, to look after the Client's interests vis-à-vis the carrier or others at the Client's expense and risk and to provide evidence of the condition, without the Client being able to derive any right vis-à-vis Clarksons from the manner in which Clarksons has undertaken this task.
- 5.17. Clarksons is entitled to take all measures, including those which do not arise from the Agreement, in order to protect the interests of the Client and its Goods. If necessary, Clarksons shall consult with the Client in good time. If timely prior consultation is not possible, Clarksons shall take the measures which in its opinion appear to be in the best interests of the Client and shall inform the Client of the measures taken and the costs involved as soon as this is reasonably possible.
- 5.18. If Clarksons delivers the Goods without the Client, addressee or receiver having established their condition in Clarksons' presence, the Goods shall be deemed to have been delivered in good condition, unless there is proof to the contrary.
- 5.19. The Client is obliged to accept or take delivery of the Goods at the time they are made available to the Client. If the Client refuses to take delivery or accept delivery or fails to provide information or instructions necessary for the delivery, Clarksons shall be entitled to store the Goods at the expense and risk of the Client. The risk of loss, damage or depreciation shall pass to the Client from the moment the Goods are made available to the Client.
- 5.20. The Client is obliged to immediately take possession of the Goods and/or have them removed if, in the opinion of Clarksons, they are so dangerous, or cause such a nuisance, that Clarksons

cannot be required to hold them for a longer period. In this case, the removal and loading shall take place by or on behalf of the Client and at the Client's own expense and risk.

- 5.21. If the Client fails to comply with its obligations as stated in paragraphs 5.19 and 5.20 of this article, Clarksons is entitled to:
- 5.21.1. the private or public sale of the Goods at the Client's expense and risk after the expiry of fourteen days after dispatch to the Client of a written notification of the intended sale, without the need to observe any further formality;
  - 5.21.2. abandon or destroy the Goods at the expense and risk of the Client after the expiry of fourteen days from the date on which a written notification of the intended abandonment or destruction was sent to the Client, if it is likely that in the event of the sale of the Goods, the costs will exceed the benefits or if, despite a reasonable attempt by Clarksons, no buyer can be found;
  - 5.21.3. remove and destroy, at the expense and risk of the Client, immediately and without further notice, or otherwise render harmless those Goods which, in the opinion of Clarksons, pose an immediate threat of danger and are so dangerous, or cause such a nuisance, that Clarksons cannot be required to hold them any longer, even if Clarksons was aware of the danger upon acceptance.
- 5.22. If, within the framework of the Agreement, Clarksons or its Third Parties/Servants/Agents perform Services or Activities at the Client's location or at a location designated by the Client, the Client shall provide the reasonably required facilities free of charge.
- 5.23. Clarksons commits to making efforts on sustainable business practices within the framework of the laws and regulations applicable to it and the requirements of its certifications. It is committed to developing an appropriate environmental management system. It further undertakes to minimise the production of waste and the use of water and energy within its own organisation by optimising the production process. It also undertakes to increase the "recycled content" of its products, insofar as this can be done without relevant loss of quality and without other adverse effects on the environment, public health, etc. Finally, Clarksons undertakes to strive to minimise its environmental impact also in the provision of framing services, such as transport, after-sales service, and the like. Clarksons gives preference to suppliers/clients that comply with environmental labelling schemes to ensure product sustainability. Example: EU Ecolabel.



## 6. Duration, suspension, dissolution, and early termination of the Agreement

- 6.1. The Agreement between Clarksons and the Client is entered into for an indefinite period of time, unless the nature of the Agreement dictates otherwise or if the parties explicitly agree otherwise in writing.
- 6.2. Clarksons may terminate the Agreement with immediate effect, if the Client:
  - 6.2.1. discontinues all or a significant part of its profession or business operations;
  - 6.2.2. loses the power to dispose of its capital or a significant part thereof;
  - 6.2.3. loses its legal personality, is dissolved or is actually wound up;
  - 6.2.4. is declared bankrupt;
  - 6.2.5. offers a settlement to its creditors;
  - 6.2.6. applies for a suspension of payments;
  - 6.2.7. loses power to dispose of its property or a significant part thereof as a result of an attachment.
- 6.3. If the Client fails to perform its obligations under the Agreement, or fails to perform them in full or on time, or if, after concluding the Agreement, Clarksons has good reason to fear that the Client will not perform its obligations, Clarksons may suspend the performance of its obligations with immediate effect. Clarksons is also entitled, without prejudice to its right to compensation for damages, to terminate all or part of the Agreement with immediate effect, after it has given the Client a deadline of fourteen days for compliance and the Client has still not complied with its obligations after this deadline has passed. If, by setting such a deadline, Clarksons' interest in the undisturbed operation of its business would be disproportionately impaired, Clarksons may also terminate the Agreement without observing a deadline.
- 6.4. Furthermore, Clarksons is entitled to terminate the Agreement if circumstances arise which are of such a nature that performance of the Agreement is impossible or if other circumstances arise which are of such a nature that Clarksons cannot reasonably be expected to perform the Agreement.

- 6.5. If Clarksons proceeds with suspension or termination, it is in no way liable to pay compensation for damages and costs incurred in any way, while on the other hand the Client must compensate or indemnify Clarksons for breach of contract.
- 6.6. If Clarksons continuously imputably fails to comply with one or more of its obligations under the Agreement, the Client may terminate all or part of the Agreement with Clarksons, after:
- 6.6.1. the Client has given Clarksons written notice of default by registered letter, has sufficiently stated Clarksons' failure and has allowed Clarksons a period of at least thirty days for compliance, and
- 6.6.2. Clarksons has not fulfilled its obligations after this period.
- 6.7. If, after receiving the Goods, Clarksons is unable to commence the performance of the Agreement, or if this Agreement cannot be continued or completed, Clarksons shall inform the Client accordingly. The parties then have the right to terminate the Agreement in writing. In this case, the Agreement shall end upon receipt of this notice. Clarksons shall subsequently not be obliged to perform the Agreement and is entitled to unload and/or store the Goods at a suitable location; the Client is entitled to take possession of the Goods. The costs incurred in connection with the termination with regard to the Goods shall be borne by the Client. Except in the event of Force Majeure, Clarksons shall be obliged to compensate the Client for the damage it has suffered as a result of the termination of the Agreement, whereby the damages shall not exceed the fee/price agreed by the parties for the performance of the Agreement, with a maximum of 10,000 SDRs.
- 6.8. Neither party can terminate the Agreement if the failure - in view of its special nature or limited significance- does not justify the termination and the consequences thereof.

## 7. Force Majeure

- 7.1. In the event of Force Majeure, Clarksons obligations shall be suspended for the duration of the Force Majeure. If this period lasts longer than two months, both parties shall be entitled to terminate the Agreement without being obliged to pay compensation to the other party.
- 7.2. All additional costs caused by Force Majeure shall be borne by the Client and must be paid on Clarksons' demand.
- 7.3. Insofar as Clarksons has already partially fulfilled its obligations under the Agreement or will be able to fulfil them at the time of the Force Majeure, and insofar as independent value can be attributed to the part already fulfilled or to be fulfilled, Clarksons is entitled to separately

invoice the part already fulfilled or to be fulfilled respectively. The Client must pay this invoice as if it were a separate Agreement.

## 8. Payment and collection costs

- 8.1. All amounts owed by the Client to Clarksons shall be paid within the agreed period, or failing this, within 30 days of the invoice date.
- 8.2. The amounts and invoices sent by Clarksons are also due in the event damage has occurred during the performance of the Agreement.
- 8.3. Contestation of an invoice does not suspend the obligation to pay it. Nor is the Client entitled to suspend payment of an invoice for any other reason.
- 8.4. The Client shall never be entitled to set off claims for payment arising from any Agreement concluded with Clarksons.
- 8.5. In the event of a dispute regarding the amount owed by the Client to Clarksons, the documentation to be submitted by Clarksons shall provide full proof of the nature, content and extent of the Services and/or Activities carried out, subject to proof to the contrary.
- 8.6. If Clarksons grants credit, the term of this credit period is at its discretion. In this case, Clarksons is entitled to charge a late payment surcharge.
- 8.7. If the Client fails to pay any amount due within the period stipulated in paragraph 8.1 of this article, he shall be in default without notice of default being required, and shall be obliged to pay the statutory commercial interest in accordance with Section 119a of Book 6 of the Dutch Civil Code, with effect from the day on which payment should have been made until the day on which payment is made in full.
- 8.8. Clarksons is entitled to charge the Client for legal and other costs incurred to collect the amounts due. These costs are payable from the time the Client is in default. The extrajudicial costs amount to 15% of the claim, with a minimum of € 500,00. Legal costs and enforcement costs fully qualify for reimbursement and are calculated on the basis of the actual costs incurred by Clarksons.
- 8.9. Upon termination or dissolution of the Agreement, all Clarksons' claims - including future claims - shall become immediately due and payable in full. In any case, all claims shall be immediately due and payable in their entirety if:

- 8.9.1. the Client's bankruptcy is declared, the Client applies for a suspension of payments or otherwise loses its power to freely dispose of all or a significant part of its assets;
- 8.9.2. the Client offers a settlement to its creditors, is in default of meeting any financial obligations towards Clarksons, ceases to operate its business operations or is dissolved.
- 8.10. Clarksons is not obliged to provide security from its own resources for the payment of freight, duties, levies, taxes and/or other costs, should this be required. If Clarksons has provided security from its own resources, it is entitled to demand immediate payment of the amount for which security has been provided from the Client.
- 8.11. The Client shall at all times reimburse Clarksons for any amounts to be collected or levied by any government in connection with this Agreement or A(a)greement(s), as well as any related fines, on Clarksons' demand and within two working days. These amounts must also be reimbursed by the Client if Clarksons is held liable for these amounts by a Third Party/Servant/Agent engaged by Clarksons in connection with the Agreement.

## **9. Securities, right of retention and retention of title**

- 9.1. On Clarksons' demand the Client shall immediately furnish security for what the Client owes or will owe to Clarksons. This obligation shall also exist if the Client has already had to provide security in connection with the amount owed. All consequences of not complying or not immediately complying with Clarksons' request to provide security shall be for the Client's account.
- 9.2. On Clarksons' demand, the Client shall provide security for costs paid or to be paid by Clarksons to third parties or authorities and other costs incurred or expected to be incurred by Clarksons on behalf of the Client, including freight, port costs, duties, taxes, levies and premiums.
- 9.3. Clarksons shall never be obliged to make any payment on behalf of the Client, as long as it has not received the required security.
- 9.4. In the absence of documents, Clarksons shall never be obliged to provide any indemnity or security.
- 9.5. Clarksons is entitled to refuse to deliver to anyone any Goods, documents and monies which Clarksons has or will have in its possession in connection with the Agreement.

- 9.6. Clarksons is entitled to exercise a right of retention on all Goods, documents and monies which it has or will have in its possession in connection with the Agreement for all claims which Clarksons has or will have against the Client and/or the owner of the Goods, including claims which do not relate to the Goods in question.
- 9.7. For all claims Clarksons has or will have against the Client and/or the owner of the Goods, a pledge is established on all Goods, documents and monies which Clarksons has or will have in its possession in connection with the Agreement.
- 9.8. Clarksons may consider anyone who entrusts Goods to Clarksons on behalf of the Client for the performance of its Services and/or Activities, as authorised by the Client to create a pledge on those Goods.
- 9.9. If, when settling the invoice, a dispute arises regarding the amount due or if a calculation is required to determine the amount which cannot be carried out quickly, the Client or the party demanding delivery is obliged, on Clarksons' request, to immediately pay the part which the parties agree is due and to provide security for the payment of the disputed part or for the payment of the part for which the amount has not yet been established.
- 9.10. Clarksons may also exercise the rights outlined in this article for what is still owed to it by the Client in connection with previous orders and Agreements.
- 9.11. The sale of any collateral shall take place for the account of the Client in the manner provided by law or, if there is agreement thereon, privately.
- 9.12. Goods supplied to the Client by Clarksons within the framework of the Agreement, shall remain the property of Clarksons until the Client has properly fulfilled all its (payment) obligations under the Agreement. Until such time, the Goods may not be resold, pledged or encumbered in any other way.
- 9.13. Clarksons reserves the rights and powers to which it is entitled under the Dutch Copyright Act and other Dutch intellectual legislation and regulations. Clarksons is entitled to use the knowledge it gains from the implementation of an Agreement for other purposes, insofar as this does not involve bringing strictly confidential information from the Client to the attention of third parties.
- 9.14. In the event that Clarksons wishes to exercise its property rights as set out in this article, the Client hereby gives, in advance, Clarksons and its Third Parties/Servants/Agents unconditional and irrevocable permission to enter all those places where Clarksons' property is located and to retrieve the same.

