

**TRANSLATION**



**General Terms and Conditions P. de Vrij Moerkapelle B.V.**

**filed on the 11<sup>th</sup> of August 2016 with the Chamber of Commerce in Rotterdam**  
**Latest amended filing on the 18<sup>th</sup> of March 2019**

The General Terms and Conditions of P. de Vrij Moerkapelle B.V. (hereinafter referred to as: “*these conditions*”) apply to any agreement with, or any actions arising therefrom, by P. de Vrij Moerkapelle B.V. (hereinafter referred to as: “*De Vrij*”). Depending on the nature of the actions agreed upon, the General Terms and Conditions of the sector in question will apply to these conditions. See also the references made in these conditions.

A copy of these conditions can be viewed on or downloaded of de website: [www.devrijmoerkapelle.nl/voorwaarden](http://www.devrijmoerkapelle.nl/voorwaarden), they are filed with the Chamber of Commerce in Rotterdam and will be sent free of charge immediately upon request. Such a request may in any event be made by e-mail to: [info@devrijmoerkapelle.nl](mailto:info@devrijmoerkapelle.nl).

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2. Warehousing Conditions Amsterdam-Rotterdam 2006, filed with the Registrars of the Court of Amsterdam (depotnumber133/2006) and of Rotterdam (85/2006) on October the 3rd, 2006 (hereinafter: “*Warehousing Conditions 2006*”) page 8
3. Dutch Forwarding Conditions; general conditions of the FENEX (Netherlands Association for Forwarding and Logistics) deposited at the Registry of the District Courts at Amsterdam and Rotterdam on the 1<sup>st</sup> of May 2018 (hereinafter: “*Dutch Forwarding Conditions*”) page 24
4. General Transport Conditions 2002, deposited at the clerk to Amsterdam court (no. 81/2014) and to Rotterdam court (no. 2/2015). (hereinafter: “*AVC*”) page 34

## General Terms and Conditions P. de Vrij Moerkapelle B.V.

### Article 1 Definitions

In the absence of an explicit provision to the contrary, the following terms in these conditions will mean:

**De Vrij:** The private limited liability company (“Besloten vennootschap met beperkte aansprakelijkheid”) P. de Vrij Moerkapelle B.V. established under Dutch law at Ambachtstraat 9, (2751 GP) Moerkapelle, postadres: Postal address: PO Box 24, (2750 AA) Moerkapelle, registered with the Trade Register of the Chamber of Commerce under number: 29016245, VAT number.: NL807338989.B01, supplier and the user of these general terms and conditions.

**Principal:** any party (natural or legal person) who enters into an agreement with De Vrij or to whom De Vrij has submitted an offer or quotation to which these conditions apply.

**Agreement:** any contract, concluded in whatever way, not being a contract of carriage, between De Vrij and the principal, or any changes or additions to it, as well as any actions or legal actions taken in preparation of, and in execution of, that agreement.

**Contract of Carriage:** a contract with the principal in which De Vrij acts as a Carrier (read: transporter) and not as a Forwarder. A carrier is explicitly not a forwarder. It should be noted here that a ‘carrier’ transports goods or persons from A to B, whereas a forwarder has this carried out, and therefore does not actually transport goods itself. The General Conditions of Transport (hereinafter referred to as: “GCT”<sup>1</sup>) apply to the contract of carriage of goods by road; if the CMR [*Convention on the Contract for the International Carriage of Goods by Road*]<sup>2</sup> applies, then the GCT will also apply. A contract of carriage is concluded by means of the GCT/CMR consignment note.

**Assignment:** any instruction made by the principal for whom De Vrij executes their activities and/or services, which comes into effect between De Vrij and the principal by means of an agreement. The applicability of the Sections 404 and 407, subsection 2 and 409 of Book 7 of the Dutch Civil Code (hereinafter referred to as: “DCC”) is explicitly excluded, regardless of the way in which this has been made.

**Activities:** everything De Vrij performs that is subject of the contract. De Vrij offers a variety of activities and services. De Vrij carries out the following activities:

- **Warehousing:** this concerns instructions for the storage, safekeeping or delivery of goods and any activities relating thereto. The Warehousing Conditions (page 8 up to and including 23) apply to the execution of activities or the supply of services by De Vrij as the Warehousing Company;
- **Forwarder:** this concerns the assignments in which De Vrij acts as a forwarder. Within the context of these conditions forwarder is not exclusively understood to mean the forwarder as referred to in Book 8 of the DCC. The party who instructs the forwarder to execute actions and activities will be considered the forwarder’s principal, regardless of the agreed method of payment. The Dutch Forwarding Conditions (page 24 up to and including 31) apply to the execution of activities or the supply of services by De Vrij as the forwarder;
- **Carrier:** this concerns the assignments in which De Vrij acts as a carrier. Here De Vrij is only responsible for the transporting of the principal’s goods. The GCT (page 34 up to and including 43) apply to the execution of activities or the supply of services by De Vrij as a Transporter;
- **Processor:** this concerns the assignments in which De Vrij processes the principal’s goods. The processing of goods may include, but is not confined to: repacking and packing, drying, blending, cleaning by means of a combination of various machines (including, sieves, wind machines, specific gravity cleaning machines, colour sorting and X-ray cleaning machines), washing, polishing and metal detection, separately or in combination with several machines. These Conditions (page 2 up to and including 7) apply to the execution of activities or the delivery of services by De Vrij as Processor;

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<sup>1</sup>General Conditions of Transport 2002 are published by the Stichting vervoeradres. In Stichting vervoeradres transport organisations such as TLN [*Dutch Transport and Logistics*] and GVN [*Groot Verspaners Nederland/sectoral machining group*] collaborate with shipping organisations such as EVO [*Dutch Logistics Association*].

<sup>2</sup> Convention Relative au Contrat de Transport International de Marchandises par Route.

If of a combination of several activities and/or services is involved, the applicable sector conditions will first and foremost apply to the individual activities or assignments. The activities or assignments are mentioned separately in the agreement, whereby De Vrij assumes (or may assume; or can assume) that the principal clearly understands which conditions apply to the activity in question and to the (parts of the) assignment in question.

By approving this agreement, the principal explicitly accepts the applicability of the various conditions.

In view of Article 1, under the principal's contract, De Vrij acts as a Warehousing Company, Forwarder, Carrier and/or Processor, to which all the general sectoral conditions relating thereto, or in the case of processing, these conditions (page 2 up to and including 7) apply. If De Vrij performs services or activities other than those referred to in the sectoral conditions and/or referred to in the definition of the processor, or if one or more provisions has been or is nullified, or is voidable, for any reason whatsoever, as a result of a dispute, then the provisions stated under these conditions (page 2 up to and including 7) will apply.

## **Article 2            Applicability of these conditions**

2.1 As specified in the previous article of these conditions, these conditions will, in any event, apply to the processing contract from the moment the principal approaches De Vrij about this matter. As regards the actions by De Vrij acting as the Warehousing Company, Forwarder or Carrier, the applicable general sectoral conditions referred to in the last paragraph of the previous article must be observed. Consequently, any conflict between the various (sectoral) general conditions will be explicitly excluded.

The applicability of any (general terms and) conditions used by the principal will be expressly dismissed. Derogation from these conditions will only be possible in the event that this has been explicitly agreed to in writing beforehand.

2.2 All the provisions of these conditions between the parties are effective, to the extent that the parties have not explicitly derogated from these conditions in writing.

If De Vrij tacitly permits derogation from these conditions, this will not affect their right to demand immediate and strict compliance with the conditions. The principal can never enforce any right, or have any rights enforced in the event that De Vrij applies these conditions flexibly, and/or does not always demand strict compliance with the provisions of these conditions.

2.3 These conditions also apply to all agreements in which third parties must have to be engaged in order to carry them out.

2.4 In the event of lack of clarity as regards the content of these conditions, or if any circumstances have not been regulated by these conditions, these will be explained or clarified by De Vrij at the request of the principal, while observing the spirit of these conditions.

If any provision of these conditions is null and void or is voidable, the other provisions of these conditions will remain in full force. In that event, De Vrij will draw up provisions to replace the void and/or voidable provisions. In doing so, the purpose and meaning of the void and/or voidable provision will be taken into account as far as possible.

2.5 Once the principal has entered into a contract under these conditions, the principal is considered to have tacitly agreed with the applicability of these conditions to agreements concluded afterwards with De Vrij. Article 1, and particularly the last paragraph of that article, of these conditions will apply here.

## **Article 3            Quotes and agreements**

3.1 Quotations made by De Vrij, and agreements made with De Vrij, will only be binding once they have been explicitly agreed upon in writing with De Vrij. An agreement will only be binding if De Vrij has confirmed this in writing or if De Vrij has already started to carry out the agreement.

3.2 If the circumstances in which the agreement was drawn up between the principal and De Vrij, change in such a way that, as a result, compliance with the agreement, or a part of it, cannot reasonably be expected from one of the parties, the parties agree to consult one another about interim changes to the agreement.

If no express reference is made to these conditions, they will still apply, regardless of how the agreement came into effect.

If the changed circumstances arise through actions of and/or at the request of, and/or under the responsibility of the principal, any costs incurred arising from additional work will be charged to the principal.

#### **Article 4            Execution and delivery**

4.1 De Vrij is free to execute the contract as it sees fit, and when doing so, will observe the requirements of good workmanship. Agreements will only be defined as an obligation to perform to the best of one's abilities and may never contain an obligation to produce a certain result.

De Vrij is entitled to have certain activities executed by third parties, if and in so far as a good performance of the contract so requires.

4.2 If the principal requests De Vrij for an inspection or advice, no rights may be derived from them at any time. An inspection by or advice from De Vrij is always free of obligation.

4.3 De Vrij bases the execution of their activities on the information provided by the principal. De Vrij may assume from this that the information provided by the principal is correct and complete.

The principal ensures that it will provide De Vrij with any information in time, which De Vrij indicates to be needed or which the principal should reasonably understand to be needed for the execution of the agreement. Prior to entering into the agreement with De Vrij, the principal is explicitly obliged to mention any seizures, abnormalities or of any rejected goods which may or may not have been cleared (by Customs & Excise).

If the information needed for the execution of the agreement is not provided to De Vrij in time, De Vrij is entitled to suspend the performance of the agreement and/or charge the principal with any costs incurred arising from the delay at the customary rates.

4.4 Both De Vrij as well as the principal guarantee that all information received from the other party will be treated as, and remain, confidential. This provision also applies after the termination of the agreement.

4.5 An agreed deadline for the supply of a service, activity and/or the carrying out of work by De Vrij will never be considered as a strict deadline, but merely a guideline, unless otherwise explicitly agreed in writing. An agreed deadline will start from the moment that the principal provides De Vrij with all the information, goods or other requirements they have requested.

4.6 De Vrij is entitled to refuse the goods, which are subject to the agreement (hereinafter referred to as: "*the goods*") in the event of non-compliance of the principal's obligations as stated in the article of these conditions and/or in the event that the goods are delivered to De Vrij in a poor or damaged condition.

4.7 De Vrij is entitled to take steps to handle the goods without being obliged to do so, if De Vrij deems it necessary to protect and/or extend the durability of the principal's goods, its own goods and/or the location, at the expense and risk of the principal.

4.8 If the principal sells or disposes of the goods, or part of the goods, the principal is not released from its contractual obligations towards De Vrij.

The principal is obliged to immediately notify De Vrij in writing about the transfer of ownership of the aforementioned goods and/or the execution thereof, and/or the transfer or transition of the right to delivery, if this applies.

