

## **General Terms and Conditions of R.B.C. Terminal B.V.**

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### **Article 1 – General**

1. These general terms and conditions, hereinafter: the “RBC Conditions”, apply to any and all offers and order confirmations submitted by R.B.C. Terminal B.V., hereinafter: “RBC”, and/or to any and all agreements concluded by RBC with its Clients and to any and all activities to be carried out by RBC.
2. The term “Client” is taken to mean the party giving the order to carry out activities and/or the party entering into an agreement with RBC, including the group companies of this party or entities otherwise affiliated with this party.
3. If a contract has been concluded on the basis of the RBC Conditions, these conditions will also apply to any subsequent offers, order confirmations and agreements concluded with the same Client.
4. The applicability of other terms and conditions, including the general terms and conditions used by the Client, are explicitly rejected, unless these conditions have been explicitly accepted by RBC in writing.
5. The provisions in the RBC Conditions may only be varied in writing. The document needs to be signed by persons being authorized to do so according to the Commercial Register.
6. If a provision or part thereof in the RBC Conditions is null and void or nullifiable, this will not have an effect on the applicability of the other provisions or parts thereof.
7. In the event of any differences between the Dutch text of the RBC Conditions and the translation thereof into English, the Dutch text shall prevail.

### **Article 2 – Applicable conditions and regimes**

1. In addition to the RBC Conditions, the regimes referred to in this article at a. through h. apply to the activities specified therein, if and in so far as RBC actually carries out those activities. The regime pertaining to the most relevant activity of RBC for (potential) liability applies to the (potential) liability of RBC. The general terms and conditions referred to in article 2 (1) (a. through d.) are attached to the RBC Conditions as appendix and form an integral part thereof. The conventions referred to in article 2 (1) (e. through h.) are hereby declared to apply and these conventions also form an integral part of the RBC Conditions.
  - a. Terminal activities: the Rotterdam Stevedoring Conditions 1976;
  - b. Forwarding and customs broker activities: the Dutch Forwarding Conditions (FENEX, Netherlands Association for Forwarding and Logistics, 2018);
  - c. Warehousing activities: the Dutch Warehousing Conditions (FENEX, 1995);
  - d. Heating: R.B.C. Terminal B.V. General Terms and Conditions for Tank Heating;
  - e. National and International barge services: the Budapest Convention on the Contract for the Carriage of Goods by Inland Waterways (CMNI);

- f. National and International carriage by road: the Convention on the Contract for the International Carriage of Goods by Road (CMR);
  - g. National and International carriage by sea: the Hague-Visby Rules;
  - h. National and International carriage by rail: the Convention concerning International Carriage by Rail (COTIF) as well as the Uniform Rules concerning the Contract of International Carriage of Goods by Rail (CIM) ; and
  - i. All other activities: the provisions of these RBC Conditions, including, but not limited to the conditions of article 3 of these Conditions.
2. In the event of any conflict between a provision from the RBC Conditions and a provision from one of the aforementioned applicable regimes, including, but not limited to provisions with respect to the competent court, the provision from the RBC Conditions shall prevail, in so far as the provision from the applicable regimes does not apply mandatorily.