## 10. Liability

- 10.1. All Services and Activities are performed at the Client's risk. The Client shall be liable for all damage and loss, including personal injury, suffered by Clarksons, its Third Parties/Servants/Agents, its employees and its other Clients, caused by the Client itself, its Goods (including the packaging of its Goods), its Servants/Agents, employees and other persons appointed by it.
- 10.2. The Client shall be liable to Clarksons for all damages caused by the failure to comply with its obligations under the Agreement(s) and these Terms and Conditions and any applicable additional conditions.
- 10.3. If Clarksons is held liable by the Client for damages incurred during the performance of the Services and/or Activities, Clarksons' liability shall not exceed its liability under the Agreement, these Terms and Conditions and any applicable additional conditions.
- 10.4. Clarksons shall not be liable for any damage or loss suffered by the Client, unless the Client proves that the damage or loss was caused by intent or deliberate recklessness on the part of Clarksons or its managing employees.
- 10.5. Clarksons shall never be liable for loss of profit, consequential loss, intangible loss, lost savings, damage due to business interruption and/or any other form of indirect damage howsoever arising.
- 10.6. Clarksons shall never be liable for damage resulting from the failure of the Client to comply with any of its obligations under the Agreement(s), these Terms and Conditions and any applicable additional conditions.
- 10.7. Clarksons shall never be liable for damage, of whatever nature, due to the fact that Clarksons or its subordinates relied on incorrect and/or incomplete information provided by the Client.
- 10.8. Clarksons shall never be liable for damage caused by the absence or inadequacy of proper packaging of the Goods.
- 10.9. The Client shall be liable to Clarksons for all damages - including but not limited to fines, consequential damages, interest, penalties and confiscations, including consequences due to failure to comply or to comply on time with customs documents and claims relating to product liability and/or intellectual property rights - which Clarksons suffers directly or indirectly as a result of, among other things, the Client's failure to comply with any obligation under the Agreement or under applicable legislation and regulations, as a result of any

incident which is within the Client's control (such as, for example, the inaccuracy, incorrectness or incompleteness of its instructions and the data and/or documents provided by it, the failure to make the Goods available, or the failure to do so on time, at the agreed time, place and manner, as well as the failure to provide documents and/or instructions, or the failure to do so on time), as well as resulting from the fault or negligence in general of the Client and/or its employees and/or third parties whose services the Client engages and/or third parties that work on behalf of the Client.

- 10.10. The Client shall indemnify Clarksons at all times against claims from third parties, including employees of both Clarksons and the Client, related to or arising from the damage referred to in the previous paragraph, as well as for damage whose cause is not attributable to Clarksons but to another party. If the Client fails to take adequate measures, Clarksons is entitled to do so itself, without notice of default. All costs and damages incurred by Clarksons as a result are entirely at the expense and risk of the Client.
- 10.11. In the event of storage, Clarksons shall be deemed to have exercised due care in the event of damage and/or loss due to theft by breaking and entering if it has ensured that the storage place was properly locked. Where Goods are stored on open ground or can only be stored on open ground, or where it is customary for Clarksons to store such Goods on open ground, any liability on the part of Clarksons for damages possibly relating to such storage on open ground, is excluded.
- 10.12. The damages to be compensated by Clarksons shall never exceed the invoice value of the goods, to be proved by the Client, or in the absence thereof, the market value, to be proved by the Client, applicable at the time the damage arose.
- 10.13. Clarksons' liability for damage or loss to Goods shall further be limited to 4 SDRs per kilogram damaged, reduced in value or lost gross weight, up to a maximum of 10,000 SDRs per event or series of events with the same cause of damage.
- 10.14. Clarksons' liability for all damages other than damage to or loss of Goods, shall be limited to 10,000 SDRs per event or series of events with one and the same cause of damage, on the understanding - and subject to this limitation of liability to 10,000 SDRs - that if customs formalities are carried out by Clarksons or it acts as a tax representative, Clarksons shall not be liable for any damage, unless the Client proves that the damage was caused by Clarksons' fault or negligence.
- 10.15. In all cases, Clarksons' liability is limited to the amount for which it is insured and which the insurance company actually pays out, plus the excess.

- 10.16. If Clarksons is sued extra contractually by someone who is not a party to the Agreement or to a transport agreement made by or on behalf of Clarksons, for damage to or loss of a Good or a delay in delivery, its liability to such a party shall never exceed its contractual liability.
- 10.17. All liability limitations and exclusions in these Terms and Conditions on behalf of Clarksons also apply to its employees and Third Parties/Servants/Agents engaged by Clarksons.

## 11. Prescription and limitation

- 11.1. Clarksons shall not be liable for any damage or loss, unless the Client notifies Clarksons in writing of the damage or loss, either within four weeks of becoming aware of the damage, or within three months after the relevant Services and/or Activities have been completed and the Goods have been or should have been delivered by Clarksons. In this regard, the shortest period shall apply.
- 11.2. All claims of the Client in connection with the Agreement shall be subject to prescription by the expiry of a period of nine months and shall lapse by the mere expiry of a period of eighteen months. In the event of total or partial loss, damage, delay or stock discrepancy, the periods shall commence on the first of the following days:
- 11.2.1. the day on which the Goods were delivered or should have been delivered by Clarksons;
- 11.2.2. the day of notification of the loss or damage.
- 11.3. For all other claims, the periods specified in paragraph 11.2 shall commence from the day on which they became due and payable. In any event, the periods referred to in paragraph 11.2 for all claims in connection with the Agreement shall commence on the day following the day on which the Agreement between the parties was terminated.

## 12. Applicable law and disputes

- 12.1. The CONTRACT and these TERMS AND CONDITIONS, as well as all further agreements arising therefrom or related thereto, including all questions of their existence, validity and termination, shall be exclusively governed by and construed in accordance with Dutch law. Validity and termination thereof, shall be exclusively governed by and construed in accordance with Dutch law.



- 12.2. The place of settlement and claim settlement shall be the place of Clarkson's registered office. The applicability of the United Nations Conventions on Contracts for the International Sale of Goods (Vienna 1980) (CISG) is excluded.
- 12.3. All disputes between parties, on whichever legal ground, shall be exclusively brought before the District Court of Rotterdam, unless Clarkson opts for the following, in which case that will apply exclusively:

**Optional**

- 12.3.1. Disputes shall be settled exclusively in arbitration in the Netherlands, in accordance with the UNUM Arbitration Rules, with the exception of claims up to €100,000 and undisputed claims which, at the option of the Clarkson, and only in the event of the submission of a dispute by Clarkson against the Client, may be submitted to the competent court in Rotterdam, the Netherlands.
- 12.3.2. In case of arbitration, the arbitrators shall, if applicable, apply the provisions of the Convention on the International Carriage of Goods by Road (CMR).
- 12.4. The Client guarantees to Clarkson that the consignor, the consignee and the other cargo interests, in the event of damage to or loss of the Goods and/or a delay in their delivery, shall be bound by the provisions of this article. However, if Clarkson is involved in proceedings before a different court, or in arbitration in accordance with a different regulation, Clarkson shall be free to bring legal action against the Client before the same court or in the same arbitration procedure.

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These terms were drafted in the Dutch language. In case of ambiguity or any unclarity the Dutch version shall prevail.

## **Appendix 1: The Standard Terms and Conditions of Dutch shipbrokers and Agents**



# GENERAL CONDITIONS AND RULES FOR DUTCH SHIPBROKERS AND AGENTS

UNITED DUTCH SHIPBROKERS AND AGENTS

DEPOSITED AT THE REGISTRY OF  
THE ROTTERDAM DISTRICT COURT  
AND THE CHAMBER OF COMMERCE  
IN ROTTERDAM.

**UNITED DUTCH SHIPBROKERS AND AGENTS, CONSISTING OF:**

ORAM, THE AMSTERDAM REGION BUSINESS ASSOCIATION  
(AMSTERDAM SHIPAGENTS ARE INCORPORATED IN ORAM)

ASSOCIATION OF SHIPBROKERS IN THE NORTHERN NETHERLANDS

ASSOCIATION OF ROTTERDAM SHIPBROKERS AND AGENTS

ZEELAND SHIPBROKERS AND SHIPAGENTS ASSOCIATION

# GENERAL CONDITIONS AND RULES FOR 'CARGADOORS' (DUTCH SHIPBROKERS AND AGENTS)<sup>1</sup> 2009

## 1. General/applicability:

- 1.1. For the purposes of the present conditions 'Cargadoor's Services' shall be understood to cover the following:
  - 1.1.1. Services performed in an enterprise the business of which is attending to and taking care of ships- and transportation matters for shipowners, carriers, time charterers and/or masters of sea going vessels, delivering incoming cargo and receiving outgoing cargo, which shall comprise all that needs to be done in respect of or for the shipping- and/or transportation industry, such as for instance acting as customs agent/freight forwarder and conducting of shipsmanagement, all in the widest sense, as well as
  - 1.1.2. On behalf of others (in particular but not limited to receivers, shippers and senders) handling of cargo, as well as anything related there to in any way, as well as
  - 1.1.3. Acting as intermediary as to concluding contracts (amongst others and in particular contracts of affreightment, other contracts of carriage, contracts pertaining to the use of containers and the like, contracts of insurance and contracts of sale and purchase- whether or not in a broking capacity- and all related contracts always in the widest sense of the words), to the extent that a seagoing vessel or other means of conveyance is involved directly or indirectly;
- 1.2. The present conditions and not those of the principal are applicable in respect of services rendered/to be rendered by the 'Cargadoor', unless to the extent that it would explicitly have been agreed otherwise in writing (including by telex, facsimile or e-mail), whilst observing the provisions of art. 2.1 of the present conditions;

<sup>1</sup> Note by the Associations:

The Associations are aware that the words 'Shipbrokers and Agents' in practice are/have become the household translation/equivalent of the Dutch term 'Cargadoor'; In the heading of these conditions these words therefore have been retained between brackets; However, in recent years the activities of their members 'Cargadoors' have expanded beyond the classical activities of Shipbrokers as well as beyond those of Shipagents; Also, contracts regularly show a mixture of several different characteristics; Therefore, to prevent confusion and as the Dutch term 'cargadoor' in the Netherlands Shipping and Transportation Industry does these days indeed cover it all, in the present conditions the word 'Cargadoor' will be consistently used.

- 1.3. Board members/directors/managers and/or staff and/or (other) subordinates of the 'Cargadoor' and/or (of) third parties engaged by the 'Cargadoor', may also invoke the provisions of the present conditions in the event of a claim being made against them directly;
- 1.4. To the extent that one or more (parts of) provisions from the present conditions would in law transpire to be null and void or would be annulled and/or avoided, or would in equity be not applied, then that is of no consequence to the validity of the other (parts of) provisions of these Conditions.

## **2. The activities of the 'Cargadoor' in the wide sense of the word:**

- 2.1. All work done and/or to be done by the 'Cargadoor' that generally does not come within the scope of the work of a 'Cargadoor' in the strict sense of the word (such as for instance but not limited to stevedoring, freight forwarding, running of warehouses, controlling etc), shall be also subject to the conditions that are customary in the branch of trade concerned or that have been registered and/or laid down by the organisation of that branch of trade;  
The aforesaid, however, with the exception of such provisions therein that might extend a 'Cargadoor's liabilities beyond those envisaged in the present conditions, in stead of which the pertinent provisions of the present conditions (amongst others and in particular in art. 5 'liability') remain in force, and also with the exception of such jurisdiction or arbitration clauses as might be part of these other conditions, in stead of which art. 8 of the present conditions ('Tamara Arbitration' with the exceptions envisaged in that art.) remains in force, and finally with the exception of such choice of law clauses as would give rise to the application of other than Netherlands Law, in stead of which art. 7 of the present conditions remains in force;
- 2.2. Thus amongst others the conditions herein after shall (also) apply:
  - 2.2.1. On Freight Forwarding work the 'Netherlands Freight Forwarding Conditions', with the exception of amongst others and in particular the present art 11 (liability) para's 2, 3 and 4 and the arbitration-/jurisdiction clause (presently art. 23);
  - 2.2.2. On Stevedoring work the 'Rotterdam Stevedoring Conditions', with the exception of amongst others and in particular the present art. 8 (liability) para's 1 and 3 and the arbitration/ jurisdiction clause (presently art. 13);

- 2.2.3. On Warehousing/Storage work the 'Netherlands Warehousing Conditions' (Nederlandse Opslag Voorwaarden), with the exception of amongst others and in particular the present artt. 19 (damage to and loss of goods) and 4 (arbitration clause); See, however, also art 2.2.4 herein after;
  - 2.2.4. On Tank Storage the 'General Conditions for Tankstorage in the Netherlands', with the exception of amongst others and in particular the present artt. 57 (liability of the storage company) and 66 (jurisdiction/arbitration clause);
- 2.3. In case of conflict between these (other) conditions referred to in herein before and the present conditions these other conditions shall prevail (whilst observing the afore said sub 2.1 and sub 2.2 as to the non applicability of such provisions as extend liability as well as arbitration and/or jurisdiction clauses and/or choice of law clauses), however to the extent only that the work is being done or has been done upon instructions from or in the interests of a party interested in the cargo; In all other situations the present conditions shall prevail.

### **3. The conclusion of contracts/payment:**

- 3.1. The 'Cargadoor' quotes the terms (such as for instance freight- and additional costs) on which a contract envisaged by the principal, may be brought about;  
The intended contract is then concluded by acceptance of the quotation;  
All quotations by the 'Cargadoor' are deemed to be without engagement unless the contrary is specified therewith;
- 3.2. Freight- and/or additional costs and/or other services are invoiced by the 'Cargadoor' to the principal as soon as possible after sailing and/or departure respectively after having been provided/delivered;
- 3.3. The 'Cargadoor', who after all is usually debited himself for the items sub 3.2 and who is usually under an obligation to promptly settle these sums, in the matter 'de iure' acquires title so sue (of his own) vis-a-vis the principal (whilst taking into account the other provisions of the present conditions):
  - 3.3.1. It stands established between the principal and the 'Cargadoor' that the 'Cargadoor' himself in these matters has title to sue vis-a-vis the principal;

3.3.2. On the other hand the 'Cargadoor' shall hold the principal harmless against such later claims by third parties as are established in a Court of law in respect of such amounts as may have been paid in these matters by the principal to the 'Cargadoor' to a maximum equal to these amounts paid;

3.4. (Timely) payment/penalty/interests:

3.4.1. In case a shipping agent allows credit, the duration of this credit period is at the discretion of the shipping agent himself. The debtor will be in default immediately if payment is not made within the above period, with no notice of default required.