4.9 Unless explicitly agreed otherwise in writing, De Vrij is not obliged to take care of any insurance of the goods.

In case De Vrij and the principal have agreed that De Vrij will take care of insurance of the goods on the account of the principal, Section 23 of the Warehousing conditions will be applicable (Page 16 of this conditions).

## **Article 5            Payment and costs**

5.1 Unless otherwise explicitly agreed in writing, all prices and fees are exclusive of VAT and any other taxes and levies.

5.2 If the prices of suppliers or wages, costs, import duties, levies and/or other costs, under any title whatsoever, are subject to increases and/or surcharges after accepting the agreement, De Vrij is entitled to add these increases in prices and fees to their existing agreements and/or orders. These increases in prices or rates will be binding on the principal.

Unless otherwise explicitly agreed, De Vrij is entitled to implement price and/or rate increases, which could include, but are not confined to, interim increases in wages, fuel and materials.

Earlier quotations, tenders, prices and/or hourly rates do not automatically apply to new contracts.

5.3 De Vrij is entitled to send invoices by email, which the principal is obliged to pay within a period of thirty (30) days after the invoice date, without applying a discount or deduction, into an account to be specified by De Vrij at a later date. In the event late payment, the principal will be in default *ipso jure*, without any further notice of default being required.

Pending the completion of the contract, De Vrij is entitled to send interim invoices.

5.4 To avoid the risk of lapsing, complaints about invoices must be made in writing and within eight (8) days after the invoice date. Objections against the amount of the submitted invoices do not suspend the obligation to settle them.

5.5 From the moment of default until the date on which payment is made in full, the principal will owe interest on the full amount due of 1% or calculated pro rata, as well as the costs incurred, amounts owing, and any extrajudicial costs incurred by De Vrij.

The extrajudicial costs will be calculated in accordance with the collection charges of the Netherlands Bar Association [*Nederlandse Orde van Advocaten*]. In the event De Vrij incurs higher costs, which were reasonable and necessary, these costs will also be for the principal's account, as well as any legal and execution costs incurred.

5.6 De Vrij has the right of retention in respect of all information, documents and other goods held by the principal, until the principal has paid all that he owes De Vrij.

Payments made by the principal will always first be applied to settle all interest payable and costs, and secondly the invoices due and payable which have been outstanding for the longest period.

5.7 If in De Vrij's opinion the principal's financial position or payment record gives cause for concern, De Vrij will be entitled to request the principal for some immediate security, or additional security in some form, or advance payment, the amount to be decided by De Vrij. If the principal fails to provide the requested security, De Vrij will be entitled, without prejudicing any of their other rights, to immediately suspend further performance of the agreement, and everything that the principal owes De Vrij will be immediately due and payable. De Vrij is not liable for any damage that may arise from such a suspension of performance.

In the event of the principal's liquidation, bankruptcy or suspension of payment, all of De Vrij's claims as well as the obligations of the principal towards De Vrij, will be immediately due and payable.

## **Article 6            Liability and indemnity**

De Vrij is only liable to the extent that this is reflected in this article. The limitations of De Vrij's liability do not apply if the damage is intentional or attributable to gross negligence on the part of De Vrij.

6.1 De Vrij's liability will at all times be limited to the amount that would be paid out by their insurer for the damage in question. If the insurer does not compensate De Vrij, then De Vrij's liability will be limited to the invoice amount for the activities and/or services from which the damage arose, or at least to that part of the agreement to which the liability relates.

6.2 De Vrij is not liable for acceptable wastage as a result of processing, observing the various processing operations and/or the various goods or kinds of goods.

6.3 De Vrij is not liable for damage of any kind of damage whatsoever:

- a. if she based the performance of her activity and/or service on inaccurate and/or incomplete information provided by the principal;
- b. in case of force majeure;
- c. for activities carried out by third parties;
- d. for indirect and consequential damages, including loss of profit, loss of savings and loss due to business interruption.

6.4 The principal indemnifies De Vrij against claims from third parties relating to or arising from the legal relationship between De Vrij and the principal. This shall also include that the principal explicitly indemnifies De Vrij against claims from third parties regarding the right of intellectual or industrial property concerning information provided by the principal to De Vrij, which is used for the performance of the agreement.

6.5 If the principal provides information carriers, electronic files or software and suchlike, to De Vrij, the principal guarantees that these materials are free from viruses and defects. Any damage arising from the use of these materials will be compensated by the principal.

6.6 The principal is obliged to compensate De Vrij for any damage during the performance of its activities and/or services, including, but not limited to, damage caused by material or goods that have been delivered to De Vrij for the purpose of the performance of the agreement, and/or damage arising from the processing of that material or those goods. Damage is also understood to mean damage to third parties who De Vrij is obliged to compensate, and/or the damage which results in death or injury and any form of financial loss.

6.7 In no circumstances will the burden of proof rest with De Vrij.

## **Article 7 Force majeure**

7.1. De Vrij cannot be held to fulfil any obligation if De Vrij is hindered in doing so as a result of a circumstance that is not the result of a fault or negligence of De Vrij and that neither under the law nor pursuant generally accepted principles can be considered to be for the account of De Vrij.

7.2 During the period in which force majeure continues, De Vrij may suspend their obligations to the agreement. If this period is longer than 14 days, both parties are entitled to terminate the agreement with immediate effect and without prior (written) notice and/or notice of default being required, and without any obligation to pay damages to the other party. If the situation above occurs when part of the agreement has been performed, the principal must comply with its obligations towards De Vrij up until that moment. In that event, De Vrij is entitled to separately invoice for what has already been performed and for the part still to be performed.

7.3 In these General Terms and Conditions, in addition to its definition provided by law and case law, force majeure is understood to mean all external, foreseeable or unforeseeable causes which De Vrij cannot influence, but which as a result, partly or wholly prevent them from fulfilling their obligations towards the principal, or as a result of which De Vrij cannot be reasonably expected to fulfil their obligations. These will include (if and in so far as these circumstances make performance either impossible or unreasonably complicated): strikes in other companies other than those of De Vrij, strikes in the De Vrij's company; a general shortage of required materials and other goods and activities and/or services required to deliver the agreed performance; unforeseeable halts in the production at suppliers or other third parties on whom De Vrij depends; general transport difficulties; any government measures; illness; fire; earthquakes; theft; operational and power failures; *force majeure* affecting an engaged third party and technical failures.

## **Article 8 Complaints**

8.1 The principal has the obligation to examine if the delivered goods by De Vrij are in compliance with the agreement. If visible defects are discovered, the principal must inform De Vrij accordingly in writing within eight (8) days after delivery. In case of non-visible defects the principal must inform De Vrij accordingly in writing within fourteen (14) days after discovery respectively the moment the defect could reasonably have been observed, though within a maximum of six (6) months after delivery. The principal can no longer invoke any right relating to a complaint and/or defect after expiry of said terms.

8.2 In case the principal is not present or represented at time of delivery or on the location of the delivered goods within the complaint period and/or before the term to complain has expired, the principal must take care - on his own expense and risk - that he is timely aware of the condition of the delivered goods and that De Vrij will be timely informed in the event there is a defect.

8.3 All complaints concerning an invoice of De Vrij, must be notified in writing to De Vrij within eight (8) days after send date of the invoice. After this term has expired, the principal will be deemed to have agreed with the invoice issued.

8.4 In the event of a complaint about the contract performed or an activity and/or service supplied, De Vrij is free to choose between changing the rate charged, improving or re-performing the rejected activities free of charge, or terminating part of the contract (or remaining work) in exchange for a refund proportionate to the amount already paid by the principal. If it is no longer possible or useful to perform the activities agreed upon, De Vrij will only be liable within the limits laid down in article 6 of these conditions.

## **Article 9 Termination of the agreement**

9.1 Notwithstanding De Vrij's other contractual rights, including the right to receive damages from the principal, any breach of the principal's obligations will entitle De Vrij to wholly or partly terminate the agreement with immediate effect, and without prior (written) notice of default being required, and/or to suspend or interrupt their activities. In the aforementioned case, the principal is not entitled to any payment of damages or costs by De Vrij.

9.2 If, in the event of liquidation, an application is made for suspension of payment, for bankruptcy, or to seize the principal's assets – provided the attachment is not revoked within three months - De Vrij is free to terminate the agreement at once and with immediate effect, without any obligation on their part to pay damages or other compensation, and/or without prior (written) notice of default being required. Notice of default is not required for this judicial intervention. In that case, the amounts owed to De Vrij by the principal will be immediately due and payable.

9.3 De Vrij is entitled to suspend performance of the agreement if the principal does not comply with the payment conditions, or does not fulfil its obligations in some way; all this without prejudice to De Vrij's right to claim damages.

## **Article 10 Final provisions**

10.1 These conditions have been drafted in Dutch and English. The Dutch text and interpretations thereof shall at all times prevail over the English text.

10.2 All legal claims against De Vrij, any compensation entitlements included, expire and/or become due after a period of 1 year after the claim and/or allocation arose.

10.3 De Vrij reserves the right to make alterations and/or additions at any time to these conditions and/or to any provision. Such amendments will take effect at the announced time of entry into force. De Vrij will send the modified terms and conditions timely to the buyer. In the event that no time is announced for an amendment to come into force, it shall come into effect for the other party, as soon as the latter is given notice to this effect. Until the amended version of these conditions enters into force, the version of these conditions, as if known by client before the amendments, expressly applies.

10.4 All agreements or legal relationships between De Vrij and client, and all potential deriving disputes thereof, shall be exclusively governed by the laws of the Netherlands. The aforementioned also applies when a legal relationship is wholly or partly endorsed abroad or when a party involved in an agreement or legal relationship has its domicile abroad. The Vienna Sales Convention is expressly excluded.

10.5 All disputes that may arise between De Vrij and client and which cannot be settled amicably, shall be settled by the competent court of the Netherlands.

10.6 The Dutch terms and conditions of De Vrij have been lastly modified and filed at the offices of the Dutch Chamber of Commerce on the 18<sup>th</sup> of March 2019. The most recently filed version or the version that was applicable at the time at which the agreement with De Vrij was formulated, shall be applicable at all times.

## WAREHOUSING CONDITIONS AMSTERDAM-ROTTERDAM

ISSUED BY: Ondernemersvereniging Regio Amsterdam  
Filed with the Registrars of the Court of Amsterdam and of Rotterdam on October the 3rd, 2006

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## **WAREHOUSING CONDITIONS AMSTERDAM-ROTTERDAM GENERAL PROVISIONS**

### **Section 1 Terms of reference of the general conditions**

1.1 These conditions shall apply to all legal relations between Warehousing Companies and their Principals and Warrant Holders, even after the termination of the agreement to the extent that the provisions of Chapter I hereof are concerned. The provisions of Chapter II hereof shall apply only to the legal relation between the Warehousing Companies and the Warrant Holders.

1.2 The agreement between the Principal and the Warehousing Companies shall explicitly exclude any general conditions to which the Principal might wish to refer or may deem to be applicable.

1.3 Neither the Principal nor the Warrant Holder may appeal to regulations and provisions where they are contrary to these conditions.

1.4 For services and acts performed by the Warehousing Company, which do not fall within the scope of the original activities of the Warehousing Company as specified hereafter in Section 2, such as but not limited to, forwarding, stevedoring, carriage or superintendancy services performed by the Warehousing Company, the following general conditions will also apply to those services, all according to the most recent edition: Expeditievoorwaarden (FENEX) (forwarding activities), the Algemene Nederlandse Cargadoorsvoorwaarden (ship brokerage), the Voorwaarden Stukgoed (ORAM) (stevedoring), the Voorwaarden Massagoed (ORAM) (stevedoring activities), the Algemene Vervoerscondities (national road carriage) or the Algemene Controle and Inspectievoorwaarden (VEROCOG) (survey and superintendancy). In case of a conflict between such general conditions and these general conditions, the Warehousing Company may decide which conditions or which provisions of such conditions to invoke. Prior to performing the services mentioned in this article, the Warehousing Company will notify the Principal which conditions will apply.