### **3. Article 3 – Liability and indemnification**

1. If, under the terms of the applicable regimes referred to in article 2 herein, no other limitation of liability applies, the liability of RBC towards the Client is limited to EUR 10,000.- for each incident or series of incidents ensuing from the same cause, up to a maximum annual amount of EUR 100,000.- for each Client.
2. The claim liability period of RBC commences at the time that RBC, its employees or auxiliary persons will receive the objects or containers and ends at the time that RBC, its employees or auxiliary persons will lose the actual power to dispose of the objects or containers.
3. If delays arise due to circumstances (for instance: break times, hustle and bustle, weather influences) arising from the loading and unloading of containers at RBC, RBC will not be liable for the consequential damage/loss sustained by the Client. The liability of RBC is in any event limited to the waiting costs of the driver.
4. The Client is obliged to pass on to RBC within the specified time any information and data which is required and prescribed by regulations, including, but not limited to, the SOLAS Convention (the International Convention for the Safety of Life at Sea).
5. The Client is obliged to indemnify and compensate RBC with respect to any and all costs, liabilities, fines, payments, toll charges and customs levies, taxes, damage, loss or claims incurred by or imposed on RBC, its employees or auxiliary persons in connection with the activities carried out, for whatever reason, but in particular as a result of information or data incorrectly passed on by the Client to RBC, and irrespective of whether such a claim is the result of a performance error on the part of RBC, its employees or auxiliary persons.
6. The Client is obliged to indemnify and compensate RBC for any claim submitted by a third party to RBC in connection with the agreement concluded between RBC and the Client, in so far as the claim exceeds the limited liability of RBC under the RBC Conditions, including the applicable regimes.
7. All claims of the Client against RBC shall lapse by the mere expiry of a period of 12 months, unless RBC and the Client have agreed in writing on an extension of the time limit. The aforementioned period commences on: i) in the event of a total loss or damage to the objects, the day on which the objects will be or should have been delivered by RBC or ii) in case of all other claims, the day on which the claim becomes due and payable.

#### **Article 4 – Hazardous substances**

1. If containers contain hazardous substances, the Client must provide RBC with all the necessary instructions and documents in conformity with all the applicable regulations, including, but not limited to, IMDG Code, AND, ADR and RID.
2. Containers with hazardous substances must be delivered with the correct labelling in accordance with the statutory regulations. In the event that labels drop off or are hanging loose due to circumstances, for instance as a result of weather influences, during their stay at the terminal, RBC is allowed to relabel the containers in accordance with the applicable regulations at the Client's expense. RBC will inform the Client thereof in advance.
3. The Client is liable for any damage sustained by RBC, its employees, auxiliary persons or other third parties caused by the hazardous substances during work performed by RBC.

#### **Article 5 – Offers**

4. Offers and quotations made in oral form are subject to contract. Written offers and quotations only apply during the period specified in the submitted offer or quotation.
5. Offers submitted by RBC will only be binding if the Client has signed the most recent submitted offer by providing his name, signature and company stamp and after returning such signed offer to RBC. Offers submitted earlier are automatically cancelled and until that time the offer submitted earlier applies, if applicable.
6. If, after acceptance of the offer or quotation submitted by RBC, it takes longer than three months before an agreement is performed, RBC will be entitled to pass on to the Client the price and rate changes which have taken place in the meantime.
7. Turnover tax and other levies and taxes will only be included in the prices quoted by RBC if this is expressly mentioned. Nevertheless, RBC is entitled to pass on to the Client all levies and taxes relating to the agreement.

#### **Article 6 – Payment and default**

1. Amounts charged to the Client shall be paid to RBC within [ X ] days of the invoice date .
2. The Client is not entitled to suspend or set off any payments.
3. If the Client fails to pay the invoice in full within the period mentioned in paragraph 1 of this article, the Client owes to RBC the statutory commercial interest on the amount due, to be calculated as from the invoice date, as well as the extrajudicial collection costs incurred by RBC.
4. As soon as the Client is in default with respect to RBC, RBC is entitled to suspend its obligations with respect to the Client, until the Client has complied with all its obligations with respect to RBC, or has provided sufficient security for the compliance with its obligations.
5. If the Client has remained in default with respect to RBC during 30 days, RBC is entitled to terminate any and all agreements concluded with the Client by merely giving notice in writing, all this without prejudice to RBC's right to demand payment for the activities already carried out by RBC, as well as compensation for damage/loss due to noncompliance in other respects.
6. In the event of liquidation, suspension of payment or a prejudgment or executory attachment on a substantial part of the Client's assets, the claims of RBC will be immediately due and payable and all the concluded agreements will be terminated without court intervention.