3.4.2. In the event of nonpayment within the period stated in paragraph 1, to defray administrative expenses the Shipping Agent will be entitled to charge 10% of the outstanding amount plus statutory commercial interest pursuant to Section 119a of Book 6 of the Netherlands Civil Code;

3.4.3. The Shipping Agent will be entitled to pass on the claim to a debt-collection agency in the event of nonpayment within the stated period. All associated extrajudicial and judicial costs are to be borne by the debtor.

3.4.4. The Shipping Agent has right of retention in respect of all claims on its principal/client on all assets that are in its possession that were obtained from or on behalf of the principal/client concerned, regardless of who owns the retained goods. The Shipping Agent furthermore has right of pledge on all goods owned by the principal/client.

3.4.5. Prolonged and/or repeated non payment/signalling:

3.4.5.1. If the principal is/remains in default repeatedly and/or for a prolonged period of time with timely payment of one or more sums/invoices due to the 'Cargadoor', then the 'Cargadoor' is at liberty to report that to the Association of Rotterdam 'Cargadoors'/ORAM (section shipagencies);



- 3.4.5.2. In addition and supplementary to the reminders/ summonses by the 'Cargadoor' himself the Association/ORAM (section shipagencies) may then decide to inform that principal that he has been so reported and remind him that there are obligations outstanding for his account with members of the association/ORAM (section shipagencies);
- 3.4.5.3. In case of repeated and/or prolonged arrear(s) in payment of 'Cargadoor's invoices/sums due to the 'Cargadoor', the Association/ORAM (section shipagencies) is at liberty to point out to its members that there is no obligation to extend credit to the principal in question.

#### **4. Execution:**

- 4.1. The appointment of respectively instructions to a 'Cargadoor' to render his services in that capacity to any ship (inclusive of crew and/or cargo) in any port, shall confer upon the 'Cargadoor' authority to carry out and perform such work and services as are customary in the 'Cargadoor's trade and, whether in his own name or not, conclude contracts for the benefit of his principal however without being bound by the very appointment or instruction to perform all and sundry work for the benefit of that ship, her crew and her cargo;
- 4.2. If in case of any contract of affreightment between charterer and shipowner it has been agreed that the 'Cargadoor' appointed by the charterer is to act as the ship's agent, the charterer and shipowner shall be jointly and severally liable as principal vis-a-vis the 'Cargadoor' according to the terms envisaged by these Conditions;
- 4.3. The 'Cargadoor' shall be at liberty to have work that he contracts out to third parties for the benefit of his principal done, respectively make use in the execution of his obligations of goods/equipment of third parties, on the conditions that are customary in the branch of trade of these third parties concerned or that the third parties themselves have laid down for their business;  
The 'Cargadoor' himself shall then also be entitled though not obliged to vis-a-vis his principal rely on those conditions, inclusive of conceivable arbitration-, jurisdiction-, and/or choice of law clauses there in (in that case notwithstanding the articles 8 [arbitration] and 7 [choice of law] of the present 'Cargadoors conditions');

- 4.4. In all instances where the 'Cargadoor' receives cargo for shipment/transport he shall be deemed to have this cargo in his charge and render his services concerning these goods as authorised agent to the shipper/sender, until such time as when it has been taken over by or on behalf of the ship/the carrier, unless before or at taking over of the goods the 'Cargadoor' has explicitly stated to act on behalf of the carrier;  
In the aforesaid instances the cargo remains entirely at the risk and expense of the shipper/sender and therefore all costs such as berth dues and demurrage charges in respect of barges, demurrage on wagons, discharging of barges and wagons, superintendence, weighing, expenses for work at night or overtime shall be at the expense of the shipper/sender;
- 4.5. The 'Cargadoor' shall render his services against remunerations expressly agreed with the principal, or in the alternative – in the absence of these- as per his published charges or those quoted to the principal in question;  
However, in case of special work or particularly time consuming or exhaustive work being required, an equitable extra remuneration may be charged which, failing agreement, shall be determined in arbitration as per the rules of procedure of the Stichting Transport and Maritime Arbitration (TAMARA) (see also art. 8 and following);
- 4.6. Both before, during and after the performance of his obligations the 'Cargadoor' is entitled to demand security in respect of the sums due to him by his principal; He shall at no time be under any obligation to make any payment whatsoever on behalf of his principal until such time he has received the proper security or funds to do so;  
The 'Cargadoor' shall be entitled to charge his principal a fee of one percent over advance payments made on his principal's behalf;
- 4.7. The Cargadoor shall be entitled to retain goods and/or monies received from or intended for his principals until such time as when appropriate security has been posted for the sums due to him;  
The 'Cargadoor' shall have a lien on any and all goods and moneys he has in his custody on behalf of his principal for any claims which the 'Cargadoor' may have against his principal from any cause whatsoever;  
The 'Cargadoor' shall further more be entitled to set off any sum due to him from the principal against and from moneys owed by him to the principal and/or to sell the goods on which he has a lien either publicly or, having obtained leave to do so from the Court, privately. if the

principal has failed to, within 30 days as of the dispatch by registered letter, facsimile message or e-mail of a summons, either provide security or settle the 'Cargadoor's claim;

- 4.8. Any and all expenses incurred in connection with the remittance of moneys from, to or on behalf of the principal shall be for account of the principal;
- 4.9. If the sums due to the 'Cargadoor' by the principal are expressed in a foreign currency, the 'Cargadoor' shall have the option to demand payment either in the foreign currency concerned or by first rate bankcheque or in Netherlands Currency at the exchange rate of the Bank of the Netherlands prevailing on either the date of his instructions or the highest rate prevailing on the date of the account in question or the highest rate prevailing on the date of payment;
- 4.10. The 'Cargadoor' shall never be liable for any loss on exchange in respect of moneys which he has in his keeping on behalf of his principal or which he is to collect or pay on the latter's behalf. Freight or other moneys expressed in foreign currency which are to be collected or paid by him on behalf of his principal, may be accepted or paid by him in Netherlands currency at the Bank of the Netherlands' exchange rate prevailing on the day of payment;
- 4.11. All information and communications, for instance concerning port facilities, dispatch, cost and expenses, progress of loading and unloading, arrival and departure, strikes, etc etc, nothing excepted, shall be given and made by the 'Cargadoor' to the best of his knowledge and ability, but he shall not be responsible for their correctness;
- 4.12. Calling forward of cargo by the 'Cargadoor' against a specific date and/or time is done at all times subject to alteration of that date and/or time because of unforeseen circumstances and/or changes in the sailing/transportation schedule; Amongst other things and in particular the 'Cargadoor' is never liable for the laycan obligations;
- 4.13. The Cargadoor is never responsible for the proper collection of moneys due on delivery of goods shipped on C.O.D terms;
- 4.14. Shipment of cargo may be refused at the 'Cargadoor's discretion without any reason therefore being given, even after he has taken it in his charge;

- 4.15. If the 'Cargadoor' has cargo or other matters in his custody he is entitled to terminate that situation:
  - 4.15.1. He shall then notify (to the last address known to him of) his principal of his intentions to do so by telex, or facsimile message, or e-mail or registered letter,
  - 4.15.2. If such cargo or other matters have then not been disposed of within the reasonable period of time specified in said notice, then the 'Cargadoor' is entitled at his discretion to store the goods for the account and at the risk of whom it may concern; Also he is then entitled to sell the goods, having obtained permission from the Court to do so, as envisaged in artt. 8 : 491 of the Neth. Civil Code and 632 of the Neth Code of Civil Proceedings;
  - 4.15.3. The 'Cargadoor' shall give notice of such sale intended by him by telex, or facsimile message, or by e-mail or by registered letter to the last address known to him of his principal;
  - 4.15.4. Furthermore the 'Cargadoor' shall then be entitled to set off and deduct any sums due to him from the principal against and from the proceeds of the goods;
- 4.16. The risk of mutilation of any communication or interruption of the transmission of communications through the use of the postal services, radio, telephone, telex, facsimile, telegraph and e-mail shall be for account of the principal; The 'Cargadoor' shall not be liable for misunderstandings arising or resulting from the use of a language other than the Netherlands language;
- 4.17. The 'Cargadoor' shall under no circumstance be bound to give guarantees and/or security vis-a-vis third parties on behalf of his principal; In respect of any and all guarantee given by him by order of his principal a commission in line with what is customarily charged by Netherlands commercial banks shall be payable to him by the principal on the maximum amount for which the 'Cargadoor' may be held liable under the guarantee or security given by him;
- 4.18. The 'Cargadoor' shall not be bound to effect any insurance, unless it has been explicitly agreed otherwise in writing (which includes exchange of telex-, facsimile messages and/or e-mails);
- 4.19. The 'Cargadoor' shall not be answerable for the due payment of amounts outstanding in the Netherlands, where the granting of credit is customary

or in the interest of an effective performance of his duties and where the debtor was to be considered solvent, all at his absolute discretion; He shall never be answerable for the due payment of amounts outstanding abroad; Nevertheless the 'Cargadoor' is 'authorised and instructed' by his principal to demand payment in his own name of amounts outstanding both in the Netherlands as well as abroad and to institute proceedings to that end;

- 4.20. The 'Cargadoor' shall be entitled to deliver cargo against appropriate security if the receiver is not in possession of bills of lading. Appropriate security shall include a bankers guarantee by a first class Bank on the form as recommended by the association of which the 'Cargadoor' is a member;
- 4.21. The 'Cargadoor', who names his principal or adequately identifies the principal amongst parties interested in the shipping and transportation industry by the use of abbreviations or otherwise or by giving the name of the ship, shall not on his own account be liable for the payment of orders or instructions which he has placed or given on behalf of his principal to third parties; Any payment in respect of such order or instruction made by the 'Cargadoor' shall be considered an advance which at all times can be claimed back as long as the 'Cargadoor' has not himself received the amount concerned from his principal
- 4.22. If the agreement between the 'Cargadoor' and the principal is by way of a long-term agreement the principal shall, save in the event of a serious breach by the 'Cargadoor', be under an obligation to give a term of notice that is under the circumstances equitable before terminating the agreement, whilst the 'Cargadoor', in the event that he is not equitably and fairly held harmless by observance of such term of notice and a conceivable goodwill payment, shall be entitled to an indemnity to be determined on the basis of equity and fairness in respect of amongst other things investments, selling costs, advertising expenses and extra costs arising from the discharge of redundant personnel, incurred on behalf of the principal;
- 4.23. 'Reach'
- 4.23.1. Pursuant to E.E.C directive No. 1907/2006 of the European Parliament and the European Council dd. 18th of December pertaining to the "Registration, Evaluation, Authorisation and Restriction of Chemicals" ("Reach") chemical substances in brief may only be produced on the territory of the European

- Community (“EC”) or brought on to the Market of the EC after having been registered by the manufacturer or importer of these chemical substances with the European Chemicals Agency (“ECHEA”), as envisaged by the provisions of REACH;
- 4.23.2. If and to the extent that the ‘Cargadoor’ in the course of rendering his services to the principal deals with cargo (including but explicitly not limited to on behalf of the principal physically bringing of cargo into EC customs territory) (“handling of cargo”), whilst that cargo in any manner (as such, in preparations or in articles) contains chemical substances envisaged in art 3.1 REACH (“substances”), the ‘Cargadoor’ renders these services only on the condition precedent that he shall not be regarded as the importer thereof as envisaged by “REACH”; Furthermore the principal recognises that the ‘Cargadoor’ is not to be regarded as the importer; Upon request of the ‘Cargadoor’ the principal shall render every reasonable assistance that is required to enable the ‘Cargadoor’ to substantiate vis-a-vis the authorities that the ‘Cargadoor’ is not to be regarded as the importer and/or which legal entity is to be regarded as the importer;
- 4.23.3. If and to the extent that the ‘Cargadoor’ in the course of rendering his services to the principal handles cargo that in any manner (as such, in preparations or in articles) contains “Substances” and the ‘Cargadoor’ is then at any time regarded as Importer concerning such cargo by third parties (including the authorities), then the principal shall hold the ‘Cargadoor’ harmless against any and all claims by these third parties, any and all contractual obligations and any and all statutory obligations (inclusive of any steps taken by way of enforcement by the authorities) in relation to thus having been regarded as Importer as envisaged by “REACH” and against any and all damages and costs that the ‘Cargadoor’ incurs or makes as a consequence thereof.

## **5. Liability:**

- 5.1. The ‘Cargadoor’ shall be liable for damages or losses, arising as a consequence of the non or improper execution of the instructions given to him or otherwise only to the extent that it is proven by his counter part that the damages or losses in question have been caused by wilful misconduct or negligence tantamount there to by the ‘Cargadoor’ himself or his leading subordinates;

- 5.2. However, the 'Cargadoor's liability is limited to a maximum amount equal to the remuneration that the 'Cargadoor' would be entitled to in the event he had properly executed the instructions in question;
- 5.3. Furthermore the 'Cargadoor' shall never be liable
- 5.3.1. In respect of damage or loss to goods that have been entrusted to him for handling or storage;
- 5.3.2. In respect of the consequences of war, danger of war, riots, strikes or slow down actions, congestion and/or overburdening of any port and the like that may be of influence on or interrupt his regular course of business;  
In the event that cargo and/or other matters cannot be delivered because of one or more of the circumstances set out in previous sentence or other circumstances amounting to force majeure, the 'Cargadoor' shall nevertheless be entitled to payment of Warehouse hire and/or storage charges up to the moment of delivery, as per the applicable rates;
- 5.3.3. For any kind of consequential damages;
- 5.4. The principal shall be liable to 'Cargadoor', notwithstanding the provisions of art. 6:74 of the Neth Civil Code, in respect of all obligations entered into vis-a-vis the 'Cargadoor' by the Master of the Ship to which the 'Cargadoor renders his services on behalf of the principal and in respect of any and all instructions whether emanating from the Master or from the office of the principal or from their subordinates or written on their stationery, even where for instance the Master, respectively the person by whom such instruction has been given on behalf of the Principal has exceeded his authority, unless the principal proves that the 'Cargadoor' had been aware of such authority having been exceeded or that this could have been established timely and simply and without investigation abroad;
- 5.5. The principal shall hold the 'Cargadoor' harmless in all cases where the 'Cargadoor' is himself liable to third parties (including the authorities and/or departments or services of the authorities) in respect of his actions on behalf of the principal vis-a-vis such third parties which shall include any fine as may be imposed upon him, in particular but not exclusively where the 'Cargadoor' has acted as licensed customs agent, except for instances or wilful misconduct or negligence tantamount there to as envisaged in art. 5.1 of the present conditions.