### **Section 2 Definitions**

In these conditions it is understood by:

#### **Last warrant holder known**

**to the Warehousing Company:** the party to whom a Warrant has been issued and subsequently the Warrant 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 that the latter is the last Warrant Holder.

**Principal:** the party who instructs the Warehousing Company to store or deliver goods, or the party for whom the Warehousing Company stores goods for which no Warrant is in circulation.

**Warehousing Company:** the party which - apart from the possibility of wider terms of reference as physical distributor - accepts instructions for the storage or custody or delivery of goods (Chapter I) or the party who has goods in custody against which a warrant issued by him is in circulation (Chapter II).

**Warrant:** a by the Warehousing Company numbered and legally signed or stamped receipt entitled "Warrant", stating that the bearer has the right to receive the goods mentioned therein, including Partial Warrants as defined in Article 32.1 of these conditions.

**Warrant Holder:** the party who identifies themselves to the Warehousing Company as the holder of a warrant by producing the warrant or who establishes ownership in any other manner acceptable to the Warehousing Company.

### **Section 3 Applicable law**

All agreements between the Warehousing Company, the Warrant Holder and the Principal shall be subject to the laws of the Netherlands and if not otherwise specified in these conditions the provisions of civil law concerning the custody of goods, shall apply in general and according to circumstances.

## **Section 4 Disputes**

4.1 All disputes between the Warehousing Company, the Principal and/or the Warrant Holder will be subjected to arbitration in Amsterdam in accordance with sub paragraphs 2 and 3 of this Section. For claiming amounts due the Warehousing Company is entitled to waive the above, in which case the competent Court in Amsterdam has the exclusive jurisdiction to decide over such claim(s).

4.2 Disputes subjected to arbitration will be decided by three arbitrators. One of these arbitrators will be nominated by the Warehousing Company and one by the Principal and/or Warrant Holder. These two arbitrators jointly nominate a third arbitrator, which arbitrator in all circumstances, depending on the nature of the dispute, should be a lawyer specialized in Dutch trade-, storage- and/or transport law. This third arbitrator presides over the arbitral tribunal and stipulates and defends in cooperation with the other arbitrators the procedural order, with the proviso that parties should at least be allowed to clarify their positions in writing and verbally. In case the two arbitrators do not appoint the third (presiding) arbitrator within reasonable time, either party may request the Dean of the Bar Association in the district within which the Warehousing Company is established to appoint the third arbitrator in compliance with the above conditions.

4.3 The arbitration procedure is deemed to be pending from the day on which one party notifies the other party of the written nomination of an arbitrator. The instruction of the arbitrator continues until the final decision which should be rendered in accordance with the laws of the Netherlands, including provisions of international treaties on carriage. They will file their judgment with the registrar of the Court within which district the place of arbitration is situated, while a copy of the judgment will be sent to the parties involved. Prior to starting their work the arbitrators may request the claimant or all parties involved to pay a deposit for the arbitration costs; during the proceedings they may demand for an increase of this deposit. In their judgment arbitrators will decide who of the parties involved and for which part should bear the arbitration costs. This includes fees and costs of the arbitrators, and costs made by the parties as far as reasonably deemed necessary by the arbitrators. The amounts destined for the arbitrators will as far as possible be recovered from the deposit.

## **Section 5 Filed conditions**

5.1 These conditions have been filed with the Registrars of the District Courts of Amsterdam and Rotterdam. They will be sent on request.

5.2 In case of difference between the Dutch text and the text in any other language of these Warehousing Conditions, the Dutch text shall be decisive.

## **CHAPTER 1 PROVISIONS RELATING TO STORAGE, CUSTODY AND DELIVERY**

### **Section 6 Written procedures**

6.1 All agreements, tenders, instructions regarding storage, custody, handling and delivery of goods, shall be recorded in writing.

6.2 Verbal or telephone communications or arrangements shall only be binding on the Warehousing Company if immediately confirmed in writing by the Warehousing Company, unless otherwise agreed.

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

7.1 Tendering of goods and instructions on storage, custody and handling shall be effected or supplied providing the 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 conditions if the Warehousing Company had been acquainted with the true state of affairs, together with delivery to the Warehousing Company of any and all documents prescribed by law.

7.2 If goods are subject to customs and excise provisions or to tax regulations, the Principal shall timely 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 done and agreements between the Warehousing Company and the Principal regarding rates and payments for work done shall be based on the cost of labour prevailing at the time the instructions were given or the agreement was made. In the event of an increase in the cost of labour, the current rates or the agreed rates and payments may be adjusted accordingly. The Warehousing Company shall also have the right to adjust the rates in cases where the Authorities introduce or increase charges imposed on the services rendered by the Warehousing Company.

8.2 Current and agreed rates for storage shall be based on the customary method of stacking or dumping the relevant goods unless otherwise agreed. If at the Principal's request or due to the condition of the goods the customary method of stacking or dumping is not followed, 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, disbursements, taxes, duties, contributions, levies, fines and/or other charges or costs of whatever nature, incurred by or relating to the goods and payable on arrival or charged forward, shall be for the account of the Principal and shall be paid or reimbursed by the Principal whether or not in advance, at the Warehousing Company's first demand, irrespective of whether the goods are still on the premises or have since been removed.

9.2 When the Warehousing Company deems it necessary to conduct law suits or take other legal steps with regard to taxes, duties, contributions, levies, fines and/or other charges or costs of whatever nature, imposed by the Authorities; or if the Principal requests the Warehousing Company to conduct such law suits or implement such legal steps and the Warehousing Company complies with such a request, the resulting work and costs, including the costs of legal and/or fiscal and/or other advice or assistance deemed necessary by the Warehousing Company shall be for the account and risk of the Principal.

9.3 In the event of the Warehousing Company acting or having acted as fiscal agent, all taxes, duties, contributions and other levies as well as fines, interest, costs of whatever nature, or indemnifications shall be for the account of the Principal, without prejudice to the provisions of Section 9.1. The Principal shall pay such amounts at the Warehousing Company's first demand, or shall, at the option of the Warehousing Company, arrange for sufficient security for these amounts by means of a guarantee by a first class Dutch bank in favour of the Warehousing Company or, at the option of the Warehousing Company, in favour of such authority, organisation, corporation or person claiming these amounts.

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

10.1 The Principal shall be liable to 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 the loss and/or damage resulting from defects of the goods and/or the packaging, even when such loss or damage was caused through no fault of his. If the weight has been omitted or stated incorrectly, the Principal shall be liable for all resulting loss and/or damage.

10.2 Notwithstanding the above provisions the Principal shall indemnify the Warehousing Company against claims from third parties as well as indemnify the Warehousing Company for damages paid or due to third parties, including employees of both the Warehousing Company and the Principal, resulting from the nature or condition of the goods stored, unless the damage has resulted directly from personal wilful misconduct or gross negligence by the Warehousing Company themselves.

10.3 The Principal is obliged to pay the amounts mentioned in Section 10.2 upon first demand of the Warehousing Company to the warehousing Company or, at the option of the Warehousing Company, the Principal shall issue sufficient security for these amounts in the form of a bank guarantee issued by a first class Dutch bank in favour of the Warehousing Company or, at the option of the Warehousing Company, in favour of the third party claiming these amounts.

10.4 In case the Warehousing Company has to defend itself legally against claims of third parties as mentioned in Section 10.2, or in case the Warehousing Company deems it necessary to lodge proceedings or any other legal measures regarding such claims, or in case the Principal requests the Warehousing Company to lodge such proceedings or take legal measures and the Warehousing Company agrees to such request, the work and costs, including costs regarding legal and/or tax and/or

other forms of advice or assistance deemed necessary by the Warehousing Company, will be for the risk and account of the Principal. However the Principal is allowed to take over such legal measures or proceedings after approval of the Warehousing Company and after payment of the costs incurred by the Warehousing Company up to that moment regarding legal and/or tax and/or other advice and assistance deemed necessary by the Warehousing Company.

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

The Warehousing Company shall have the right to refuse an instruction for storage and/or custody without having to give any reasons therefore. In the event of the Warehousing Company having accepted the instructions, the agreement may only be broken by mutual consent of the parties concerned, subject to the provisions below.

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

12.1 When the goods are stored the Warehousing Company shall not be obliged to weigh and/or measure the goods without having received specific instructions to this effect, in respect of the manner of packing or storage or storing, neither shall the Warehousing Company be obliged to perform any other research regarding the nature and condition of the goods, including research into the moistness.

12.2 At its own discretion the Warehousing Company may weigh and/or measure the goods in order to check and verify the specifications received, or may perform any other research. If in such an event the Warehousing Company ascertains that the weight or measure vary from the specification, the cost of weighing and/or measuring shall be for the account of the Principal. However, the Warehousing Company shall only be responsible for ascertaining the weights and/or measurements, 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 20 of the Warehousing Company's liability.

12.3 Packages, including containers, may only be opened for inspection of the contents at the Principal's request, however the Warehousing Company shall at all times have the right, but not be obliged, to open the packages in order to verify the contents, should they have reason to suspect that the contents have been incorrectly declared.

12.4 If on inspection it appears that the contents differ from the specification, given by the Principal or any party acting for and/or on behalf of the Principal, the costs of the inspection shall be for the Principal's account. The Warehousing Company, however, shall never be liable for differences between the description and/or designation of the goods taken into custody and their actual nature, condition, weight and/or volume of the goods.

### **Section 13 Delivery and receipt**

Delivery to and receipt by the Warehousing Company shall be made by the Principal's delivery of the goods and their acceptance by the Warehousing Company at the place of storage.

### **Section 14 Condition of the goods on arrival and period of responsibility**

14.1 Save for transfer of the goods in the meaning of Section 18, in which case the liability of the Warehousing Company is governed by the conditions and limitations of liability as specified in that Section, the Warehousing Company is not liable for damage to goods caused by or resulting from an event or process that took place or commenced prior to arrival and readiness for discharge of the goods at the location agreed with or chosen by the Warehousing Company, at which location they will be stored by or on behalf of the Warehousing Company pursuant to the conditions of an agreement entered into with the Warehousing Company, or after removal of these goods from the place of storage agreed with or chosen by the Warehousing Company. In case of goods carried in containers, "ready for discharge" means the moment at which the container(s), in all aspects and in full compliance with the safety regulations and laws in force, can safely be entered. "Removal" means the moment of commencement of loading of the goods on or in a specific means of transport, including containers.

14.2 Unless notification to the contrary goods will have to be delivered to the Warehousing Company in good condition and, in case packed, with good package, including the conditions of containers used therefore.

14.3 If the goods sent to the Warehousing Company arrive in outwardly visible damaged or defective condition, the Warehousing Company shall have the right, but not be obliged, to take any steps to protect the Principal's interests against the carrier or others, at all times for the Principal's account and risk, and shall provide evidence of such condition, without the Principal however being able to make any claim against the Warehousing Company for the manner in which the Warehousing Company have performed such tasks. The Warehousing Company shall notify the Principal without delay in case the goods are upon arrival in an outwardly visible damaged or defective condition, without the latter however having any right to claim against the Warehousing Company because of failure to notify or because of the contents of such notification.

14.4 Goods received for storage may at any time be removed, or destroyed or rendered harmless in any other manner by the Warehousing Company at the risk and expense of the Principal, when as a diligent warehouse-keeper, had he known that they could be dangerous after receipt, would not have accepted the goods for storage.