#### **Article 7 – Security**

1. If upon payment a dispute should arise about the amount due or if for the determination of this amount a calculation is necessary which cannot be made soon,

the Client or the party/person demanding delivery is obliged at RBC's request to pay without delay the part of the amount being due and payable on which the parties have reached agreement and to provide security for the payment of the contested part or of that part of the amount which has not been determined yet, all this at RBC's option.

2. Immediately on request of RBC, the Client will provide security for costs paid or to be paid by RBC to third parties or government bodies and for other costs which RBC incurs or may incur for the Client, including freight charges, port charges, entitlements, levies and premiums.

#### **Article 8 – Right of retention and right of pledge**

1. RBC is entitled to refuse to hand over objects, documents and monies which RBC has or will come to have in its possession for whatever reason or destination with respect to any party/person.
2. RBC has a right of retention in respect of any and all objects, documents and monies which RBC has or will come to have in its possession for whatever reason or destination for all claims which RBC has or will come to have against the Client and/or the owner of the objects, also with regard to claims which do not pertain to the objects.
3. RBC has a right of pledge on all objects, documents and monies which RBC has or will come to have in its possession for whatever reason or destination for all claims which RBC has or will come to have against the Client and/or the owner of the objects.
4. RBC may also exercise the right of retention and the right of pledge referred to in this article for all that the Client is still payable to RBC in connection with previous agreements.
5. The sale of objects in respect of which RBC exercises a right of retention or a right of pledge will take place at the Client's expense in the manner prescribed by law or privately if there is consensus.

#### **Article 9 – Confidentiality**

1. The Client is obliged to keep confidential any and all data, information and documents arising from the agreement concluded with RBC or by reason of the activities to be carried out by RBC which he will come to have in his possession, except and in so far as there exists a statutory obligation to disclose, and in this connection the Client will comply with all the applicable regulations and privacy legislation.
2. The Client is obliged to indemnify and compensate RBC with respect to any and all costs, liabilities, fines, payments or other costs incurred by or imposed on RBC, its employees or auxiliary persons, as a result of a breach of the obligations arising from paragraph 1 of this article.

#### **Article 10 – Applicable law and the court of competent jurisdiction**

3. Dutch law applies to all legal relationships between RBC and the Client, as well as to the RBC Conditions.
4. Any dispute arising from or in connection with agreements or offers to which the RBC Conditions apply will be exclusively subject to the jurisdiction of the Rotterdam District Court.
5. If mandatory law should preclude the exclusive nature of the jurisdiction clause of paragraph 2 of this article, this jurisdiction clause will confer additional jurisdiction on the judicial bodies referred to hereinabove.

**GENERAL CONDITIONS  
OF THE  
ASSOCIATION OF ROTTERDAM STEVEDORES**

**“ROTTERDAM STEVEDORING CONDITIONS”**

Deposited at the registry of the  
District Court at Rotterdam  
August 12<sup>th</sup> 1976.

## DEFINITIONS

### Article 1

1. When reference is made in these General Conditions to *operations*, this covers all acts whether in fact or in law or omissions as well as the making and receiving of oral or written statements.
2. When reference is made in these General Conditions to the *premises* of the stevedore, this covers all sites, buildings (sheds and otherwise) and waterplots where the stevedore is situated or performs his operations, including quays, railway and crane tracks and roads, whether adjacent or not.
3. The titles of the articles in these General Conditions are for reference and are not an exact summary of the subject matter of the article.

## GENERAL PROVISIONS

### Article 2

1. These General Conditions apply to all orders to and all operations of the stevedore, irrespective of their nature and whether they are stevedoring operations in the strict sense or the stevedore is under an obligation to carry out the operations involved or they are carried out for payment.
2. In respect of orders and operations which do not belong to the operations of a stevedore in the strict sense, such as the provision of tug services, warehousing and the like, the stevedore shall be entitled to invoke also the standard conditions of operators of the relevant branch or such specific conditions as may have been agreed.