## **6. Extinction-/time bar of the right of action:**

Any claim against the 'Cargadoor' shall become time barred after 9 months have passed and shall become extinct after 18 months have passed, these periods to be determined as of the date of the final day of the occurrence that gave rise to the claim.

## **7. Applicable law:**

The legal relationship between the 'Cargadoor' and the principal shall be governed by Netherlands Law, unless and to the extent that elsewhere in the present conditions it is specified otherwise or that in the contract/instructions in question it has been agreed differently explicitly, and therefore the question whether and to what extent the 'Cargadoor' has executed correctly any action on behalf of the principal shall also be judged in accordance with the Laws and views prevailing in the Netherlands; Errors at his end as to foreign law or situations abroad cannot be held against him.

## **8. Arbitration clause:**

- 8.1. All disputes arising between the 'Cargadoor' and the principal shall be subject to arbitration in Rotterdam or Amsterdam as per the TAMARA Rules, which shall be supplied by the 'Cargadoor' upon request;
- 8.2. Notwithstanding the provisions in the preceding paragraph the 'Cargadoor' shall be at liberty but not obliged
  - 8.2.1. To bring claims concerning sums of money that are due and demandable, and of which the indebtedness has not been challenged by the other party within 4 weeks as of invoice date/ as of the date of their becoming due and demandable, before the regular Court, i.e. in first instance before the Rotterdam- or the Amsterdam District Court ('Rechtbank');
  - 8.2.2. In case proceedings are commenced against him before a regular Court (whether or not abroad) or before other (than TAMARA) arbitrator(s) then, to the extent that there exists the procedural possibility to do so, proceed against his principal/ contract partner before that same Court/. Arbitrator(s) (for instance and in particular in indemnity);



- 9. The present Conditions shall be available, in Dutch and/or in English upon first request from the ‘Cargadoors Associations’ and/or from the ‘Cargadoor’;**  
**In case of any discrepancy between the text in Dutch of these conditions and the text in any other language the Dutch text shall prevail;**  
**If these Conditions are amended then the new Conditions, provided they have been registered promptly and properly, shall replace the previous conditions without the need for further juridical acts;**
- 10. These Conditions may be quoted as the “General Conditions for ‘Cargadoors’ (Dutch Shipbrokers and Agents) 2009”.**

## Appendix 2: The Dutch Forwarding Conditions

**DUTCH FORWARDING CONDITIONS**

May 1<sup>st</sup> 2018

as lodged by FENEX with the Clerks of the District Courts of Amsterdam under number 23/2018 and  
Rotterdam under number 16/2018

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## Definitions

### Article 1. Definitions

In these Conditions, the following terms shall have the following meanings:

1. **Third party/parties:** all of those persons, who are not employees, with whom the Freight Forwarder has an undertaking on behalf of the Client, irrespective of whether the Freight Forwarder has the undertaking in its own name or in the name of the Client;
2. **Services:** all activities and work, in any form and by whatever name, including those performed by the Freight Forwarder for or on behalf of the Client;
3. **Freight Forwarder:** the natural or legal person who performs Services on behalf of the Client and who uses these Conditions; this person is not exclusively understood to be the Freight Forwarder referred to in Book 8 of the Dutch Civil Code;
4. **Client:** every natural or legal person who provides the Freight Forwarder with an order to perform Services and concludes to that effect the Agreement, irrespective of the agreed method of payment;
5. **Agreement:** the agreement entered into by the Freight Forwarder and Client in respect of the Services to be performed by the Freight Forwarder, of which these Conditions form part;
6. **Force majeure:** all circumstances that the Freight Forwarder has reasonably been unable to avoid and in respect of which the Freight Forwarder has reasonably been unable to prevent the consequences.;
7. **Conditions:** these Dutch Forwarding Conditions.
8. **Good/Goods:** the goods to be made available or made available to the Freight Forwarder, its agent or Third Parties by or on behalf of the Client, for the purpose of executing the Agreement.

## Scope

### Article 2. Scope

1. These Conditions govern all offers, agreements, legal acts and actual acts relating to Services to be performed by the Freight Forwarder, insofar as these are not subject to imperative law. These Conditions apply to the legal relationship between the parties, including once the Agreement has ended.
2. Insofar as any provision in these Conditions is void or otherwise unenforceable, this does not affect the validity of the other provisions in these Conditions. Furthermore, considered to be applicable is such a stipulation (legally permissible) that is the closest to the purport of the void or voided stipulation.
3. In case the English translation differs from the Dutch text, the latter will prevail.

### Article 3. Third Parties

The Client gives the Freight Forwarder free rein to engage the services of Third Parties to execute the Agreement, and to accept the (general) terms and conditions of those Third Parties at the Client's expense and risk, unless agreed otherwise with the Client. At the Client's request, the Freight Forwarder is obliged to provide (a copy of) the (general) terms and conditions under which it has entered into a contract with those Third Parties.

### **Conclusion of the Agreement**

#### Article 4. Conclusion of the Agreement

1. All offers made by the Freight Forwarder are non-binding.
2. Agreements, as well as amendments of and additions to these agreements, shall only become effective if and insofar as the Freight Forwarder has confirmed these in writing or the Freight Forwarder has started to perform the Services.

### **Customs work**

#### Article 5. Customs work

1. The provision of information to the Freight Forwarder, that is reasonably provided to enable customs formalities to be carried out, shall imply an order, unless otherwise agreed in writing.
2. This order is accepted by the Freight Forwarder by means of an explicit written confirmation or by the Freight Forwarder starting to carry out the customs formalities. The Freight Forwarder is never obliged to accept an order to carry out customs formalities.
3. If the Freight Forwarder becomes familiar with information or conditions which would indicate that the Client has not complied with article 9 paragraph 3 of these Conditions (has provided incorrect and/or incomplete information and/or documents) and on the basis of which the Freight Forwarder has not accepted the order to carry out customs formalities, the Freight Forwarder is at all times entitled to end this order and not carry this out (any further), which may or may not be set out in an additional agreement and/or authorisation, without any obligation to pay damages.

### **Remunerations and other costs**

#### Article 6. Remunerations

1. All prices quoted shall be based on the prices that apply at the time of the offer (quotation). If between the time of the offer and the time of execution of the Agreement, one or more of the cost factors (including fees, wages, the cost of social measures and/or laws, freight prices and exchange rates, etc.) increase, the Freight Forwarder is entitled to pass on this increase to the Client. The Freight Forwarder must be able to prove the changes.

2. If the Freight Forwarder charges all-in or fixed rates, these rates shall be deemed to include all costs that, in the normal process of handling the order, are for the account of the Freight Forwarder.
3. Unless provided otherwise, all-in or fixed rates shall not include at any rate: duties, taxes and levies, consular and attestation fees, costs of preparing bank guarantees and insurance premiums.
4. In the event of circumstances that are of such a nature that when concluding the Agreement it was not deemed necessary to take into account the risk that they could occur, that cannot be attributed to the Freight Forwarder and that significantly increase the costs of the Services being performed, the Freight Forwarder is entitled to an additional payment. Where possible, the Freight Forwarder shall consult in advance with the Client. In such a case, the additional payment shall consist of the additional costs that the Freight Forwarder has had to incur in order to perform the Services, plus an additional payment - deemed fair and equitable - for the services to be performed by the Freight Forwarder.
5. Expenses of an exceptional nature and higher wages arising whenever Third Parties, by virtue of any provision in the relevant agreements between the Freight Forwarder and Third Parties, load or unload goods in the evening, at night, on Saturdays or on Sundays or public holidays in the country where the Service is being carried out, shall not be included in the agreed prices, unless specifically stated. Any such costs shall therefore be remunerated by the Client to the Freight Forwarder.
6. Other than in cases of intent or deliberate recklessness on the part of the Freight Forwarder, in the event of the loading and/or unloading time being inadequate, all costs resulting therefrom, such as demurrage, waiting times, etc. shall be borne by the Client, even when the Freight Forwarder has accepted the bill of lading and/or the charter party from which the additional costs arise without protestation. The Freight Forwarder must make every effort to avoid these costs.

## **Insurance**

### Article 7. Insurance

1. Insurance of any kind shall only be arranged at the Client's expense and risk following acceptance by the Freight Forwarder of the Client's explicit written order, in which the Client clearly specifies the goods to be insured and the value to be insured. A mere statement of the value or the interest is not enough.
2. The Freight Forwarder will take out the insurance (or arrange for this to be taken out) through an insurer / insurance broker / insurance intermediary. The Freight Forwarder is neither responsible nor liable for the solvency of the insurer / insurance broker / insurance intermediary.
3. When the Freight Forwarder uses equipment, such as derricks, cranes, fork-lift trucks and other machines to perform the Services that do not form part of its usual equipment, the Freight Forwarder shall be entitled to take out insurance at the Client's expense to cover the Freight Forwarder's risks arising from the use of such equipment. Where possible, the Freight Forwarder shall consult in advance with the Client about the use of such equipment. If no

timely prior consultation is possible, the Freight Forwarder will take the measures that seem to it to be in the best interests of the Client and shall inform the Client of that.

## **Execution of the Agreement**

### **Article 8. Delivery date, method of delivery and route**

1. The mere statement by the Client of a time for delivery shall not legally bind the Freight Forwarder. Arrival times are not strict deadlines and are not guaranteed by the Freight Forwarder, unless agreed otherwise in writing.
2. If the Client has not given any specific instructions about this with its order, the method of delivery and route shall be at the Freight Forwarder's discretion and the Freight Forwarder may at all times accept the documents customarily used by the firms it contracts for the purpose of carrying out its orders.

### **Article 9. Commencement of the Services**

1. The Client is obliged to deliver the Goods to the Freight Forwarder or a Third Party in suitable packaging to the agreed location, at the agreed time and in the manner agreed.
2. In respect of the Goods, as well as in respect of the handling thereof, the Client is obliged to supply the Freight Forwarder in good time with any details and documents that it knows or ought to know, are of importance to the Freight Forwarder. If the Goods and/or activities are subject to governmental provisions, including customs and excise regulations and tax rules, the Client must provide all information and documents, in good time, that are required by the Freight Forwarder in order to comply with those provisions.
3. The Client guarantees that the information and documents that it provides are correct and complete and that all instructions and Goods that are made available comply with current legislation. The Freight Forwarder shall not be obliged but shall be entitled to investigate whether the information provided is correct and complete.

### **Article 10. Goods Handling**

1. All operations such as inspecting, sampling, taring, tallying, weighing, measuring, etc. and receiving goods subject to appraisal by a court-appointed expert, shall take place only on the Client's specific instructions and upon remuneration of the costs thereof.
2. Notwithstanding the provisions in paragraph 1, the Freight Forwarder shall be entitled, but not obliged, on its own authority and at the Client's expense and risk, to take all such actions as it deems necessary in the Client's interest. Where possible, the Freight Forwarder shall consult in advance with the Client. If this is not possible, the Freight Forwarder shall take the measures that seem to it to be in the best interests of the Client and shall inform the Client of the measures taken and the associated costs, as soon as this is reasonably possible.
3. The Freight Forwarder is not an expert with respect to the Goods. The Freight Forwarder shall therefore in no way be liable for any damage that arises from or that is related to any notification by the Freight Forwarder with regard to the state, nature or quality of the Goods; nor shall the Freight Forwarder be under any obligation to ensure that the shipped Goods correspond with the samples.



## Liability

### Article 11. Liability

1. All Services shall be at the Client's expense and risk.
2. Without prejudice to the provisions in Article 17, the Freight Forwarder shall not be liable for any damage whatsoever, unless the Client can prove that the damage has been caused by fault or negligence on the part of the Freight Forwarder or the latter's employees.
3. The Freight Forwarder's liability shall in all cases be limited to 10,000 SDR per occurrence or series of occurrences with one and the same cause of damage. Taking into account the aforementioned limit, in the event of damage, loss of value or loss of the Goods in the Agreement, the liability shall be limited to 4 SDR per kilogram of damaged or devalued Goods or lost gross weight.
4. The loss to be indemnified by the Freight Forwarder shall never exceed the invoice value of the Goods, to be proved by the Client, in default whereof the market value, to be proved by the Client, at the time when the damage occurred, shall apply.
5. The Freight Forwarder shall never be liable for lost profit, consequential loss and immaterial damage, however that occurred.
6. If during the execution of the Agreement damage occurs for which the Freight Forwarder is not liable, taking into account the provisions in Article 19 of these Conditions, the Freight Forwarder shall make efforts to recover the Client's damage from the party that is liable for the damage. The Freight Forwarder shall be entitled to charge to the Client the costs incidental thereto. If so requested, the Freight Forwarder shall waive in the Client's favour its claims against Third Parties whose services it engaged for the purpose of executing the Agreement.
7. The Client shall be liable vis-a-vis the Freight Forwarder for any damage - including but not limited to material and immaterial damage, consequential damage, fines, interest, as well as penalties and confiscation, including damage on account of non-clearance or tardy clearance of customs documents and claims due to product liability and/or intellectual property rights – suffered directly or indirectly by the Freight Forwarder as a result of (amongst other things) the non-compliance by the Client of any obligation pursuant to the Agreement or pursuant to applicable national and/or international legislation, as a result of any incident that is within the control of the Client, as well as a result of the fault or negligence in general of the Client and/or its employees and/or Third Parties whose services the Client engages and/or Third Parties that work on behalf of the Client.
8. The Client shall indemnify the Freight Forwarder at all times against third-party claims, including employees of both the Freight Forwarder and the Client, connected with or ensuing from the damage referred to in the previous paragraph.
9. Even where all-in or fixed rates, as the case may be, have been agreed, the Freight Forwarder that is not a carrier but always a party that arranges transportation in accordance with title 2, section 3 of Book 8 of the Dutch Civil Code, shall be liable, whereby the liability is governed by these Conditions.