14.5 With regard to the storage of goods of which the Warehousing Company was aware of their danger, the same shall apply, but only when such goods present an immediately imminent danger.

14.6 The Warehousing Company shall not be liable for any claim for damages in such events and the Principal shall be liable to cover all costs and damages to the Warehousing Company resulting from the delivery for storage, from the storage itself or from the measures taken, unless such costs and damages or the need for taking such action are exclusively due to personal gross negligence or willful misconduct of the Warehousing Company themselves.

14.7 As a result of the measures taken the agreement for the storage of goods stated therein shall cease to apply at the moment of ending these measures, but in the event that the goods are still delivered, the agreement shall only be terminated after their delivery. The provisions relating to dangerous goods shall not prejudice Section 22.

#### **Section 15 Speed of execution of order**

The Warehousing Company shall determine the speed at which an order for storage or delivery of goods is executed. The Principal's wishes shall be taken into consideration as far as possible in this connection, but the Warehousing Company shall not be liable for costs incurred or damage suffered by the Principal when the speed at which the instructions are carried out is slower than desired by the Principal.

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

If the Principal has advised the Warehousing Company that goods are to be delivered for storage in a certain quantity and/or at a specified time, or that goods to be removed, are to be collected in a certain quantity and/or at a specified time; and if the said Principal or any third party then fails to deliver and/or collect in the agreed manner and/or at the agreed times, then the Principal shall be obliged to pay the Warehousing Company any costs incurred for labour and/or equipment not utilised, or not fully utilised, which had been engaged and/or assigned to carry out the relevant instructions by the Warehousing Company.

#### **Section 17 Working hours**

Delivery of goods to and removal of goods from the place of storage shall be carried out during the official working hours of the warehousing staff. Should the Principal require work to be carried out outside the official working hours, the warehouse may at its own discretion comply or not comply with this request. Extra costs incurred for working outside of official working hours shall be borne by the Principal.

#### **Section 18 Place of storage, moving of goods**

18.1 Unless otherwise agreed, the Warehousing Company shall have sole discretion of where the goods are to be stored.

18.2 The Warehousing Company shall at all times have the right to remove the goods to another place of storage.

18.3 The costs of such transfer and insurance or normal transport risk, shall be for account of the Warehousing Company, unless such a transfer is made:

- in the interests of the Principal or the order, or
- due to circumstances for which the Warehousing Company is not liable, or
- due to circumstances which reasonably cannot be for risk and account of the Warehousing Company, or
- due to law or instructions by authorities.

The carriage in connection with a transfer that comes for the account of the Warehousing Company is, in case of national carriage, subject to the Algemene Vervoerscondities ("AVC"), most recent edition, and, in case of international carriage, subject to the CMR, in which case the maximum damages to be paid for national carriage is always limited to 2 SDR per kilogram damaged or lost gross weight, under the condition that the liability of the Warehousing Company is in all circumstances limited to SDR 100.000 per event or number of events following from one and the same cause. Transfers performed for the account of the Principal will be handled by the Warehousing Company acting as forwarder and subject to the Nederlandse Expeditievoorwaarden of the FENEX, most recent edition, and is performed for the risk of the Principal.

18.4 When the goods are moved to another place of storage, the Warehousing Company shall notify the Principal, however without the latter being able to lodge any claim against the Warehousing Company because of failure to notify.

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

19.1 By accepting these warehousing conditions, the Principal and/or Warrant Holder renounces any right to lodge claims or recover damages from third parties in the case of loss or damage of the goods. The Principal will only be able to hold the Warehousing Company liable, even when the Warehousing Company has employed the services of these third parties in the course of their business. The following limitations shall apply to the Warehousing Company's liability.

19.2 In the case of damage and/or loss because of theft by burglary, the Warehousing Company shall be considered to have applied adequate care, if they have provided a proper closure for the storage place.

19.3 In the case of goods stored on open ground or which can only be stored on open ground or for which it is customary for the Warehousing Company to store them on open ground, any liability of the Warehousing Company for damage or shortage, possibly in connection with such storage, shall be excluded.

19.4 In the case of damage and/or loss caused by rats or mice or insects or other vermin, the Warehousing Company shall be considered to have applied adequate care if they have provided the normal pest control in the place of storage.

19.5 The Warehousing Company shall not be liable for any damage and/or loss arising from the following causes, regardless of their origin:

- a. the natural quality of the goods, change in quality, inner rot, dehydration, settling, pulverization, leaking, heating, seeping, sweating, condensation, fermenting, freezing, rusting, breakage, insufficient and/or defective packaging;
- b. force majeure, government measures, requisitioning, seizure, strike, lockout, sabotage, riot, looting, interruption of power supplies;
- c. fire, smoke, explosion, radiation, water damage, break of water pipes, floods, settling, storm, cloudburst and/or extreme precipitation and generally every external calamity;
- d. heat, cold, changes of temperature or humidity of the air, but only in case it was not agreed that the storage would take place in a location fitted to protect the goods from such influences;
- e. incompleteness or incorrectness of the numbers, letters or marks of the goods.

19.6 The compensation payable by the Warehousing Company for the loss of the goods shall be limited to the value of the goods applicable on the day of storage.

19.7 In the case of damage the highest indemnification shall be the difference between the actual value and the value the goods would have had after the damage on the day of storage.

19.8 The Warehousing Company indemnity is only liable for damage to the goods and never for damage due to loss of profit or any other indirect or consequential loss.

19.9 When damage is caused to only part of the goods, which can be classified as having a value of its own (e.g. machine parts) or where damage is caused to one or more items of several goods belonging together (e.g. furniture), any depreciation of the remaining part or of the undamaged goods shall be excluded and not be considered.

19.10 In no event shall more than the actual cost of the damage be paid, and then only to a maximum amount of 2 SDR per kilogram damaged or lost gross weight, provided that in all cases the warehouse's liability is limited to SDR 100,000 per event or series of events resulting from one and the same cause.

19.11 Any right to damages shall cease if no complaint is filed on receipt by or on behalf of the Principal or the Warrant Holder receiving the goods.

19.12 The Principal and/or the Warrant Holder shall be liable for any loss or damage caused by the non/late/improper execution of any obligation under these conditions, or under the separate agreement made between the Warehousing Company and the Principal or Warrant Holder, if these conditions do not already contain an arrangement.

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

20.1 The Warehousing Company shall be obliged to admit the Principal and/or the persons designated by him to the place where his goods are stored, subject to the requirement to comply with customs and/or other formalities/restrictions imposed by the Authorities.

20.2 The following conditions shall apply to all persons whom the Warehousing Company has granted admission:

- a. all persons visiting the place of storage, including the personnel of vessels and vehicles arriving at the warehouse, shall observe the Warehousing Company's regulations;
- b. admittance shall be granted only during normal working hours and always 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;

### **Section 21 Execution of proceedings**

21.1 The execution 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 carried out by or on behalf of the Principal, subject to the conditions laid down by the Warehousing Company, under the supervision of the Warehousing Company and against payment of the costs involved, however without any liability to 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 or their packing received into custody, including containers, other than such which are considered normal for the storage of the goods concerned.

22.2 The Warehousing Company shall only be obliged to take special measures if such measures have been agreed.

22.3 However, the Warehousing Company shall have the right but is not obliged to take immediate action at the Principal's cost and risk, including the clearance or removal, or destruction, or rendering harmless in any other way, 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 warehouse or to equipment, or cause harm to persons, or when such a measure is required or indicated for some other reason, such in the discretion of the Warehousing Company. The Warehousing Company shall immediately inform the Principal of the measures taken, without the latter having any right to claim against the Warehousing Company for failure to meet this obligation.

22.4 Without prejudice to the provisions of the preceding subsection, the Principal shall indemnify the Warehousing Company from any claims by third parties on account of damage caused by the Principal's goods to goods belonging to third parties.

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

23.1 Unless expressly agreed in writing with the Principal, the Warehousing Company shall not be obliged to effect any insurance on the 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 account of the Principal, then the Warehousing Company shall have the right in their discretion to effect the agreed insurance in the name of the Principal, or to include such insurance in a warehousing policy. The value to be insured shall be the amount stated by the Principal. The Warehousing Company shall in all cases exclusively be regarded as intermediary without any liability. The Warehousing Company shall not be held responsible for the condition(s) negotiated with the insurers or be responsible for their reliability or their solvency.

23.2 In all cases where the goods have been insured through the intervention of the Warehousing Company, the Warehousing Company shall have the right to collect the sums claimed for and on behalf of the parties interested in the goods and shall furthermore have the right to deduct all money owed to them for whatever reason by the Principal from the insurance settlement. The balance remaining shall be paid to the Principal.

23.3 If in case of damage to or loss of goods by fire or any other cause and 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 plus additionally a fee for their efforts. The Warehousing Company may make such assistance conditional on the cash payment of, or the provision of security for all sums owing for whatever reason and all costs referred to in this Section by the Principal to the Warehousing Company.

23.4 When partial delivery of the goods has been made by the warehouse, the Principal must inform the warehouse of the value for which he wishes the remainder of the goods to be insured. In the absence of such a declaration the Warehousing Company shall have the right to reduce the insurance value at their own discretion, in proportion to the decrease in number, weight, measure or contents of the goods.

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

Should the goods stored in the warehouse be destroyed by fire or otherwise, the day of destruction shall count as the date of delivery, and the full warehouse rent plus the insurance premium (if the goods were insured through the Warehousing Company) and all 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 that is due to the Warehousing Company (taken in the broadest context) and subject to the provisions of these General Conditions, at any time remove the goods placed in custody.

25.2 The warehouse rent - and if the goods have been 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 storage has been agreed and save for any clauses to the contrary in these conditions, the Warehousing Company cannot require the Principal to remove the goods prior to the expiration of the agreed period of time.

25.4 Where no fixed period of storage has been agreed or where the agreed period of storage has expired, the Warehousing Company has the right to require the goods to be removed at one month's notice, however not within three months of the commencement of storage.

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

26.1 The Warehousing Company shall, however, at all times have the right to require the goods received for storage to be removed prior to the expiration of the storage period, without observing any period of notice, where there is a compelling reason to do so.

26.2 Compelling reasons shall be understood to be circumstances of such nature that applying sensible standards of fair judgment, the Principal could not reasonably expect continuity of storage.

26.3 A compelling reason for removal shall be deemed to exist inter alia, 'if the Principal fails to comply with one or more of the provisions of these conditions. If for instance it appears that owing to the presence of the goods, the hazard of loss and/or damage to other goods, or to the storage place or to equipment; or danger or harm to personnel is to be suspected or feared; and further more if the goods are of a perishable nature and/or liable to inherent changes, which in the opinion of the Warehousing Company justifies the assumption of deterioration, and the Principal has neglected to give instructions for preventing or controlling same.

26.4 The Principal shall remain liable to pay the warehouse rent in full up to and including the day of the removal of the goods.

### **Section 27 Payment**

27.1 All amounts owing/due to the Warehousing Company by the Principal however incurred, such as: warehouse rent, insurance premiums and costs, rent, disbursements, fees for storage and delivery, outlays and charges for work done or to be done, costs of cleaning work and such like during or after a fire or otherwise, extraordinary expenses, additional wages, taxes, duties, levies, fines, interest, etc. shall be immediately due and payable on demand.

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 per 12 months.

27.3 Should the Principal not immediately pay the amount due to the Warehousing Company, the Warehousing Company shall have the right to charge interest at the official rates prevailing at the time.

27.4 Payments received on account shall in the first instance be allocated towards the reduction of ordinary debts, regardless of whether these monies were intended for other purposes when the payments were made.