The stevedore is equally entitled to invoke the conditions whether standard or personal of third parties with whom he has made a contract relating to his operations or any specific provisions in such contract.

In case of conflict between such conditions and these General Conditions, the stevedore can decide on which conditions or provisions he wishes to rely.

3. The conditions and provisions referred to in sub-article 2 of this article, shall be deemed to have been made in favour of the stevedore and to have been accepted by him as such.
4. These General Conditions can be invoked against the principal as well as his representative, against whom they are equally applicable.
5. The stevedore is also entitled to invoke the custom of the port, even if this differs from what would be valid pursuant to these General Conditions
6. If the stevedore, at any time, does not exercise any right granted to him in these General Conditions, this shall not be construed as a waiver of the right.
7. Reliance on a specific provision or right shall not prevent the stevedore from relying on any other specific provision or right.
8. In case of difference between the Dutch text of these General Conditions and a text in a foreign language, the Dutch text shall prevail.

## OFFERS, TARIFFS AND PAYMENTS

### Article 3

1. All offers made by the stevedore are without engagement. The tariffs quoted by the stevedore are based on the normal handling of sound and seaworthily packed cargo in the way as customary with the members of the Association of Rotterdam Stevedores, with gangs of the size normal and during the working hours normal when the tariff was quoted.

The stevedore shall be entitled to adjust the tariffs offered by him even after they have been accepted, if one or more of the factors referred to in the preceding paragraph change between the time the offer was made and the execution of the operations

2. All operations, with the exception of those referred to in sub-article 3 of this article, shall be paid for immediately on presentation of the stevedore's invoice, without any deduction or set-off whatsoever.

3. The stevedore's invoice for operations with respect to vessels trading in a regular liner service shall be paid within 14 days after presentation of the invoice to the principal or his representative, again without any deduction or sett-off whatsoever.
4. The documentation supplied by the stevedore shall be conclusive evidence of the nature, scope and extent of the operations performed by him such as the hours during which work has been performed and the men and material made available. The stevedore's documentation shall prevail over documentation prepared by others.
5. On invoices due to the stevedore but not paid, interest shall accrue from the time when the invoice is due for payment at the interest rate charged by the Central Netherlands Bank on loans to the customers ("promesse disconto") plus 4%
6. Notwithstanding the foregoing or any other contractual provision, the stevedore shall always have the right to ask for an advance or cash payment or for such security as he considers proper for any invoice presented but not paid and/or for payment of current operations and/or any other claim and until any request for payment or security has been properly satisfied to refuse to perform, or suspend or terminate operations without previous warning or court intervention and without any liability on his part.
7. All claims of the stevedore shall become due immediately in the case of the bankruptcy or suspension of payments (or applications therefore) of the principal or his representative and/or the owner and/or operator and/or charterer of the means of transport in relation to which operations are or have been performed or if any property of the principal or his representative is seized or – in general – if any goods or any contents or part thereof in relation to which operations are or have been performed, such as the vessel, the cargo or the bunkers of the vessel or the freight earned or to be earned by the vessel, are seized.
8. The stevedore is entitled to retain goods, documents and money, for the account and the risk of the principal and/or interested parties, until his claims have been properly paid or until, in his opinion, proper security has been furnished.  
  
The stevedore has the right of pledge on all goods, documents and monies which are in his possession or which will come into his possession for any cause whatsoever, for all claims arising from his operations or otherwise.  
  
If in relation to any claim, no payment has been made or proper security has been furnished within 30 days after request, the stevedore is entitled to sell the goods or documents on which he has the right of pledge by private treaty or public auction without court intervention.  
  
The stevedore is at all times entitled to set off any of his claims against such money that is or shall come into his possession.
9. If the tariff offered by the stevedore is quoted in foreign currency, any devaluation of such currency against the Netherlands guilder or any revaluation of the Netherlands guilder against such currency after the time of the offer, is for account of the principal.
10. Payment to the stevedore shall always take place in the manner indicated by the stevedore. Remittance to an agent of the principal shall not be an acquittal for the principal.
11. Without prejudice to the provisions of article 1433 of the Netherlands Civil Code, payments shall, where more than one account is outstanding, be set off against such outstanding accounts in chronological order, which the stevedore shall decide in case of doubt.
12. The provisions of this article do not invalidate the provisions of the Tariff conditions referred to in article 11.