10. If a claim is made against the Freight Forwarder by the Client outside of the Agreement in respect of the damage that occurs during the execution of the Services, then the Freight Forwarder's liability shall be limited to the liability under the Agreement.
11. If to defend its liability for conduct of a Third Party or employee the Freight Forwarder derives a defence from the Agreement vis-a-vis the Client, then if it is held liable by the Client under this defence, a Third Party or employee can invoke this defence as if the Third Party or employee were also party to the Agreement.
12. In the event a Freight Forwarder is held liable outside of the Agreement with regard to damage to or loss of a Good or delay in delivery by someone who is not party to the Agreement or a transport agreement entered into by or on behalf of the Freight Forwarder, then the Freight Forwarder has no further liability than it would have under the Agreement.

#### Article 12. Force majeure

1. In the event of Force Majeure, the Agreement shall remain in force; the Freight Forwarder's obligations shall, however, be suspended for the duration of the Force Majeure.
2. All additional costs caused by Force Majeure, such as transport and storage charges, warehouse or yard rental, demurrage and standing fees, insurance, removal, etc., shall be borne by the Client and shall be paid to the Freight Forwarder at the latter's first request.

#### Article 13. Refusal of carriers

If the carriers refuse to sign for quantity, weight, etc., the Freight Forwarder shall not be liable for the consequences thereof.

#### **Imperative law**

#### Article 14. The Agreement to organise transportation of goods

These Conditions shall not affect articles 8:61 paragraph 1, 8:62 paragraphs 1 and 2 and 8:63 paragraphs 1,2 and 3 of the Dutch Civil Code.

#### **Payment**

#### Article 15. Payment conditions

1. The Client shall pay to the Freight Forwarder the agreed remunerations and other costs, freights, duties, etc. ensuing from the Agreement upon commencement of the Services, unless agreed otherwise.
2. The risk of exchange rate fluctuations shall be borne by the Client.
3. The amounts referred to in paragraph 1 shall also be due if damage has occurred during the execution of the Agreement.

4. If, in contravention of paragraph 1 of this article, the Freight Forwarder allows deferred payment, the Freight Forwarder shall be entitled to make a credit limit charge.
5. In the event of termination or dissolution of the Agreement, all claims of the Freight Forwarder - including future claims - shall be due and payable forthwith and in full. All claims shall be due and payable forthwith and in full in any case, if:
  - the bankruptcy of the Client is announced, the Client applies for suspension of payment or otherwise loses the unrestricted disposition over a significant part of its assets;
  - the Client offers a settlement to his creditors, is in default of fulfilling any financial obligation owed to the Freight Forwarder, ceases to trade or - where the Client is a legal entity or corporate body - if the legal entity or the corporate body is dissolved.
6. Upon first demand by the Freight Forwarder, the Client must provide security for the amount owed or that shall be owed by the Client to the Freight Forwarder. This obligation remains if the Client also has to provide or has provided security in relation to the amount owed.
7. The Freight Forwarder shall not be obliged, from its own means, to provide security for the payment of freight, duties, levies, taxes and/or other costs should the same be demanded. All the consequences of non-compliance or of failure to comply forthwith with a demand from the Freight Forwarder to provide security shall be borne by the Client.

If the Freight Forwarder has provided security from of its own means, it may demand that the Client immediately pays the amount for which security has been provided.

Where possible, the Freight Forwarder shall consult in advance with the Client. If no timely prior consultation is possible, the Freight Forwarder will take the measures that seem to it to be in the best interests of the Client and shall inform the Client of that.

8. The Client shall at all times be obliged to indemnify the Freight Forwarder for any amounts to be levied or additionally demanded by any authority in connection with the Agreement, as well as any related fines imposed upon the Freight Forwarder.

The Client shall also reimburse the said amounts to the Freight Forwarder if a Third Party brought in by the Freight Forwarder demands payment for the said amounts within the framework of the Agreement.

9. The Client shall at all times indemnify the Freight Forwarder for any amounts, as well as for all additional costs that may be claimed or additionally claimed from the Freight Forwarder in connection with the order, as a result of incorrectly levied freight and costs.
10. It shall not be permissible for claims receivable to be set off against payment of remunerations arising from the Agreement on any other account in respect of the Services owed by the Client or of other costs chargeable against the Goods with claims of the Client or suspension of the aforementioned claims by the Client.

#### Article 16. Allocation of payments and judicial and extrajudicial costs

1. Cash payments shall be deemed in the first place to have been made on account of non-preferential debts.

2. The Freight Forwarder shall be entitled to charge to the Client extrajudicial and judicial costs for collection of the claim. The extrajudicial collection costs are owed as from the time at which the Client is in default and these amount to 10% of the claim, with a minimum of € 100.00.

#### Article 17. Sureties

1. The Freight Forwarder has the right to refuse the delivery of Goods, documents and monies, that the Freight Forwarder has or will obtain, for whatever reason and with whatever destination, in respect of another party.
2. The Freight Forwarder has a right of retention in respect of all Goods, documents and monies that the Freight Forwarder holds or will hold for whatever reason and with whatever destination, for all claims the Freight Forwarder has or might have in future on the Client and/or the owner of the Goods, including in respect of all claims which do not relate to those Goods.
3. The Freight Forwarder has a right of lien in respect of all Goods, documents and monies that the Freight Forwarder holds or will hold for whatever reason and with whatever destination, for all claims the Freight Forwarder has or might have in future on the Client and/or the owner of the Goods.
4. The Freight Forwarder shall regard anyone who, on behalf of the Client, entrusts Goods to the Freight Forwarder for performing Services, as the Client's agent for creating a lien on those Goods.
5. If when settling the invoice a dispute arises over the amount due or if there is need for a calculation to be made for the determination of what is due that cannot be made quickly, then at the discretion of the Freight Forwarder, the Client or the party that demands delivery at the request of the Freight Forwarder is obliged to pay forthwith the part which the parties agree is due and to furnish security for the part in dispute or for the part for which the amount has not yet been established.
6. The Freight Forwarder can also exercise the rights outlined in this article (right of lien, right of retention and right to refuse delivery) for what is still owed to it by the Client in relation to previous orders and for any amounts payable by way of delivery C.O.D. in respect of the Goods.
7. The sale of any security shall take place at the account of the Client in the manner prescribed by law or - if there is consensus thereon - privately.
8. At the Freight Forwarder's first request, the Client shall furnish security for costs paid or to be paid by the Freight Forwarder to Third Parties or government authorities and other costs that the Freight Forwarder incurs or anticipates incurring, on behalf of the Client, including freight, port costs, duties, taxes, levies and premiums.
9. In the absence of documents, the Freight Forwarder is not obliged to give indemnities or furnish securities. If the Freight Forwarder has given indemnification or furnished security, the Client is obliged to indemnify the Freight Forwarder from all consequences thereof.

## Final provisions

### Article 18. Termination of the Agreement

1. The Freight Forwarder can terminate the Agreement with immediate effect in the event the Client:
  - discontinues its profession or business largely or in full;
  - loses the power to dispose of its assets or a substantial part thereof;
  - loses its legal personality, is dissolved or effectively liquidated;
  - is declared bankrupt
  - offers an agreement excluded from the bankruptcy proceedings;
  - applies for moratorium on payment;
  - loses the power to dispose of its goods or a substantial part thereof as a result of seizure.
2. If the Freight Forwarder consistently imputably fails to fulfil one or more of its obligations under the Agreement, without prejudice to its right to compensation for any damage that may have been suffered in accordance with article 11, the Client can dissolve the Agreement with immediate effect in full or in part after:
  - it has notified the Freight Forwarder by registered letter with reasons how the Freight Forwarder has failed to comply, stipulating a period of time of at least thirty days for fulfilment of the obligations, and;
  - on expiry of that deadline, the Freight Forwarder has not yet fulfilled the obligations.
3. If the Client consistently imputably fails to fulfil one or more of its obligations under the Agreement, without prejudice to its right to compensation for any damage that may have been suffered, the Freight Forwarder can dissolve the Agreement with immediate effect in full or in part after, by registered letter, it has stipulated a deadline to the Client of at least fourteen days for fulfilment of the obligations and upon expiry of that deadline, the Client has not yet fulfilled its obligations. If, by stipulating such a period, the Freight Forwarder's interests in the undisturbed conduct of its business would be impaired disproportionately, the Freight Forwarder may dissolve the Agreement without observing a time limit.
4. Neither of the Parties may dissolve the Agreement if, considering its special nature or limited significant, the failure does not justify dissolution with all implications thereof.

### Article 19. Proceedings against Third Parties

Legal and arbitration proceedings against Third Parties shall not be conducted by the Freight Forwarder unless it agrees to do so at the Client's request and at the latter's expense and risk.

### Article 20. Prescription and limitation

1. Notwithstanding the provisions in paragraph 5 of this article, every claim is subject to prescription by the expiry of a period of nine months.
2. Every claim vis-a-vis the Freight Forwarder shall be time-barred by the mere expiry of a period of 18 months.
3. The periods of time stated in paragraphs 1 and 2 commence on the day following the day on which the claim has become due and payable, or the day following the day on which the

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prejudiced party had the knowledge of the loss. Notwithstanding the foregoing provisions, the aforementioned periods of time for claims with regard to damage, value depreciation or loss of the Goods, commence on the day following the day on which the Goods are delivered by the Freight Forwarder or should have been delivered.

4. In the event that the Freight Forwarder is held liable by Third Parties, including any public authority, for damages, the periods of time stated in paragraphs 1 and 2 commence as from the first of the following days:
  - the day following the day on which the Third Parties have brought action against the Freight Forwarder;
  - the day following the day on which the Freight Forwarder has settled the claim brought against it.

If the Freight Forwarder or the Third Party whose services it has engaged objects and/or appeals, the periods of time stated in paragraphs 1 and 2 commence on the day following the day on which a final ruling has been given on the objections and/or appeal.

5. Unless the situation referred to in paragraph 4 of this article occurs, if following the term of prescription a claim is brought against one of the parties for that payable by that party to a Third Party, a new term of prescription of three months commences.

#### Article 21. Choice of law

1. All Agreements to which these Conditions apply are governed by Dutch law.
2. The place of payment and settlement of claims shall be the Freight Forwarder's place of business.

#### Article 22. Reference title

These general terms and conditions can be cited as "Dutch Forwarding Conditions".

### **Disputes**

#### Article 23. Arbitration

1. All disputes which may arise between the Freight Forwarder and its Other Party shall be decided by three arbitrators to the exclusion of the ordinary courts of law, in accordance with the FENEX Rules of Arbitration. The FENEX Rules of Arbitration and the current fees for the arbitration process can be read and downloaded from the FENEX website. A dispute shall exist whenever either of the parties declares that this will be so.  
Without prejudice to the provisions of the preceding paragraph, the Freight Forwarder shall be at liberty to bring before the competent Dutch court in the Freight Forwarder's place of business, claims for sums of money due and payable, the indebtedness of which has not been disputed in writing by the Other Party within four weeks after the invoice date. The Freight Forwarder is also at liberty to institute interim relief proceedings for claims of an urgent nature at the competent Dutch court in the Freight Forwarder's place of business.
2. The arbitration shall be settled by three arbitrators, unless neither of the parties has submitted a request for arbitrators to be appointed and the parties have jointly informed the FENEX secretariat in writing that they wish to have the arbitration settled by an arbitrator who they have appointed jointly, appending the written declaration of the arbitrator who

they have appointed jointly containing his/her acceptance of the appointment and the force and validity of the FENEX Arbitration Rules.

3. One arbitrator shall be appointed by the Chairman or the Vice-Chairman of the FENEX; the second shall be appointed by the Dean of the Bar Association of the district in which the aforesaid Freight Forwarder has its registered office; the third shall be appointed by mutual agreement between the two arbitrators so appointed.
4. The Chairman of the FENEX shall appoint an expert on forwarding and logistics; the Dean of the Bar Association shall be asked to appoint a specialised lawyer in forwarding and logistics; the third arbitrator shall preferably be an expert on the trade and trade and industry in which the Freight Forwarder's Other Party is engaged.
5. Where applicable, arbitrators shall apply the provisions of international transport conventions, including the Convention on the Contract for the International Carriage of Goods by Road (CMR).