27.5 When in the case of late payment the amount due is collected by judicial or other means, this amount shall be increased by 10% to cover administrative costs, while the judicial and extra-judicial costs paid by the Warehousing Company shall be for account of the Principal and shall amount at least 15% of the amount due by the Principal.

### **Section 28 Lien and pledge**

28.1 The Warehousing Company has against any party demanding delivery of goods, documents or moneys held by the Warehousing Company, irrespective of the legal nature of such holdership a right of pledge and right of retention on/over such goods, documents or monies as security for all claims it may have against the Principal. The Warehousing Company can exercise these rights also for amounts due by the Principal for prior orders.

28.2 Such right of lien shall be extended to also include sums from insurance claims the Warehousing Company has collected or will collect on behalf of the Principal.

28.3 The Warehousing Company shall regard anyone who, on behalf of the Principal, entrusts goods to the warehouse for performing work, authorized by the Principal to create a pledge on such goods in favour of the Warehousing Company.

### **Section 29 Public sale**

29.1 Should the Principal fail to remove the goods entrusted to the Warehousing Company for storage, on expiry of the rental period covered in the agreement; or fail to remove the goods after the agreed or specified time for storage or at any other point of time in the case of a compelling reason as mentioned under Section 26 above, the Warehousing Company shall have the right, without prejudice to the provisions of Section 28 above, to sell the goods entrusted to them, or to have them sold, without observance of any formalities, 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 furthermore shall have the right to recover from such proceeds all amounts the Principal owes the Warehousing Company.

29.2 If it is probable that the cost of selling the goods will be higher than the benefits or if no buyer is found, despite a reasonable attempt to do so, the Warehousing Company shall have the right to remove the goods, to have them removed or

to have them destroyed. The Principals shall remain liable for all amounts due, increased by the cost of removal and/or destruction.

29.3 In the event of sale, the Warehousing Company shall hold the balance of the proceeds after having deducted all costs and all the Principal's debts, at the Principal's disposal for five years, after which period the balance if not claimed, accrues to the Warehousing Company. The Warehousing Company is not liable to pay interest over the mentioned balance held at the Principal's disposal.

### **Section 30 Expiration of claims**

30.1 Claims against the Warehousing Company for loss, damage or decrease of stored goods or general claims against the Warehousing Company for failure to meet their obligations, shall expire after 12 months.

30.2 In cases of damage to or decrease in the goods, where the Warehousing Company have not informed the Principal of such damage or decrease, the period of expiry shall commence at the end of the day the goods are delivered. In cases of total loss and where notice of damage or decrease has been given, the expiry date shall commence at the end of the day the Warehousing Company have notified the Principal.

### **Section 31 Transfer or transition of goods**

31.1 Transfer or transition of ownership of warehoused goods, or the transfer or transition of the right to take delivery of the goods, by a Principal to a third party, shall not be accepted by the Warehousing Company and be without legal effect as far as the Warehousing Company is concerned neither shall the Warehousing Company recognise such transfer or transition of title, unless all claims the Warehousing Company may have, for whatever reason, against the original and/or transferring Principal have been paid in full.

31.2 The Principal shall be obliged to inform the Warehousing Company instantly in writing of any transfer or transition of ownership of goods, or transition or transfer of the right to release the goods.

31.3 Without prejudice to the provisions above the transfer or transition has no legal implications for the Warehousing Company nor shall the Warehousing Company recognize them, unless the new owner(s) has 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.

31.4 The Warehousing Company is not required to recognize the transfer or transition of ownership or the right to release the goods and shall even have the right to revoke a previous recognition made, and may furthermore refuse to release 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 release; and if the new owner(s) claim(s) not to have accepted these present conditions or not to be bound by them.

31.5 The original and/or transferring Principal shall remain liable to the Warehousing Company for all the warehouse's claims for or in connection with the storage, and/or work done 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 32 Issue of Warrants**

32.1 The Warehousing Company may issue a warrant to the Principal at his request, describing the goods given into custody to the Warehousing Company by the Principal, or the Warehousing Company may issue a number of Warrants, each specifying the amount stated by the Principal of the goods given by him in custody to the Warehousing Company of the same sort and quality, in which case the total of these amounts may not exceed the total amount of the goods of same sort and quality given in custody by the Principal to the Warehousing Company ("Partial Warrants").

32.2 The Warehousing Company shall have the right to refuse to issue a Warrant, 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 Warrant if they believe they have grounds to do so.

32.3 Once a Warrant has been issued, all the Warehousing Company's obligations towards the Principal shall cease, and shall be replaced by the Warehousing Company's obligations towards the Warrant Holder, these regulations being detailed in Chapter II of these Conditions. The Principal shall, even after the issue of the Warrant remain liable towards the Warehousing Company for the effects of any discrepancies between the goods for which the Warrant was issued and their description on the Warrant.

32.4 The Principal indemnifies and will hold the Warehousing Company harmless from claims of Warrant Holders in case the Warehousing Company accidentally delivers the goods given in custody by the Principal for which a Warrant was issued in exchange for a forged Warrant, unless such forgery should reasonably have been detected by the Warehousing Company at the moment of presentation of that document.

32.5 The Principal indemnifies and will hold the Warehousing Company harmless for claims of holders of Partial Warrants or any other party involved therein, in case a negative difference occurs between the weight, volume and/or quality of the goods described in these Partial Warrant(s) and the actual weight, volume and/or quality at the moment of delivery of these goods to the Holder or third party involved in the Partial Warrant(s), irrespective of the cause of such difference.

## **CHAPTER II PROVISIONS REGARDING THE WARRANT**

### **Section 33 Applicable provisions**

The legal relations between Warehousing Companies and (former) Warrant Holders shall be governed by the provisions of Chapter I, except when the provisions of Chapter II determine that a provision of Chapter I may not be applied. The duties resting upon the Principal in accordance with Chapter I also rest upon the Warrant Holder and the rights and defences to which the Warehousing Company is entitled pursuant to Chapter I can also be invoked against the Warrant Holder, unless otherwise described in the wording of these conditions.

### **Section 34 Right to delivery of goods**

34.1 The Warrant awards the right of delivery by the Warehousing Company of the goods they have received for storage and against which the Warrant has been issued. The Warehousing Company shall be liable towards the Warrant Holder for any discrepancy between the goods stored by the Warehousing Company and their description on the Warrants, unless it concerns goods which identification or weighing requires expert knowledge and/or a thorough examination or analysis, as for example, but not limited to, goods discharged in bulk.

34.2 If the Warrant contains the clause: "Content, quality, number, weight and measure unknown" or a similar clause, the Warehousing Company shall not be bound by any statement in the Warrant regarding contents, quality and the number, the weight or the dimensions of the goods.

34.3 The right to delivery shall not exist as long as the Warehousing Company have a claim on the goods resulting from these present conditions and/or until all customs and other formalities prescribed by the Authorities, required for the delivery, have been fulfilled.

### **Section 35 Expiry of the Warrant**

35.1 The Warrant shall be valid for three years from the date of issue, unless a shorter period of validity is indicated on the Warrant.

35.2 Until its expiry the Warrant may be replaced at the Warrant Holder's request by a new Warrant or by several Partial Warrants, against payment of all the costs involved. The Warehousing Company shall have the right to refuse the replacement of the Warrant and may require the goods to be removed on the expiry date of the contract.

35.3 If on its expiry date the Warrant has not been presented for replacement, or if after refusal to replace the Warrant the goods have not been removed from the warehouse on the expiry date, the Holder of the expired Warrant shall be deemed to agree to the warehouse rent, and if the goods have been insured through the Warehousing Company, the insurance premium and costs shall be determined by the Warehousing Company as from such date.

35.4 If on its expiry date, the Warrant has not been presented for replacement, or if after refusal to replace the Warrant the goods have not been removed from the warehouse on the expiry date, against payment of the amount the Warehousing Company are entitled to under Section 36 above, the Warehousing Company shall have the right to dispose of the goods to which the expired Warrant refers, subject to applying the provisions relating thereto.

35.5 For a period of five years after the expiry date of the Warrant, the Warehousing Company shall be obliged to deliver the goods described on the expired Warrant - or should the Warehousing Company have exercised their right to dispose of the goods, the net proceeds of the goods, without payment of interest, shall be paid to the Holder of the expired Warrant, after having deducted all the amounts due to the Warehousing Company. After these five years have expired, the rights of the Holder of the expired Warrant 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 Warrant nor to others.

### **Section 36 Delivery of goods after payment**

36.1 The Warehousing Company shall prior to effecting full or partial delivery of the goods to which the Warrant gives title, have the right to demand payment of:

- a. the warehouse rent due since the date when the last payment was made, as shown on the Warrant and not having been otherwise paid prior to delivery, at the monthly rent noted on the Warrant, parts of months to count as full months;
- b. insurance premiums due since the date when the last payment was made, as shown on the Warrant and not having been recorded as otherwise having been paid prior to delivery, at the monthly insurance premium rate stated on the Warrant, parts of months to count as full months;
- c. the charges for delivery of the goods at the current rate applicable;
- d. disbursements and other outlays made by the Warehousing Company on behalf of the Warrant Holder requesting delivery, in connection with customs and/or other formalities as required by the appropriate authorities, for the goods described on the Warrant;
- e. all costs incurred by the Warehousing Company after the date of issue mentioned on the Warrant:
  - e. 1 for preserving/retaining the goods mentioned on the Warrant,
  - e. 2 for eliminating any dangers caused by the goods mentioned on the Warrant to the warehouse and/or to other goods stored therein,
  - e. 3 for measures taken in respect of the goods mentioned on the Warrant 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 Warrant.

36.2 Notwithstanding the provisions of the preceding paragraphs the Warrant Holder shall be obliged to pay the warehouse rent due - and if the goods have been insured through the Warehousing Company, also the insurance premiums and costs - at the end of each 12 months of storage or such earlier period as has been agreed and is recorded on the Warrant, plus the costs incurred by the Warehousing Company referred to in e.4 and e.5 above, as soon as the Warehousing Company have given notification of this to the Warrant Holder.

36.3 If the Warrant Holder fails to meet his obligation to pay the rent after each 12 monthly period or an earlier period as has been agreed and shown on the Warrant - and if the goods have been insured through the Warehousing Company, additionally the insurance premiums and costs - the monies due to the Warehousing Company accrued in this manner shall be increased as from the day the 12 months storage has elapsed by a penalty of 1% of the amount due for each month in excess of the 12 month period.

### **Section 37 Indemnification**

37.1 Contrary to the provisions of Section 19 above the compensation to be paid by the Warehousing Company for loss of goods shall be limited to the applicable value of the goods on the day of issue of the Warrant, the Warehousing Company is not liable for any consequential loss or costs.

37.2 In the case of damage no greater sum shall be paid than the difference between the value referred to in the previous paragraph and the value after the damage which the goods would have had on the day of issue of the Warrant.

37.3 In any case compensation shall only be paid on the actual damage incurred with a maximum of 2 SDR per kilogram damaged or gross weight lost, always on the understanding that the Warehousing Company's liability shall in all cases be limited to 100,000 SDR per event, or series of events arising from the one and the same cause.

#### **Section 38 Access to and information about goods**

Access to and information about goods for which Warrants have been issued shall only be given on production of the said Warrant.

#### **Section 39 Work in connection with the goods**

39.1 Tasks to be carried out on the goods described on the Warrant as desired by the Warrant Holder, such as sampling, handling, servicing, packing, repacking, restacking, lotting, weighing, splitting into smaller consignments, etc., as well as delivery, shall be carried out by the Warehousing Company having the goods in custody, at the appropriate fees and on the appropriate conditions applicable at that time.