FENEX: Netherlands Association for Forwarding and Logistics  
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### **Appendix 3: The Dutch Warehousing Conditions**



# **DUTCH WAREHOUSING CONDITIONS**

*deposited by the FENEX,  
Netherlands Association for Forwarding and Logistics,  
at the Registry of the District Court at Rotterdam  
on 15 November 1995*

## **GENERAL PROVISIONS**

### **Section 1 Application of these standard conditions**

- 1.1 These conditions shall apply to all legal relations between warehousing companies and their principals, even after the termination of the agreement, as far as the provisions of Chapter I hereof are concerned, and to the legal relation between warehousing companies and holders of receipts, as far as the provisions of Chapter II hereof are concerned, if the receipt states that these conditions - referred to by the name "Dutch Warehousing Conditions" - are applicable.
- 1.2 To the agreement between the principal and the warehousing companies shall explicitly not apply any standard conditions to which the principal might refer in any manner or the principal might declare as applicable.
- 1.3 The principal nor the receipt holder may appeal to regulations or provisions if they are contrary to these conditions.
- 1.4 With regard to the activities and services as those of forwarding agents, shipping-agents/shipbrokers, stevedores, carriers, insurance brokers, control companies, etc. performed by the warehousing company, the conditions customary in the relevant branch of trade, or the conditions whose application has been agreed, shall also apply.

### **Section 2 Definitions**

In these conditions it is understood by:

- warehousing company:** the party who - apart from the possibility of wider terms of reference - accepts orders for warehousing or custody or delivery of goods (Chapter I) or the party who has goods in custody against which a receipt issued by him is in circulation (Chapter II);
- principal:** the party who instructs the warehousing company to store or deliver goods, or the person for whom the warehousing company stores goods for which no receipt is in circulation;
- receipt:** a numbered and legally signed or stamped document entitled "receipt" or a synonym, stating that the holder has the right to receive the goods mentioned therein;

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**receipt holder:** the person who identifies himself to the warehousing company as holder of a receipt by producing the receipt or in any other manner acceptable to the warehousing company;

**last receipt holder known to the**

**warehousing company:** the person to whom a receipt has been issued and subsequently the receipt holder whose written request to the warehousing company to be considered as such bears the most recent date, provided however that the warehousing company shall have the right but not be obliged to regard someone else as such if they have reason to assume he is the last receipt holder.

### **Section 3 Applicable law**

All agreements between the warehousing company and the principal shall be subject to the laws of the Netherlands and if not otherwise specified in these conditions, the Civil Law provisions concerning the custody of goods, shall apply generally and according to circumstances.

### **Section 4 Disputes**

- 4.1 All disputes arising between the warehousing company and the principal or the receipt holder shall be decided in the last instance by three arbitrators, with the exclusion of the ordinary court of law. There shall be a dispute whenever either party declares that such is the case.  
Without prejudice to the provisions of the preceding paragraph, the warehousing company shall be free to submit claims of amounts due and payable, the indebtedness of which has not been challenged in writing by the opposite party within four weeks of the invoice date, to an ordinary court of law.
- 4.2 One of the arbitrators shall be designated by the Chairman of FENEX; the second shall be designated by the President of the Bar Council of the judicial district where the said warehousing company has its registered office; the third shall be appointed in mutual consultation by the arbitrators so designated. The Chairman of FENEX shall only designate an arbitrator if one of the parties to the dispute is a FENEX member. If the said Chairman should not designate an arbitrator, the designation of arbitrators shall be made in accordance with the provisions of subsection 4.6.
- 4.3 The Chairman of FENEX shall designate an expert on warehousing; the President of the Bar Council shall be requested to appoint a lawyer; as third arbitrator shall preferably be elected an expert in the branch of trade or industry in which the opposite party of the warehousing company operates.
- 4.4 The party desiring a decision of the dispute shall inform the FENEX Secretariat thereof by registered letter, briefly describing the dispute and his claim, simultaneously sending an amount for service charges established by FENEX in compensation of the administrative involvement of FENEX in case of arbitration.

- 4.5 On receipt of the said registered letter the FENEX Secretariat shall as soon as possible send copies to the opposite party, to the Chairman of FENEX, to the President of the Bar Council, requesting the latter two to designate an arbitrator each and to inform the FENEX Secretariat of the name and residence of the nominee.

On receipt of such information the FENEX Secretariat shall as soon as possible inform the two nominees of their appointment, sending them a copy of the application for arbitration and a copy of these standard conditions and requesting them to appoint the third arbitrator and to inform the FENEX Secretariat who has been appointed as such.

On receipt thereof the FENEX Secretariat shall as soon as possible inform the third arbitrator of his appointment, sending him a copy of the application for arbitration and a copy of these standard conditions. The FENEX Secretariat shall subsequently inform both parties who have been appointed arbitrators.

- 4.6 If within 30 days of filing the application for arbitration all three arbitrators have not been designated, all arbitrators shall be appointed by the President of the District Court within whose jurisdiction the warehousing company has its registered office, on the complainant's application by means of a simple petition.

- 4.7 Chairman of the arbitrators shall be the arbitrator appointed by the President of the Bar Council. If the appointment is made by the President of the District Court, the arbitrators shall decide among themselves which of them will act as Chairman.

Arbitrators shall deliver their award as good men in fairness and under obligation to comply with the applicable imperative legal provisions, including the provisions of international transport treaties. They shall determine how the arbitration is to be treated, provided always that the parties shall at any rate be given an opportunity to expound their views in writing and explain them orally.

- 4.8 The arbitrators' assignment shall continue until their final decision. They shall file their award with the Registrar of the Court within whose jurisdiction the place of arbitration is situated, whilst sending copies thereof to each of the parties and to the FENEX Secretariat.

Arbitrators may beforehand require a deposit from the claimant or from both parties to cover the cost of arbitration; during the proceedings they may demand an additional deposit. In their award the arbitrators shall decide which of the two parties or for what portion either party is to bear the cost of arbitration. Such costs shall include the arbitrators' fees and outlays, the amount paid to FENEX on application for service costs, as well as the costs incurred by the parties, if the arbitrators think such costs reasonably necessary. The fees due to the arbitrators shall be recovered from the deposit as far as possible.

## **Section 5 Filed conditions**

- 5.1 These conditions have been filed with the Registrar of the District Court of Rotterdam. They shall be sent on request.
- 5.2 In case of difference between the Dutch text and the text in any other language of these Dutch Warehousing Conditions, the Dutch text shall be decisive.

## CHAPTER I

### PROVISIONS RELATING TO PRESENTING, WAREHOUSING, CUSTODY AND DELIVERY

#### **Section 6 Written records**

- 6.1 All agreements, tenders, instructions regarding warehousing, custody, handling and delivery of goods, shall be recorded in writing.
- 6.2 Oral or telephone communications or arrangements shall only be binding on the warehousing company if immediately confirmed in writing, unless otherwise agreed.

#### **Section 7 Description of goods and supply of information**

- 7.1 Tender of goods and instructions on warehousing, custody and handling shall be effected or supplied giving an exact and full written description of the goods, such as inter alia their value, the number of packages, the gross weight and furthermore all particulars of such nature that the agreement would not have been made or not on the same terms and conditions if the warehousing company had been acquainted with the true state of affairs.
- 7.2 If goods are subject to customs and excise provisions or to tax regulations or other government rules, the principal shall promptly supply all information and documents required in this connection, in order to enable the warehousing company to comply with such provisions or regulations.

#### **Section 8 Rates/payments/taxes**

- 8.1 Current rates and payments for work and all oral or written agreements between the warehousing company and the principal regarding rates and payments for work shall be based on the cost of labour prevailing at the time the instructions were given or the agreement was made.  
In case of an increase in the cost of labour, the current or the agreed rates and payments shall be adjusted accordingly with immediate effect. The warehousing company shall also have the right to adjust the rates in case the authorities introduce or increase charges imposed on the services rendered by the warehousing company.
- 8.2 Current and agreed rates for warehousing shall be based on the customary method of stacking the relevant goods, unless expressly agreed otherwise. If at the principal's request or in view of the condition of the goods the customary method of stacking is departed from, an increase in the rates shall be applied proportional to the additional floor space occupied compared to normal stacking.

#### **Section 9 Duties, costs and taxes**

- 9.1 All freight, reimbursements, taxes, duties, contributions, levies, fines and/or other charges or costs by whatever name, falling on or relating to the goods and payable on arrival or charged forward, shall be for account of the principal and shall be paid or reimbursed by the principal whether or not in advance, on the warehousing company's first demand, irrespective of whether such goods are not yet on the premises or have meanwhile been removed.

- 9.2 If the warehousing company thinks it necessary to conduct lawsuits or to take other legal steps with regard to taxes, duties, contributions, levies, fines and or other charges or costs by whatever name imposed by the authorities, or if the principal requests the warehousing company to conduct such lawsuits or take such legal steps and the warehousing company complies with such request, the resulting work and costs including the cost of legal and/or fiscal and/or other advice or assistance deemed necessary by the warehousing company, shall be for the principal's account and risk.

Before conducting lawsuits or taking legal measures in terms of this section, the warehousing company shall try to consult on the matter with, or to obtain instructions from the principal or the party directly concerned.

- 9.3 If the warehousing company acts or has acted as fiscal agent, all taxes, duties, contributions and other levies as well as fines, interest, costs, by whatever name, or indemnifications due and payable by the warehousing company, shall be for account of the principal, without prejudice to the provisions of subsection 1 of this section. The principal shall pay such amounts on the warehousing company's first demand.

### **Section 10 The principal's liability**

- 10.1 The principal shall be liable towards the warehousing company and/or third parties for any loss or damage resulting from incorrect and/or misleading and/or incomplete descriptions or indications or information, as well as for loss or damage resulting from defects of the goods and/or the packing not reported beforehand, even if such loss or damage was caused through no fault of his. If no weight is stated or stated incorrectly, the principal shall be liable for any resulting loss or damage.
- 10.2 The principal shall be liable for any damage resulting from not, not timely or not properly meeting any of his obligations under these conditions, or under a separate agreement between the warehousing company and the principal, if no provisions are already included herein.
- 10.3 Notwithstanding the above provisions the principal shall indemnify the warehousing company against claims from third parties or compensate the warehousing company for damages paid or due by third parties or paid or due to third parties, including the employees of both the warehousing company and the principal, relating to the nature or condition of the goods stored.

### **Section 11 Refusing an order**

The warehousing company shall have the right to refuse an order for warehousing and/or custody without giving reasons therefor. If the warehousing company has accepted the order, the agreement may only be broken by mutual consent of the two parties.

### **Section 12 Inspection of goods**

- 12.1 The warehousing company shall not be obliged to weigh or measure the goods stored without instructions thereto.

- 12.2 It is in the warehousing company's discretion to weigh and measure the goods in order to verify the specifications received. If in such case the warehousing company ascertains that weights or measures differ from the specification, the cost of weighing and/or measuring shall be for the principal's account. However, the warehousing company shall only be responsible for ascertaining weights and/or measures, if the goods have been weighed and/or measured by the warehousing company on the principal's instructions and without prejudice to the provisions of section 19 on the warehousing company's liability.
- 12.3 Packages may only be opened for inspecting their contents at the principal's request, but the warehousing company shall at all times have the right, but not be obliged, thereto if they suspect that the contents have been described incorrectly.
- 12.4 If on inspection it appears that the contents differ from the specification, the cost of inspection shall be for the principal's account. However, the warehousing company shall never be responsible for the description and/or designation of goods taken into custody.

### **Section 13 Presenting/delivery and receipt**

- 13.1 Presenting to and receipt by the warehousing company shall be made by the principal's presenting the goods and their acceptance by the warehousing company at the place of warehousing.
- 13.2 Delivery to and receipt by the principal shall be made by the warehousing company's delivery of the goods and their acceptance by the principal at the place of warehousing.

### **Section 14 Condition of the goods on arrival**

- 14.1 Unless otherwise stated, goods shall be delivered to the warehousing company in good condition and if packed, properly packed.
- 14.2 If the goods sent to the warehousing company arrive in apparent damaged or defective condition, the warehousing company shall have the right, but not be obliged, to protect the principal's interests against the carrier or others for the principal's account and risk, and to provide evidence of such condition, however, without the principal being able to derive any right against the warehousing company from the manner in which the warehousing company have performed such work. The warehousing company shall notify the principal instantly, without the latter having any right of claim against the warehousing company because of failure to notify.
- 14.3 Goods received for warehousing, which a conscientious warehousing company, had it known they might be dangerous after receipt, would not have accepted for warehousing in view of this, may at any moment be removed or destroyed or rendered harmless in another manner by them.
- 14.4 With regard to the warehousing of goods of which the warehousing company knew their danger, the same shall apply, but only when such goods present an immediately imminent danger.

- 14.5 The warehousing company shall not owe any indemnification in such matter and the principal shall be liable for all costs and damages to the warehousing company resulting from the presentation for warehousing, from the warehousing itself or from the measures taken, unless such costs and damages or the need for taking such measures are exclusively due to faults on the part of the warehousing company.
- 14.6 As a result of the measures taken the agreement on the goods stated therein shall cease, but if such goods are delivered as yet, only after their delivery.

### **Section 15 Commencement of execution of order for warehousing**

Unless agreed otherwise or prevented by special circumstances, the warehousing company shall as soon as possible after accepting the order and on receipt of the required documents, particulars and handling instructions, commence the execution of accepted orders for warehousing or delivery of goods.

### **Section 16 Late or irregular delivery or removal**

If the principal has advised the warehousing company that goods are to be presented for warehousing in a particular quantity and/or at a specified time, or that goods to be removed are to be collected in a particular quantity and/or at a specified time, and if in such case the principal fails to present or collect in time and regularly, the principal shall be obliged to pay the costs resulting for the warehousing company, because workers and equipment ordered and/or assigned by the warehousing company for executing the relevant order are not or not fully employed.

### **Section 17 Working hours**

Presenting goods to and removal of goods from the place of warehousing shall be made during the official working hours of the warehousing company's staff. If the principal desires work to be done outside the official working hours, it is in the warehousing company's discretion to comply or not. Extra costs incurred for working outside the official working hours, shall be borne by the principal.

### **Section 18 Place of warehousing, transfer of goods**

- 18.1 Unless otherwise agreed, it shall be in the warehousing company's discretion where the goods are to be stored.
- 18.2 The warehousing company shall at all times have the right to transfer the goods to another place of warehousing.
- 18.3 The cost of such transfer shall be for the warehousing company's account, unless such transfer is to be made:
- in the interest of the principal or the goods, or
  - due to circumstances for which the warehousing company is not responsible, or
  - due to circumstances that cannot reasonably be for the warehousing company's account and risk, or
  - due to government rules and regulations.

The transport related to the transfer for the warehousing company's account, shall take place on the customary transport conditions.

The transport related to the transfer for the principal's account, shall be undertaken by the warehousing company as forwarding agent and shall be made at the principal's risk.

- 18.4 If the goods are transferred to another place of warehousing, the warehousing company shall notify the principal, without the latter being able to make any claim against the warehousing company for failing to notify.

### **Section 19 Damage/loss of goods**

- 19.1 Under the present warehousing conditions the principal renounces any right of recovery against third parties in case of damage and/or loss; he shall exclusively be able to hold the warehousing company liable, even if the warehousing company has employed the services of third parties in the course of their business, all of which with the following limitation.
- 19.2 All activities and work shall be performed for the principal's account and risk, unless provided otherwise herein.
- 19.3 The warehousing company shall not be liable for any damage, unless the principal proves that the damage was caused by faults or negligence of the warehousing company or its staff.
- 19.4 In case of damage and/or loss because of theft by means of burglary, the warehousing company shall be considered to have applied adequate care, if it has provided proper closure of the place of warehousing.
- 19.5 In the case of goods stored on open grounds or which can only be stored on open grounds or of which it is customary for the warehousing company to store them on open grounds, any liability of the warehousing company for damage that may be related to such warehousing, shall be excluded.
- 19.6 The warehousing company's liability in all cases shall be limited to 2 SDRs per kilogram damaged or lost gross weight with a maximum of 100,000 SDRs per event or series of events with the same cause of damage.
- 19.7 The damage to be compensated by the warehousing company shall never exceed the invoice value of the goods, to be proved by the principal, in the absence of which their market value, to be proved by the principal, at the time the damage was done, shall apply. The warehousing company shall only be liable for damage to the goods themselves and for damage in terms of subsection 19.9 and shall never be liable for lost profits, consequential damage and immaterial damage.
- 19.8 In case of damage to an independent part of the goods, or in case of damage to one or more parts of several goods belonging together, any depreciation of the remaining parts or the undamaged goods shall not be considered.
- 19.9 The warehousing company's liability for damage resulting from complying with (customs) formalities shall be limited to 7500 SDRs per event or series of events with one and the same cause of damage.



## **Section 20 Admittance to the premises**

- 20.1 The warehousing company shall be obliged to admit the principal and the persons designated by him, for the principal's account and risk, to the place where his goods are stored, subject to the compliance with the customs and other formalities prescribed by the authorities.
- 20.2 To the persons to whom the warehousing company grants admittance the following conditions shall apply:
- a. all persons visiting the place of warehousing including the crew of vessels and vehicles arriving at the place of warehousing, shall observe the warehousing company's regulations;
  - b. admittance shall be granted only during regular working hours and under escort;
  - c. the cost of escorting visitors shall be paid to the warehousing company by the principal;
  - d. the principal shall be liable for any damage caused directly or indirectly by the visitors.
- 20.3 The principal shall indemnify the warehousing company against third party claims, including both the warehousing company's and the principal's employees, relating to damage resulting from the preceding subsections.

## **Section 21 Performance of activities**

- 21.1 The performance of the work required by the principal, such as sampling, handling, servicing, repacking, restacking, lotting, weighing, etc., as well as delivery, shall be entrusted to the warehousing company having the goods in custody, at the appropriate fees and on the appropriate conditions.
- 21.2 Any work the warehousing company does not wish to undertake may, with the warehousing company's consent, be executed by or on behalf of the principal, subject to the conditions made by the warehousing company, under the supervision of the warehousing company and against payment of the costs involved, however without any liability of the warehousing company.

## **Section 22 Special method of handling goods**

- 22.1 The warehousing company shall not be obliged to take any measures in respect of the goods received into custody or their packing, than such measures as are considered normal for the custody of the goods concerned.
- 22.2 The warehousing company shall only be obliged to take special measures if they have been agreed.
- 22.3 However, the warehousing company shall have the right to take immediate action at the principal's cost and risk, including the clearance or removal or destruction or rendering harmless in any other manner, if it is feared that failure to take such action may cause loss and/or damage to the goods themselves or to other goods, or to the warehousing or to equipment, or injury to persons, or when measures are required or indicated for some other reason, such in the warehousing company's discretion. The

warehousing company shall immediately inform the principal of the measures taken, without the latter having any right of claim against the warehousing company because of failure to meet such obligation.

- 22.4 Without prejudice to the provisions of the preceding subsection, the principal shall indemnify the warehousing company against any third party claims for damage caused by the principal's goods to goods pertaining to third parties.

### **Section 23 Insurance of goods**

- 23.1 Unless expressly agreed with the principal in writing the warehousing company shall not be obliged to effect any insurance for goods.

If it has been agreed between the warehousing company and the principal that the warehousing company is to effect insurance of the goods for the principal's account, the warehousing company shall have the right in their discretion to effect the agreed insurance in the principal's name, or to include such insurance in a warehouse policy.

The value to be insured shall be the amount stated by the principal. The warehousing company shall in all cases of insurance exclusively be regarded as intermediary without any liability, nor for the terms and conditions agreed with the insurer(s) or for their reliability or their solvency.

- 23.2 In all cases where the goods have been insured through the intermediary of the warehousing company, the warehousing company shall have the right to collect the amounts claimed for and on behalf of the parties interested in the goods and to recover therefrom all their claims, for whatever reason, on the principal.

The balance shall be paid to the principal.

- 23.3 If in case of damage to or loss of goods by fire or by any other cause, the assistance of the warehousing company for assessing the damage or loss is desirable or necessary, such assistance shall be rendered by the warehousing company against payment of the costs involved and of a fee for their efforts. The warehousing company may make such assistance contingent on the cash payment of, or the provision of security for all amounts owing to the warehousing company by the principal for whatever reason and the costs and fee referred to in this subsection.

- 23.4 In case of partial delivery of the goods by the warehousing company, the principal shall inform the warehousing company for what amount he wishes to have the remaining goods insured.

In the absence of such information the warehousing company shall have the right to reduce the insured amount in their own discretion in the same proportion as the decrease in the number, weight, measure or contents of the goods.

### **Section 24 Charging warehouse rent in case of destruction of goods**

In case the goods stored with the warehousing company are destroyed by fire or otherwise, the day of destruction shall count as the date of delivery and the warehouse rent plus - if the goods were insured through the warehousing company - insurance premium and costs calculated in full monthly periods, shall be due and payable up to and including such date.

## **Section 25 Removal of goods**

- 25.1 The principal may, upon payment of all amounts due to the warehousing company (in the widest sense) and subject to the provisions hereof, at any time remove the goods placed in custody.
- 25.2 The warehouse rent - and if the goods were insured through the warehousing company, the insurance premiums and costs - shall always be charged in full months, part of a month counting as a full month.
- 25.3 If a fixed period of warehousing has been agreed, the warehousing company cannot require the principal to remove the goods prior to the expiration of the agreed period of time.
- 25.4 If no period of warehousing has been agreed or if the agreed period of warehousing has expired, the warehousing company may require the removal at one month's notice, however not within three months of the commencement of warehousing.
- 25.5 In case of force majeure the agreement shall remain in force; however, the warehousing company's obligations shall be suspended for the duration of the force majeure. All extra costs caused by force majeure shall be for the principal's account. Force majeure shall be all circumstances the warehousing company has reasonably been unable to avoid and whose consequences the warehousing company has reasonably been unable to prevent.

## **Section 26 Premature removal of goods for urgent reasons**

- 26.1 However, the warehousing company shall at all times have the right to require the removal of the goods received for warehousing prior to the expiration of the warehouse period without observing any period of notice, if there is an urgent reason therefor.
- 26.2 Urgent reason shall be understood to be a circumstance of such nature that according to rules of reasonableness and fairness the principal cannot expect the warehousing to be maintained.
- 26.3 Such reason shall be deemed to exist inter alia if the principal fails to comply with one or more other provisions hereof, or if it appears that owing to the presence of the goods the hazard of loss and/or damage to other goods or the warehouse place or to equipment, or injury to persons is to be feared, and furthermore if the goods are perishable or liable to inherent changes which in the warehousing company's opinion justify the assumption of deterioration and the principal has neglected to give instructions for preventing or controlling it.
- 26.4 The principal shall remain under obligation to pay the warehouse rent up to the day of removal of the goods.

## **Section 27 Payment**

- 27.1 All amounts owing to the warehousing company by the principal for whatever reason, such as: warehouse rent, insurance premiums and costs, rent, disbursements, fees for warehousing and delivery, outlays and charges for work done or to be done, cost of cleaning work and such like during or after a fire or otherwise, extraordinary expenses, extra wages, taxes, duties, levies, fines, interest etc., shall be immediately due and payable.  
If the warehousing company applies a term of payment, the said amounts shall be immediately due and payable on expiry of the term of payment.
- 27.2 Without prejudice to the provisions of the preceding subsection the principal shall always pay the warehouse rent due promptly within the term agreed between the parties, but at least once in 12 months.
- 27.3 If the principal does not immediately pay the amounts due to the warehousing company, the warehousing company shall have the right to charge the legal interest.
- 27.4 Payments on account shall be regarded to have been made in the first place in reduction of ordinary debts, regardless of whether other instructions were given on payment.
- 27.5 If in case of overdue payment the debt is collected by judicial or other action, the amount of the debt shall be increased by 10% administrative costs, while the judicial and extrajudicial costs shall be for the principal's account, up to the amount paid or due by the warehousing company.

## **Section 28 Lien and right of retention**

- 28.1 The warehousing company shall have a lien and a right of retention towards anyone requesting delivery thereof, on all goods, documents and monies the warehousing company holds or will hold for whatever reason and for whatever purpose, for all claims it has or may have in future on the principal and/or owner.
- 28.2 The warehousing company may also exercise the rights awarded to it in subsection 28.1 for all amounts the principal still owes the warehousing company in connection with earlier orders.
- 28.3 The warehousing company shall regard anyone who, on behalf of the principal entrusts goods to him for performing work, as the principal's agent for creating a lien and a right of retention on such goods.
- 28.4 In case of non-payment of the claim, the sale of the security shall take place in the manner prescribed by law, or - if there is consensus thereon - privately.

## **Section 29 Public sale**

- 29.1 Without prejudice to the provisions of section 28 hereof, the warehousing company shall have the right to sell the goods entrusted to the warehousing company, or to have them sold, without observing any formality, in the place and in the manner and on the conditions the warehousing company may see fit, publicly or in any other manner the law may permit, at the expense of the principal and to recover from the proceeds all amounts the principal owes the warehousing company, in case the principal fails to remove the goods entrusted to the warehousing company on expiry of

the agreement or at the agreed or specified time or at any other point of time in case of one of the urgent reasons mentioned in section 26 hereof.

- 29.2 If it is probable that in case of sale the cost will be higher than the benefits or if no buyer is found despite a reasonable attempt thereto, the warehousing company shall have the right to remove the goods, to have them removed or to destroy them. The principal shall then remain liable for the amounts due, increased by the cost of removal or destruction.
- 29.3 In case of sale the warehousing company shall hold the balance of the proceeds after deducting all costs and all the principal's debts, at the principal's disposal for five years, after which period the balance, if not claimed, shall accrue to the warehousing company.

### **Section 30 Prescription and extinction**

- 30.1 Every claim shall become prescribed by the simple lapse of 12 months.
- 30.2 All claims against the warehousing company shall become extinct by the simple lapse of 2 years.
- 30.3 In case of total loss, damage or reduction, the periods mentioned in subsections 30.1 and 30.2 shall commence on the first of the following days:
- the day the warehousing company delivered or should have delivered the goods;
  - the day the warehousing company informed the principal of such event.
- 30.4 In case the warehousing company is held liable by third parties, including any government, the period mentioned in subsection 30.1 shall commence on the first of the following days:
- the day the warehousing is held liable by the third party, or
  - the day the warehousing company paid the claim against it.
- 30.5 Notwithstanding the provisions of subsections 30.3 and 30.4, the periods mentioned in subsections 30.1 and 30.2 for all other claims shall commence on the day they become due and payable.

### **Section 31 Complaints**

- 31.1 If the goods are made available by the warehousing company without the principal or someone else for him having established their condition in the presence of the warehousing company or without having informed the warehousing company of reserves, in case of visible loss or damage not later than the moment the goods were made available, or in case of invisible loss or damage within five working days of the availability, indicating the general nature of the loss or damage, he shall be considered to have received the goods in good condition, unless the contrary is proved. In case of invisible loss or damage, the said reserves shall be made in writing.
- 31.2 The day the goods are made available shall not be counted in the determination of the above periods.