39.2 Such tasks as required by the Warrant Holder, shall only be carried out after surrender of the Warrant.

39.3 Tasks the Warehousing Company does not wish to undertake may, with the Warehousing Company's consent and after surrender of the Warrant, be performed by or on behalf of the Warrant Holder, under the supervision of the Warehousing Company and against payment of all costs involved, however without any liability on the part of the Warehousing Company.

39.4 Partial deliveries, sampling and handling of the goods, causing a change, decrease or change in the number, weight or volume of the goods shall be inserted on the Warrant in the space allocated for these remarks. When there is no space left on the Warrant for further statements regarding deliveries, changes, decreases, etc., the Warrant shall be replaced at the expense of the Warrant Holder.

39.5 Payments due to the Warehousing Company for work performed in connection with the goods mentioned on the Warrant or for supervising such work, shall be paid immediately. The Warehousing Company shall have the right to refuse to return the Warrant until settlement has been made.

#### **Section 40 Notification of special method of handling**

Should the Warehousing Company carry out any work in connection with the goods stored covered under Section 22, the Warehousing Company shall as soon as possible after this event notify the Last known Warrant Holder, without the Warrant Holder having any right to claim against the Warehousing Company for failing to give such notification.

#### **Section 41 The Warehousing Company's responsibility to insure the goods**

41.1 When it is shown on the Warrant that the goods are insured, the Warehousing Company shall thereby have carried out their responsibility to effect insurance for the Warrant Holder's account in accordance with the provisions under Section 23.

41.2 The insured value shall be the value indicated on the Warrant.

41.3 When the Warrant 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 42 Changes in, effect and termination of insurance**

42.1 It will only be possible to change the insured value and/or terminate the insurance when the Warrant is surrendered to be endorsed accordingly.

42.2 Only the insurance as stated on the Warrant shall be applicable.

42.3 Insurance cover shall be terminated on delivery of the goods.

42.4 On delivery of part of the goods, the insured value of the part consignment to be delivered shall be quoted separately and entered on the Warrant where the Warrant does not indicate the insured value per unit and where it is not possible to deduce a proportionate decrease from the value indicated on the Warrant.

#### **Section 43 Amounts of claim**

Compensation amounts for claims collected by the Warehousing Company shall be paid by the Warehousing Company against receipt of the Warrant, after having deducted all amounts owed by the Warrant Holder to the Warehousing Company.

#### **Section 44 Notification of destruction**

In the case of destruction of the goods described on the Warrant, by fire or otherwise, the Warehousing Company shall immediately notify the Last known Warrant Holder, without the Warrant Holder having any right of claim against the Warehousing Company for failure to notify.

#### **Section 45 Mutilation of the Warrant**

45.1 Any erasures and mutilations shall render the Warrant void; alterations shall not be valid unless initialled by the Warehousing Company.

45.2 The Holder of a mutilated Warrant may request the issue of a duplicate, on surrender of the original Warrant and on payment of the charges involved. The details regarding the nature and quantity of the goods to be shown on the duplicate Warrant shall be exclusively determined from the relevant details as shown in the Warehousing Company's records.

#### **Section 46 Loss or destruction of Warrants**

46.1 If a Warrant has been lost or destroyed, the person so entitled may apply to the Warehousing Company for nullification of the Warrant and request delivery of the goods, or request the issue of a duplicate Warrant. Such applications shall, where possible, state the cause for the loss of the Warrant and detail the grounds on which the applicant bases his claim to title.

46.2 If the investigation made by the Warehousing Company afford no reason to doubt the truth of the reasons for the application, the Warehousing Company shall publish the application made, by inserting two announcements at intervals of at least 14 days each in at least two daily newspapers selected by the Warehousing Company, inviting those who believe they have title to the goods described on the missing Warrant to oppose the delivery of the goods and/or the issue of a duplicate Warrant by serving a writ/summons to that effect.

46.3 If within 14 days of the last announcement, no one has opposed the delivery of the goods or the issue of a duplicate Warrant by service of a writ, the Warehousing Company may nullify the Warrant and effect delivery of the goods or issue a duplicate Warrant to the applicant. For determining the nature and quantity of the goods to be delivered or to be stated in the duplicate Warrant, the Warehousing Company's relevant records shall exclusively be regarded as the only true record. The nullification of the Warrant shall immediately after the event be published in the above mentioned newspapers. As a result of such nullification the original Warrant shall lose its validity and all the Warehousing Company's obligations under the original Warrant shall cease.

46.4 In case of opposition by a third party the application shall not be complied with, until it has been determined from a Court Order or through other final and conclusive ruling or award that the applicant is the person entitled to the goods.

46.5 The person who has obtained delivery of the goods shown on a duplicate Warrant, shall remain liable for all claims that may result for risk of the Warehousing Company from this delivery and shall indemnify and hold harmless the Warehousing Company for claims of third parties, including Warrant Holders, for damage and costs resulting from the delivery against a duplicate Warrant. The Warehousing Company may request security for such claims.

46.6 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 executing the application.

#### **Section 47 Termination of the validity of the Warrant**

47.1 If after the termination of the validity of the Warrant, the Warehousing Company no longer wishes to keep the goods in storage, they shall summons the Last known Warrant Holder to remove the goods.

47.2 If the Warrant Holder fails to comply with the summons within 14 days, or if he is no longer the owner of the expired Warrant, and does not within 14 days inform the Warehousing Company who the current Holder of the expired Warrant is; and if the Holder of the expired Warrant does not present himself within such period, the Warehousing Company shall have the right to sell the goods described on the expired Warrant.

47.3 Prior to taking such action, the Warehousing Company shall publish their intention to sell the goods for which an expired Warrant is in circulation, by inserting two announcements at intervals of at least 14 days in at least two daily newspapers each, one of which at least is to appear in the place where the Warehousing Company have their registered office, requesting the Holder of the expired Warrant to as yet meet his obligations or to notify any persons having acquired the expired Warrant.

47.4 If after 14 days after the last announcement the Warrant 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 48 Commencement of the period of expiry of a Warrant**

The period of expiry 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 Warrant Holder of such loss, or if he is no longer the owner of the Warrant and no subsequent Warrant 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 49 Advised quotation and copyright**

49.1 These conditions should be quoted as "Veemcondities 2006" and were filed with the registrars of the Court of Amsterdam (file number 133/2006) and Rotterdam (file number 85/2006) on October the 3rd, 2006 by the Ondernemersvereniging Regio Amsterdam ("ORAM").

49.2 The ORAM is authorised to claim the compensations due for copying as mentioned in the Copyright Law (Auteurswet) by and subject to the rules of the Stichting Reprorecht Amsterdam. Safe for exceptions by law, nothing from these conditions may be multiplied and/or made public by means of print, photocopy, microfilm or otherwise without prior written approval by ORAM, which also applies to full or partial revision of these conditions in which case in all circumstances a source quotation will have to be included.

## **DUTCH FORWARDING CONDITIONS**

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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 of 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 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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## General Transport Conditions 2002 (AVC)

Deposited at the clerk to Amsterdam court (no. 81/2014) and to Rotterdam court (no. 2/2015).

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## Article 1 Definitions

In these conditions the following will mean:

1. **Contract of carriage:** the contract by which the carrier undertakes towards the sender to carry goods by road.
2. **Sender:** the contractual other party of the carrier. If a sender is referred to in the consignment note this does not automatically mean that the sender referred to is the contractual other party of the carrier.
3. **Consignee:** the person who by virtue of the contract of carriage is entitled to delivery of the goods by the carrier.
4. **The consignment note:** the document drawn up in three original copies, one of which (evidence of receipt) is destined for the sender, the second (evidence of delivery) being destined for the carrier, and the third being destined for the consignee.
5. **Servants and agents:** employees of the carrier as well as persons whose services the carrier uses for the completion of the contract of carriage.
6. **Force majeure:** circumstances which a diligent carrier is unable to avoid and in so far as a carrier is unable to prevent the consequences thereof.
7. **Loss due to delay:** financial loss arising from delay in delivering goods.
8. **Written or 'in writing':** in writing or electronically.
9. **BW:** Burgerlijk Wetboek (Netherlands Civil Code).
10. **CMR:** Convention on the Contract for the International Carriage of Goods by Road (CMR) (Geneva 1956), as supplemented by the 1978 Protocol.
11. **'Algemene Veerboot- en Beurtvaartcondities'** the Dutch General Ferry Boat and Regular Barge Terms and Conditions), most recent version, as deposited by Stichting vervoeradres at the registry of the District Courts of Amsterdam and Rotterdam.
12. **General Storage Terms and Conditions:** the General Storage Terms and Conditions, most recent version, as deposited by Stichting vervoeradres at the registry of the District Courts of Amsterdam and Rotterdam.

## Article 2 Electronic messages

1. If data, including those relating to the consignment note, are exchanged electronically, parties shall not dispute the admissibility of electronic messages as evidence in the event of a mutual conflict.
2. Electronic messages have the same evidential value as written documents, unless these messages were not sent, saved and registered in the form as agreed on between the parties and in accordance with the security level and manner agreed on by parties.
3. A consignment note drawn up and signed electronically via the TransFollow platform has the same evidential value as the consignment note referred to in section 1. The electronic signature placed via the TransFollow platform is recognised as sufficiently reliable.

## Article 3 Scope of application

The General Transport Terms and Conditions apply to the contract of carriage of goods by road; if the CMR applies, then the General Transport Terms and Conditions also apply.

## Article 4 Obligations of the sender;

notice of termination of the contract of carriage

1. The sender is required:
  - a. concerning the goods and the treatment of same, to timely supply the carrier with all data and information as he is able to or ought to be able to, and of which he knows or ought to know that such data and information are important to the carrier, unless he may assume that the carrier is already aware of this data;
  - b. to make the agreed goods available to the carrier at the agreed location and time and in the agreed manner, accompanied by the consignment note as required by article 5 and by any further documents as required by law from the sender;
  - c. to clearly and appropriately address each package to be carried and, in so far as reasonably practicable, to affix or append the required information and address to the packages or their packaging in such a manner that under normal circumstances it remains legible until the end of the carriage. The sender may agree in writing with the carrier that addresses on the packages can be substituted by a statement of numbers, letters or other symbols;
  - d. to report the total weight of the goods to be carried on the consignment note;

- e. to load and to stow the goods as agreed in or on the vehicle, and to have them unloaded, unless parties agree otherwise, or unless other obligations arise from the nature of the intended carriage, considering the goods to be carried and the vehicle made available.
2. The sender is not allowed to back out of his obligations mentioned in section 1 a, b, c, and d irrespective of the circumstances he may invoke and the sender is required to compensate the carrier for the damage arising from non-compliance with the obligations mentioned.
3. Without prejudice to the provisions of section 2, the carrier may terminate the contract without any notification if the sender does not fulfil his obligations referred to in section 1a and b; however the carrier may only do so after he has set a final deadline for the sender in writing and the sender fails to meet its obligation by the expiry of that deadline. If setting such a deadline would mean that the business operations of the carrier would be unreasonably affected, then the carrier may terminate the contract without granting a deadline as mentioned. The sender may likewise terminate the contract, if he does not fulfil his obligation as mentioned in section 1b.  
Termination is effected by written notice and the agreement is terminated when this notice is received. After termination the sender owes the carrier 75 percent of the agreed freight rate but cannot be held liable for further compensation. If no freight rate was agreed, the applicable freight rate will be as per the law, respectively as per custom, respectively in fairness.
4. The carrier may also give notice of termination of the contract, in case of defective loading or stowing or in case of overloading, but not until the sender has been given the opportunity to rectify the defect or the overloading. If the sender refuses to rectify the defective loading and/or stowing or the overloading, the carrier may either give notice of termination of the contract, or rectify the defects and/or the overloading himself; in both cases the sender is required to pay the carrier an amount of € 500, unless the carrier proves that the damages suffered are in excess of that amount; section 3 does not apply.
5. The sender must repay to the carrier any fine imposed on him as a result of overloading, unless the carrier has fallen short in fulfilling his obligations pursuant to article 9 sections 1 and 5 or the carrier has not given notice of termination of the contract of carriage on the ground of the previous section, without prejudice to his right to invoke bad faith on the part of the sender. In case the sender can show proof of any fine resulting from violation of article 2.6 section 2 of the Wet Wegvervoer Goederen (Law roadtransport of goods), this stipulation is deleted.
6. Notwithstanding the other sections of this article the sender must compensate to the carrier the damages suffered in so far as caused by the circumstance that the carriage of the goods is or will be fully or partially prohibited or restricted by public authority; however this liability will not exist if the sender proves that the carrier was or could have reasonably been aware of the prohibition or restriction at the time of the contract of carriage being concluded.