## **Section 32 Transfer or transition of goods**

- 32.1 Transfer or transition of ownership of stored goods, or the transfer or transition of the right to delivery thereof by a principal to a third party, shall be ineffectual against the warehousing company and without legal effect for the warehousing company, nor shall the warehousing company recognize such transfer or transition, unless all claims the warehousing company may have on the original and/or transferring principal for whatever reason, have been fully paid.
- 32.2 The principal shall be obliged to inform the warehousing company instantly in writing of any transfer or transition of ownership of goods, or transfer or transition of the right to delivery of goods.
- 32.3 Notwithstanding the provisions above the transfer or transition shall have no legal effect for the warehousing company, nor shall the warehousing company recognize them, unless the new owner(s) has(have) explicitly accepted in writing all provisions of the agreement between the warehousing company and the original and/or transferring principal as well as the present conditions.
- 32.4 The warehousing company shall not be required to recognize the transfer or transition of ownership or the right to delivery of the goods and shall even have the right to revoke a recognition made, and they may refuse to deliver the goods, if in the warehousing company's opinion there are flaws in the legal title regarding any transfer or transition of ownership of goods, or any transfer or transition of the right to delivery of goods, and if the new owner(s) claim(s) not to have accepted the present conditions or not to be committed thereto.
- 32.5 The original and/or transferring principal shall remain liable to the warehousing company for all the warehousing company's claims for or in connection with the warehousing and/or work performed in connection with such goods, even though they were performed after the transfer or transition of ownership, or after transfer or transition of the right to delivery.

After transfer or transition of ownership, or the right to delivery of the goods, the new owner shall be regarded as the principal and shall, in addition to his legal predecessor, be severally liable for all the above claims, even though they may have arisen prior to the transfer or transition.

## **Section 33 Issue of receipts**

- 33.1 The warehousing company may issue to the principal at his request a receipt, describing the goods given into custody to the warehousing company by the principal.
- 33.2 The warehousing company shall have the right to refuse to issue a receipt, if the principal has not paid all claims the warehousing company may have on him for whatever reason.
- The warehousing company may furthermore refuse to issue a receipt if they believe there are reasons therefor.
- 33.3 On the issue of a bearer receipt all the warehousing company's obligations towards the principal shall cease and shall be replaced by the warehousing company's obligations towards the receipt holder, which is regulated in more detail in Chapter II hereof. The principal shall, even after the issue of the receipt, remain liable towards the warehousing company for the effects of any discrepancy between the goods for which the receipt was issued and their description in the receipt.

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## CHAPTER II

### PROVISIONS REGARDING THE RECEIPT

#### **Section 34 Applicable provisions**

The legal relations between warehousing companies and receipt holders shall also be subject to the provisions of Chapter I, unless the provisions of Chapter II require that a provision of Chapter I may not be applied.

#### **Section 35 Right to delivery of goods**

35.1 The receipt awards a right to delivery by the warehousing company of the goods they have received for warehousing and against which the receipt has been issued. For any discrepancy between the stored goods and their description in the receipt, the warehousing company shall be liable towards the receipt holder who was unaware of the existence of the discrepancy when acquiring the receipt, unless it concerns goods whose identification requires expert knowledge and/or a thorough examination or analysis.

35.2 If the receipt contains the clause:

"Contents, quality, number, weight or measure unknown"

or a similar clause, the warehousing company shall not be bound by any statement in the receipt regarding the contents, the quality and the number, the weight or the measure of the goods.

35.3 The right to delivery shall not exist as long as the warehousing company can lay any claim on the goods under the present conditions and until all customs and other formalities prescribed by the authorities and required for the delivery, have been fulfilled.

#### **Section 36 Expiry of the receipt**

36.1 The receipt shall be valid for three years, as from the date of issue, unless a shorter period of validity is stated in the receipt.

36.2 Until its expiry the receipt may be replaced at the receipt holder's request by a new receipt, against payment of the costs involved. The warehousing company shall have the right to refuse to replace the receipt and to require the removal of the goods on the expiry date.

36.3 If on its expiry date the receipt has not been presented for replacement, or if after refusal to replace the receipt the goods have not been removed from the warehousing company on the expiry date, the holder of the expired receipt shall be considered to agree to the warehouse rent - and if the goods have been insured through the warehousing company, the insurance premium and costs - as shall be determined by the warehousing company as from such date.

- 36.4 If on its expiry date the receipt has not been presented for replacement, or if after refusal to replace the receipt the goods have not been removed from the warehousing company on the expiry date against payment of the amount the warehousing company is entitled to under section 36 hereof, the warehousing company shall have the right to dispose of the goods to which the expired receipt refers, subject to the relevant provisions hereof.
- 36.5 For a period of five years after the expiry date of the receipt the warehousing company shall be obliged to deliver the goods to which the expired receipt refers - or if the warehousing company has exercised its right to dispose of the goods, the net proceeds of the goods, without payment of interest - to the holder of the expired receipt, after deducting all amounts due to the warehousing company. On expiry of these five years the rights of the holder of the expired receipt shall cease and the warehousing company shall no longer be required to deliver the goods - or to account for their proceeds - neither to the holder of the expired receipt, nor to others.

### **Section 37 Delivery of goods after payment**

- 37.1 The warehousing company shall, prior to effecting full or partial delivery of the goods to which the receipt gives title, have the right to demand payment of:
- a. warehouse rent for so many months as appears from the receipt to have elapsed, and have not been noted therein as having been paid prior to delivery, at the monthly rent stated in the receipt, parts of months to be counted as full months;
  - b. insurance premiums and costs for so many months as appears from the receipt to have elapsed, and have not been noted therein as having been paid prior to delivery, at the monthly insurance premium stated in the receipt, parts of months to be counted as full months;
  - c. the charges for delivering the goods at the current rate therefor;
  - d. disbursements made by the warehousing company on behalf of the receipt holder requesting delivery, in connection with customs and/or other formalities prescribed by the authorities in respect of the goods described in the receipt;
  - e. all costs incurred by the warehousing company after the date of issue mentioned in the receipt:
    - e.1 for preserving the goods mentioned in the receipt;
    - e.2 for eliminating any dangers caused by the goods mentioned in the receipt to the place of warehouse and to other goods stored therein;
    - e.3 for measures taken in respect of the goods mentioned in the receipt as a result of circumstances for which the warehousing company cannot be held responsible.
  - f. all other amounts due to the warehousing company apparent from the receipt.
- 37.2 Notwithstanding the provisions of the preceding subsection the receipt holder shall be obliged to pay the warehouse rent due - and if the goods have been insured through the warehousing company, the insurance premium and costs - at the end of each 12 months of warehousing or so much earlier as has been agreed and stated in the receipt plus the costs incurred by the warehousing company referred to in paragraphs d. and e. above, as soon as the warehousing company has informed him of such costs.



- 37.3 If the receipt holder fails to meet his obligation to pay the rent after each 12 monthly period or so much earlier as has been agreed and stated in the receipt - and if the goods have been insured through the warehousing company, the insurance premium and costs - the amounts due to the warehousing company for this reason shall be increased, as from the day the 12 months warehousing elapsed, by a penalty of 1% of the amount due for each month in excess of the 12 month period.

### **Section 38 Indemnification**

Contrary to the provisions of subsection 19.7 the indemnification to be paid by the warehousing company for loss of goods shall, in the absence of the invoice value of the goods, be limited to the market value of the goods on the day of issue of the receipt, to be proved by the principal.

### **Section 39 Access to and information about goods**

Access to and information about goods for which receipts have been issued shall only be given on production of the relevant receipt.

### **Section 40 Activities in connection with the goods**

- 40.1 The activities required by the receipt holder in relation to the goods described in the receipt, such as sampling, handling, servicing, repacking, restacking, lotting, weighing, etc., as well as delivery, shall be entrusted to the warehousing company having the goods in custody, against the appropriate fees and on the appropriate conditions.
- 40.2 The activities required by the receipt holder shall only be carried out after surrender of the receipt.
- 40.3 Activities the warehousing company does not wish to undertake may, with the warehousing company's consent and after surrender of the receipt, be performed by or on behalf of the receipt holder, subject to conditions made by the warehousing company, under the supervision of the warehousing company and against payment of the costs involved, however without any responsibility of the warehousing company.
- 40.4 Partial deliveries, sampling and handling of the goods causing a modification, decrease or change in the number of the goods shall be noted on the receipt in the proper place. If there is no space left on the receipt for further noting deliveries, modifications, decreases, etc., the receipt shall be replaced at the receipt holder's expense.
- 40.5 Payments due to the warehousing company for work performed in connection with the goods described in the receipt or for supervising such work, shall be paid immediately. The warehousing company shall have the right to refuse to return the receipt until such payments have been made.

### **Section 41 Notification of special method of handling**

If the warehousing company decides to take a measure in terms of section 22, the warehousing company shall immediately notify the receipt holder last known to it, without the receipt holder having any right of claim against the warehousing company for omitting such notification.

## **Section 42 The warehousing company's obligation to insure**

- 42.1 If the receipt shows that the goods therein are insured, the warehousing company shall thereby have undertaken the obligation to effect insurance for the receipt holder's account in accordance with the provisions of section 23.
- 42.2 The insured value shall be the value stated in the receipt.
- 42.3 If the receipt states that the insured value is the current market value, it shall be the warehousing company's responsibility to keep the goods adequately insured.

## **Section 43 Changes in, effect and termination of insurance**

- 43.1 Any changes in the insured value and termination of insurance shall only be possible when the receipt is surrendered for being endorsed accordingly.
- 43.2 Only the insurance as stated in the receipt shall be effective.
- 43.3 The insurance shall otherwise cease on delivery of the goods.
- 43.4 On delivery of part of the goods the insured value of the goods to be delivered must be stated separately and endorsed on the receipt, if the receipt does not show the insured value per unit and if a proportionate decrease cannot be inferred from the receipt.

## **Section 44 Amounts of claims**

The amounts of claims collected by the warehousing company shall be paid out by the warehousing company against surrender of the receipt, after deducting all amounts due to the warehousing company by the receipt holder.

## **Section 45 Notification of destruction of goods**

In case of destruction of the goods described in the receipt by fire or otherwise, the warehousing company shall immediately notify the receipt holder last known to them, without the receipt holder having any right of claim against the warehousing company for omitting such notification.

## **Section 46 Mutilation of the receipt**

- 46.1 Any erasures and mutilations shall render the receipt void; deletions shall not be valid unless initialled by the warehousing company.
- 46.2 The holder of a mutilated receipt may request the issue of a duplicate, against surrender of the original receipt and on payment of the costs involved. For determining the nature and quantity of the goods to be shown in the duplicate receipt, the warehousing company's relevant records shall exclusively be regarded as standard.

## **Section 47 Loss and destruction of receipts**

- 47.1 If a receipt has been lost or destroyed, the rightful holder may apply to the warehousing company for nullification of such receipt and request delivery of the goods or the issue of a duplicate receipt; such application must, if possible, state the cause for the loss of the receipt and contain the grounds on which the applicant bases his title.
- 47.2 If investigations made by the warehousing company afford no reasons to doubt the truth of the grounds of the application, the warehousing company shall publish the application made by inserting two announcements, at intervals of at least 14 days each time, in at least two daily newspapers designated by the warehousing company, inviting those who believe they have a title to the goods described in the missing receipt, to oppose their delivery or the issue of the duplicate receipt by service of a writ.
- 47.3 If within 14 days of the last announcement no one has opposed the delivery or issue by service of a writ, the warehousing company may nullify the receipt and effect delivery of goods or issue a duplicate receipt to the applicant. For determining the nature and quantity of the goods to be delivered or to be described in the duplicate receipt, the warehousing company's relevant records shall exclusively be regarded as standard. The nullification may immediately thereafter be published in the said newspapers. As a result of such nullification the original receipt shall lose its validity and all the warehousing company's obligations under the original receipt shall cease.
- 47.4 In case of opposition by a third party the application shall not be complied with, until it has appeared from a Court Order or other final and conclusive ruling or award that the applicant is the person entitled to the goods.
- 47.5 The person obtaining delivery of the goods described in a duplicate receipt, shall indemnify the warehousing company against all claims resulting from such delivery. The warehousing company may require security for this purpose.
- 47.6 Any costs in the widest sense, incurred by the warehousing company as a result of the application, shall be borne by the applicant. The warehousing company shall have the right to require an advance of money to be made before considering the application.

## **Section 48 Expiration of the validity of the receipt**

- 48.1 If on expiry of the validity of the receipt the warehousing company no longer wishes to keep the goods in warehousing, they shall summon the last known receipt holder to remove the goods.
- 48.2 If the receipt holder fails to comply with the summons within 14 days, or if he is no longer in possession of the expired receipt, and does not indicate the holder of the expired receipt within 14 days, nor does the holder of the expired receipt present himself within such period, the warehousing company shall have the right to sell the goods covered by the expired receipt.
- 48.3 Prior to taking such action, the warehousing company shall publish its intention to sell goods for which an expired receipt is in circulation by inserting two announcements at intervals of at least 14 days in at least two daily newspapers each time, at least one of which appearing in the place where the warehousing company has its registered office, requesting the holder of the expired receipt to meet his obligations as yet, or notifying any persons having acquired the expired receipt.

- 48.4 If 14 days after the last announcement the receipt holder has not presented himself, or if he has presented himself but no agreement has been reached on the removal of the goods, the warehousing company shall be at liberty to sell the goods immediately.

The sale shall take place in accordance with the provisions of section 29.

#### **Section 49 Commencement of period of extinction**

The period of prescription and extinction as referred to in section 30 shall, in case of total loss, commence at the end of the day on which the warehousing company informs the last known receipt holder of such loss or if he is no longer in possession of the receipt and no subsequent receipt holder has presented himself to the warehousing company, a week after the announcement of such loss in two daily newspapers, at least one of which appearing in the place where the warehousing company have their registered office.

#### **Section 50 Application of the provisions of this chapter**

- 50.1 The provisions of this Chapter II shall exclusively apply to the legal relationship between the warehousing company and the receipt holder as such.
- 50.2 The moment the receipt holder for whatever reason surrenders the receipt to the warehousing company the provisions of the present Chapter II shall cease to apply. As from such moment the provisions of Chapter I, regulating the legal relationship between the warehousing company and the principal, shall apply provided always that the warehousing company may enforce all their rights under the receipt.

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