#### **Article 5 The consignment note**

1. When making the goods available the sender is obliged to submit a consignment note to the carrier which states that these General Terms and Conditions apply to the contract of carriage concluded.
2. The sender is required to complete the consignment note truthfully and in full according to the instructions, and when making the goods available to the carrier he warrants the correctness and completeness of the data supplied by him.
3. The carrier is required to clearly identify himself as the carrier in the consignment note presented by the sender and to sign it and return it to the sender. If the carrier so requires, the sender is required to sign the consignment note. The signature may be printed or substituted by a stamp or any other mark of origin.
4. The consignment note may also be drawn up in the form of an electronic message in accordance with the format and security level as agreed between the parties and in accordance with the manner of sending, saving and registering as agreed between the parties.

#### **Article 6 Evidential value of the consignment note**

1. When accepting the goods the carrier is obliged to check the correctness of the statement of the quantity of goods in the consignment note as well as the outward good condition of the goods and their packaging, and in case of deviation to make a note of that on the consignment note. This obligation does not exist if in the opinion of the carrier this would considerably delay the carriage.
2. The consignment note is prima facie evidence, subject to evidence to the contrary, of the conditions of the contract of carriage and the parties to the contract of carriage, and of the receipt of the goods and their packaging in outwardly good condition, and of the weight and quantity of the goods. If the carrier has no reasonable means to check the correctness of the entries referred to in section 1, then the consignment note will not be evidential of these entries.

## Article 7 Freight payment

1. The sender is obliged to pay the freight and further expenses attached to the goods at the time that the consignment note is handed over or the goods are received by the carrier.
2. If freight payable at destination has been agreed, the consignee is obliged to pay the freight, the costs due owing to other reasons relating to the carriage and further charges attached to the goods on delivery of the goods by the carrier; if the consignee does not pay these upon the first reminder, he and the sender are jointly and severally obliged to pay. If, in the case of freight payable at destination, the sender has mentioned in the consignment note that no delivery may be performed without payment of the freight costs, the costs due owing to other reasons relating to the carriage and further expenses attached to the goods, the carrier, if no payment is made, must ask the sender for further instructions which he is obliged to follow up, in so far as reasonably possible, against compensation of costs and damage and possibly payment of a reasonable fee, unless these costs were incurred by his own fault.
3. The carrier has the right to charge all extrajudicial and judicial costs incurred to collect the freight and other amounts, as mentioned in sections 1 and 2, to the parties required to pay the freight and other costs. The extrajudicial collection costs are due as from the time that the debtor is in default. The extrajudicial collection costs are calculated on the basis of the Extrajudicial costs compensation decree (*Besluit voor buitengerechtelijke incassokosten*, Bulletin of Acts, Orders and Decrees 2012/141) or the most recent version of that decree.
4. The freight, the costs due owing to other reasons relating to the carriage and further expenses attached to the goods are due also if the goods are not delivered at their destination or only partly, damaged or delayed.
5. An appeal to set off claims to pay freight, costs due owing to other reasons relating to the carriage and further expenses attached to the goods against claims for any other reason is not permitted.
6. If the sender does not fulfil his obligations referred to in this article, then the carrier is entitled to suspend departure of the vehicle, and in this event the damage arising will be considered as expenses attached to the goods.

## Article 8 Instructions of the sender

1. The sender is entitled to change the location where the goods are made available, to designate himself or somebody else as consignee, to change a designation given of the consignee as well as to give orders concerning delivery or to change the place of delivery, provided these instructions do not impede the normal business operations of the carrier. Instructions concerning non-delivery which reach the person having to carry them out on time, must still be carried out however.
2. Instructions may also be given after receipt of the goods by the carrier.
3. The sender is required to compensate the carrier for any damage and costs caused by following the instructions. If as a result of the instructions given the vehicle has been driven to a location which was not previously agreed on, then the sender is required to pay a reasonable fee in this respect as well as compensating the damage suffered and expenses incurred.
4. The right to give instructions lapses as soon as the consignee accepts the goods at the place of delivery or the consignee claims compensation from the carrier because the latter did not deliver the goods.

## Article 9 Obligations of the carrier

1. The carrier is required to accept the goods agreed on at the place and time and in the manner agreed as well as to communicate the loading capacity of the vehicle to the sender, unless it can be presumed that the sender is aware of this.
2. The carrier is obliged to deliver the goods received for carriage at the destination in the condition in which he has received them.
3. The carrier is obliged to deliver the goods received for carriage within a reasonable time period; if a period of delivery has been agreed in writing delivery must be carried out within this period.
4. If the carrier does not fulfil the obligation referred to in section 1, either party may give notice of termination of the contract in respect of the goods not yet accepted by the carrier. However, the sender may do so only after having set a deadline in writing for the carrier and the carrier does not fulfil his obligation at the expiry of it.

Notice of termination is given by a written communication to the other party and the contract terminates when this notice is received. After termination the carrier is required to compensate the sender for the damage which he has suffered as a result of the termination. This compensation, however, cannot amount to more than twice the freight and the sender owes no freight.

5. The carrier is obliged to check the loading, stowing and any overloading by or on behalf of the sender if and in so far as circumstances permit this. If the carrier considers that the loading and stowing is defective, he is obliged, notwithstanding the stipulation in article 4 section 4, to make a note of this on the consignment note. If he is not able or in a position to fulfil his control obligation, he may make a note of this on the consignment note.
6. If delivery domicile has been agreed, the carrier must deliver the goods to the door of the address mentioned in the consignment note or to the door of an address which the sender has provided in good time instead of the one in the consignment note pursuant to article 8. If the address is not reachable via a surfaced road or any other reasonable manner, it must be delivered to a location, which is as close as possible to the address originally indicated.

#### **Article 10 Liability of the carrier**

1. Except in the case of force majeure the carrier is liable for damage to or loss of the goods and for damage due to delayed delivery in so far as the carrier has not fulfilled the obligations referred to in article 9, sections 2 and 3.
2. The carrier is also liable for acts and omissions of his agents and servants in the same way as for his own acts and omissions..
3. The carrier cannot relieve himself of his liability by invoking the defective condition of the vehicle or of the equipment which he uses unless this was made available to him by the sender, the consignee or the receiver. Material will not mean a ship or a railway carriage containing the vehicle.

#### **Article 11 Special risks**

Notwithstanding article 10, the carrier, who does not fulfil his obligations pursuant to article 9 sections 2 and 3, will nevertheless not be liable for the damage arising from this, in so far as the non-observance is the result of the special risks related to one or more of the following circumstances:

- a) the carriage of the goods in an open uncovered vehicle, if this was explicitly agreed and specified in the consignment note;
- b) absence of or defective condition of packing of the goods which considering their nature or the manner of carriage should have been sufficiently packed;
- c) handling, loading, stowing or unloading of the goods by the sender, the consignee or persons acting on account of the sender or the consignee;
- d) the nature of certain commodities which owing to causes related to this nature are exposed to total or partial loss or to damage, particularly through combustion, explosion, melting, breakage, corrosion, decay, desiccation, leakage, normal reduction of quality or presence of vermin or rodents;
- e) heat, cold, temperature variations or air humidity, but only if it has not been agreed that the carriage would be performed by means of a vehicle especially equipped to protect the goods from the effects of such conditions;
- f) incompleteness or inadequacy of the address, numbers, letters or signs on the packages;
- g) the fact that it concerns carriage of a live animal.

#### **Article 12 Presumption of exonerating circumstances**

1. If the carrier proves that, considering the circumstances of the case, the non-compliance with his obligations pursuant to article 9 sections 2 and 3 may have been a consequence of one or more of the special risks specified in article 11, it will be presumed that the non-compliance was indeed such a consequence. However, the person who is entitled to receive the goods from the carrier may prove that this non-compliance was not wholly or partly caused by one of these special risks.
2. The presumption referred to here above does not apply in the event mentioned in article 11a, if there is an abnormal shortage or an abnormally large loss of packages.
3. If, in accordance with what the parties had agreed, the carriage is performed by means of a vehicle especially equipped to protect the goods from the effects of heat, cold, temperature variations or air humidity, the carrier for the purpose of exoneration of his liability as a result of these effects may only invoke article 11d if he proves that all measures had been taken, which he was obliged to take considering the circumstances, with respect to the choice, the maintenance, and the use of such equipment and that he acted in accordance with the special instructions referred to in section five.

4. The carrier may only invoke article 11g, if he proves that all measures had been taken which he was normally obliged to take, considering the circumstances and that he acted in accordance with the special instructions referred to in section five.
5. The special instructions referred to in sections three and four of this article must have been given to the carrier before the start of the carriage and must have been explicitly accepted by him and must be specified in the consignment note if one has been issued for the carriage concerned. Merely the specification of them in the consignment note constitutes no evidence in this event.

#### **Article 13 Compensation**

1. The compensation owed by the carrier on the ground of non-compliance with his obligation pursuant to article 9 section 2 is limited to an amount of € 3.40 per kilogram; the carrier is not liable on the grounds of the contract of carriage for other damage than that arising from loss of or damage to the goods, such as consequential damage, business stagnation or immaterial damage.
2. The number of kilograms as basis for the calculation of the amount specified in section 1 is the weight of the damaged or not delivered object as specified in the consignment note.
3. If the carrier is liable because he did not deliver within the reasonable period specified in article 9 section 3, the compensation for delay in delivery is limited to once the freight; if the period specified in article 9 section 3 has been agreed in writing, the compensation is limited to twice the freight.
4. The costs of expertise research, salvage and other costs which are incurred to establish and realise the value of the damaged or lost goods and of those delivered with delay are considered as depreciation of the object.
5. If the carrier is liable because of non-compliance with his obligation stemming from Sections 8:1115 para 2 and 8:1118 para 3 BW, or the articles 6 section 1, 19 sections 4, 21 or 25 of these terms and conditions, compensation due by the carrier in this respect shall not exceed the compensation which he would owe in the event of total loss of the goods concerned.

#### **Article 14 Intention to cause damage and wilful recklessness**

An act or an omission by whom ever, except the carrier himself, carried out either with the intention to cause damage, or recklessly and in the knowledge that this damage would ensue, does not deprive the carrier of his right of appealing to any exoneration or limitation of his liability.

#### **Article 15 Notice of damage**

1. If the goods are delivered by the carrier showing obvious damage or loss and the consignee does not, on receipt of the goods or immediately thereafter, communicate to the carrier a reservation in writing, specifying the general nature of the damage or the loss, then the carrier is presumed to have delivered the goods in the same condition as in which he received them.
2. If the damage or the loss are not externally visible and the consignee has not, within one week of acceptance of the goods, communicated to the carrier a reservation in writing, specifying the general nature of the damage or the loss, then the carrier is likewise presumed to have delivered the goods in the same condition as in which he has received them.
3. If the goods are not delivered within a reasonable or an agreed period and the consignee has not, within one week of acceptance of the goods, communicated to the carrier a reservation in writing, specifying that the goods were not delivered within this period, then the carrier is presumed to have delivered the goods within this period.

#### **Article 16 Right to claim**

Both the sender and the consignee are entitled to demand delivery of the goods in accordance with the obligations of the carrier from the carrier.

#### **Article 17 Cash on delivery (COD)**

1. Parties may agree that the goods will be charged with a COD amount which, however, shall not exceed the invoice value of the goods. In that case the carrier may deliver the goods only after advance payment of the COD amount in cash, unless the sender has authorised the carrier to accept some other form of payment.

2. If after notice of arrival the consignee does not pay the COD amount in accordance with the form of payment as prescribed by the sender to the carrier, then the carrier must ask the sender for further instructions. The costs related to asking for instructions are for account of the sender. The carrier must follow up the instructions given to him, in so far as this is reasonably possible, in return for reimbursement of costs and possibly a reasonable fee, unless these costs were incurred by his own fault. If the sender gives instructions to the effect that delivery must be carried out in deviation to instructions previously given relating to payment, then these instructions must be given in writing to the carrier. In the absence of instructions the stipulations of article 21 apply mutatis mutandis.
3. The carrier is obliged after delivery of a COD consignment and transfer of the amount to him to remit the COD amount without delay but in any event within two weeks to the sender or to transfer it to his bank or giro account.
4. The period of two weeks specified in section 3 starts on the day that the goods are delivered.
5. The consignee who at the time of delivery knows that the goods are burdened by a COD amount is obliged to pay to the carrier the amount which the latter owes to the sender.
6. If the goods have been delivered without the COD amount having been collected in advance, the carrier is obliged to compensate the sender for the damage to the maximum of the COD amount, unless he proves that there was no fault on his part or on the part of his employees. This obligation does not affect his right of recourse against the consignee.
7. The COD fee due accrues to the sender.
8. All claims against the carrier stemming from a COD condition are limited to one year, counting from the commencement of the day following the day when the goods were delivered or ought to have been delivered.

#### **Article 18 Reservations of the carrier**

In application of the present conditions the carrier reserves the right

- a) to carry the goods by means of the vehicles which are appropriate in his opinion and to keep them if necessary in such vehicles, storage rooms or warehouses as he thinks fit, irrespective of whether these vehicles, storage rooms or warehouses belong to the carrier or third parties;
- b) to have the free choice of the route for carriage, and likewise to deviate from the customary route. He is also entitled to call on places as he thinks fit for the operation of his enterprise.

#### **Article 19 Prevention after receipt**

1. If upon receipt of the goods by the carrier the carriage cannot reasonably be effected, continued or completed or within a reasonable time period, the carrier is obliged to communicate this to the sender. Both carrier and sender are then entitled to give notice of termination of the contract.
2. Notice of termination shall be given by notifying the other party in writing and the contract will terminate when this written notification is received.
3. The carrier is not obliged to effect further carriage to the place of destination and is entitled to unload the goods and store these at a place fit for the purpose; the sender is entitled to take possession of the goods. The costs incurred with respect to the goods in connection with the termination are for account of the sender, under reservation of section 4.
4. Without prejudice to force majeure the carrier is obliged to compensate the sender for the damage which he suffers as a result of the termination of the contract.

#### **Article 20 Stack-on transport, through transport**

1. If part of the carriage, whether or not after transshipment of the goods, takes place on inland waterways, the liability of the carrier for this part is defined by articles 9 and 13 of the Algemene Veerboot- en Beurtvaartcondities.
2. If, after delivery of the goods which he has carried, the carrier undertakes to have the goods carried onwards, he does so in the capacity of a forwarding agent and his liability in this capacity is then limited to € 3.40 per kilogram for lost or damaged goods; no further compensation for any kind of damage shall be owed.

#### **Article 21 Storage in the event that the consignee does not show up**

1. If the consignee does not show up after notice of arrival of the goods, if he does not begin taking delivery of the goods, if he does not continue to accept delivery of the goods regularly and with appropriate haste, if he refuses to accept the

goods or to sign for receipt, the carrier may store the goods for account and risk of the sender, observing due care, in a manner and location of his determination, if necessary also in the vehicle in which the goods were carried; the carrier is obliged to inform the sender.

2. The carrier, taking section 1 into consideration may also proceed to storage or garaging, if furnishment of security as specified in article 23 section 5 is refused, or if a dispute arises over the amount or the nature of the security to be furnished.
3. Except in the event of seizure, the goods may be sold publicly or privately for account of the sender without any legal authorisation being required, but only after expiry of one week after a notice in writing by registered mail to the sender of the intention to sell.
4. The sale may be effected without observing any term and without prior notice if the goods are perishable or storage may be detrimental or give rise to damage or danger for the vicinity. If prior notice was not given, the carrier is obliged to inform the sender of the sale afterwards.
5. With regard to livestock the term specified in section 3 is three days, subject to the right of the carrier to proceed to the sale without respecting any term and without prior notice if the condition of the livestock so warrants. If prior notice was not given, the carrier is obliged to inform the sender of the sale afterwards.
6. The carrier will retain the proceeds from the goods sold, after deduction of the amount of any COD and a fee due to the carrier in connection therewith and of everything due to the carrier in connection with the goods sold, both for freight as well as the costs or storage and parking and other costs and damages, for the sender for six months following the acceptance of the goods for carriage, at the expiry of which term he shall put the amount retained in judicial custody.

#### **Article 22 Storage before, during and after carriage**

If sender and carrier agree that the carrier will store the goods before or during the carriage as agreed, or will do so on completion of the carriage, such storage is effected under application of the General Storage Terms and Conditions, pursuant to which sender and carrier are respectively considered as the depositor and the custodian.

#### **Article 23 Right of lien**

1. The carrier has a right of lien on goods and documents in his possession in connection with the contract of carriage towards any person who demands delivery of same. This right does not accrue to him if, at the time of receipt of the goods for carriage, he had reason to doubt the right of the sender to make the goods available for carriage to him.
2. The right of lien applies likewise to charges attached to the goods by way of COD as well as to the COD fee to which he is entitled, for which he is not obliged to accept security.
3. The carrier may also exercise the right of lien against the sender for reason of what is still owed to him with respect to previous contracts of carriage.
4. Likewise, the carrier may exercise the right of lien against the consignee who in this capacity became a party to previous contracts of carriage for reason of what is still owed to him with respect to these contracts.
5. If when settling the invoice a dispute arises over the amount due or if there is a need for a calculation to be made for the determination of what is due that cannot be made quickly, then the party demanding delivery 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.

#### **Article 24 Right of pledge**

1. All the goods, documents and monies in possession of the carrier in connection with the contract of carriage serve as pledge for all claims which he has against the sender.
2. Except for the cases where the sender has been declared bankrupt, has been granted moratorium of payments or in has been declared subject to a debt reorganisation scheme for natural persons, the carrier shall never be entitled to sell the pledged objects without permission from the Court in accordance with Section 3:248 para 2 BW.

### **Article 25 Lost goods**

If the goods have not been delivered within thirty days from the day when they were accepted for carriage and if their whereabouts is unknown, the goods will be considered as lost.

If within one year after the carrier has paid compensation for non-delivery of the goods to the person who was entitled to delivery of same, these goods or some of them appear to be (again) in possession of the carrier, the latter is obliged to communicate this circumstance to the sender or the consignee in writing, whichever has expressed the wish to this effect in writing, and then the sender respectively the consignee has the right for thirty days from receipt of such communication to demand as yet delivery of these goods against reimbursement of the compensation he has received. The same applies if the carrier has paid no compensation for non-delivery, subject however to the period of one year to start from the day after the day when the goods ought to have been delivered. If the sender or the consignee respectively does not avail himself of this right, article 21 applies.

### **Article 26 Indemnification; Himalaya clause**

1. The sender who fails to meet any obligation which the law or these conditions impose on him is obliged to indemnify the carrier against all damages which he might suffer as a result of this non-compliance when he is held liable by a third party on account of the carriage of the goods.
2. When servants and agents of the carrier are held liable on account of the carriage of the goods, these persons may invoke each liability limitation and/or exoneration which the carrier can invoke pursuant to these conditions or any other legal or contractual provision.

### **Article 27 Default interest**

Pursuant to Section 6:119 BW, parties owe statutory default interest on any amounts owed.

### **Article 28 Limitation period**

1. All judicial claims based on or related to the contract of carriage are limited to one year.
2. In so far as a carrier seeks recourse against a person whose services the carrier has used in completing the contract of carriage to recoup what the carrier is due to the sender or the consignee a new limitation period of three months begins from the time as stipulated in Section 8:1720 para 1 BW.

### **Article 29 Choice of court; choice of law**

1. All disputes arising from or relating to domestic carriage by road between parties residing in the Netherlands can exclusively be adjudicated by the competent court in Rotterdam, unless the parties agree otherwise in writing.
2. All legal relationships ensuing from or relating to the contract of carriage are governed by Dutch law.

## **Explanatory note**

*Instead of a judicial decision, parties can also opt to submit their dispute to arbitration. TAMARA specialises in arbitration in the areas of transport, storage, logistics, international trade, and the shipping and shipbuilding industries. Stichting vervoeradres sits on the board of TAMARA to represent the interests of road transport and logistics services. Since September 2011 it is no longer possible to submit cases for arbitration to the Stichting Arbitrage voor Logistiek.*

*If you wish to make use of the arbitration services of TAMARA, then include the arbitration clause below in your contract of carriage.*

*'All disputes ensuing from or connected to this contract will be subject to Arbitration in Rotterdam in accordance with the TAMARA Arbitration Regulations. Article 29 Paragraph 1 AVC 2002 does not apply to this contract.' The parties can also decide after the conflict has arisen to submit the case for arbitration. This requires a written agreement between the parties.*

Stichting Vervoeradres facilitates the logistics chain with widely accepted bilateral general terms and conditions (such as the General Conditions of Transport, AVC). Key to this is the principle of a well-balanced distribution of risks, sectoral acceptance and transparency regarding the legal status both of the sender (shipper), the logistics service provider and the consignee. The Foundation maintains contacts on an international level for purposes of enhancing the legal status of the various parties in the logistics chain (as formulated in the CMR Convention). Beurtvaartadres facilitates the logistics chain in the mutual exchange and storage of data on logistics transactions, for purposes of reducing the overall transaction costs. Its expertise, solutions and products are made available to this end. Beurtvaartadres expressly strives to provide services which apply corporate social responsibility and aims to raise awareness of its CSR policy among its colleagues, customers and suppliers. Beurtvaartadres is independent and acts on behalf of the employers' organisations EVO, Goederenvervoer Nederland, Nederlandsch Binnenvaartbureau and Transport en Logistiek Nederland. Beurtvaartadres provides its logistics services through the following entities:

### **Beurtvaartadres document**

Beurtvaartadres document ensures that businesses can send their goods with the correct legal documents, via road, water or by air.

### **TransFollow**

TransFollow supports the logistics chain with common, user-friendly ICT systems for data exchange and to improve data quality. The emphasis is placed on data integrity and the reduction of overall transaction costs with the use of new technologies.

### **Beurtvaartadres douane (Beurtvaartadres customs)**

Beurtvaartadres douane facilitates importers and exporters by enabling the (digital) processing of customs declarations and other customs obligations as efficiently as possible.