## **GENERAL PROVISIONS WITH RESPECT TO THE OPERATIONS**

### **Article 4**

1. The stevedore is always entitled to let the operations in whole or in part be performed by one or more third parties or by persons who are employed by third parties.
2. The operations will be carried out at the stevedore's option with his own equipment or with hired equipment or with the help of the loading or the discharging gear or power of the means of transport, which shall be put at his disposal free of charge. The gear and the said means of transport itself must comply with the requirements of the public authorities and the stevedore. The master of the vessel or the persons in

charge of the means of transport in relation to which operations are performed, are under an obligation to supervise the proper functioning and use of same and to do whatever is possible to prevent damage.

3. When information is given by the stevedore such as when certain cargo will be discharged or the time of loading and/or delivery, this will be to the best of his knowledge and belief but without any liability on his part.

The ordering alongside of the means of transport of the interested parties is considered as a supply of information as indicated in the preceding paragraph.

4. The clearing up of holds, the opening and closing of hatches, the rigging of derricks and/or winches, the placing and removing of gangways and in general any work, which has no direct relation with the operations in a strict sense but which is necessary in order to commence, continue or terminate the operations, shall take place without any liability on the stevedore's part, even if the execution of such work has become customary.

If the principal fails in good time to have such work performed, the stevedore shall be entitled to do such work for the account and risk of the principal.

5. The principal is under the obligation to ensure there is sufficient light on the means of transport. If light is unavailable or not sufficiently available, the stevedore will make such arrangements as he considers necessary without any liability on his part and he will in no case be liable for fire, explosion or other consequences thereof.

6. Where the stevedore has refused to perform or suspended or terminated operations, the means of transport shall leave the stevedore's premises at his first request, failing which the stevedore is entitled to take such measures as he thinks fit for the account and risk of the principal and/or the carrier and/or the owner and/or the interested party or parties without any liability on his part.

7. Goods, which are not received or taken away timely, may be stored by the stevedore for the account and risk of the principal and/or interested parties, without prejudice to any of the rights of the stevedore by virtue of these General Conditions or otherwise.

## **CONTROL-SERVICES**

### **Article 5**

1. All control-services for the principal such as tallying, weighing, measuring, gauging, checking, sampling, sorting, etc. shall be exclusively performed by the stevedore for a separate charge unless as an exception the stevedore and principal agree that such services shall be performed by a control service company provided such company is a member of the "Scheepvaart Vereeniging Zuid" (Port Employers Association).

2. The principal shall make his request for control by such other control service company to the stevedore timely and he shall pay the stevedore a reasonable fee and reasonable charges for the facilities that the stevedore will place at the disposal of such control service company. If a timely request is not made or no agreement is reached on the fee and/or charges to be paid to the stevedore, he shall not be under any obligation to accept the control service company indicated by the principal on his premises. The stevedore is entitled to impose conditions on such acceptance, notably with regard to the responsibility of or to the said company; if such conditions are not accepted by the control service company, the stevedore may refuse to accept the said company on his premises.

3. The provisions of this article do not exclude the possibility that the stevedore agrees directly with the control service company indicated by the principal on the fee and/or charges to be paid to him, in which case the principal shall be jointly and severally liable with the control service company for the payment of such charges and the provisions of article 3 relating to payment shall apply.

## **THE PACKING AND MARKING OF GOODS**

### **Article 6**

1. Without limitation to what follows hereafter, the cargo to be handled must be packed and marked clearly in conformity with the law of the place where the operations are performed.

2. In any case, it must be clearly and accurately indicated on the goods in conformity, wherever possible, with generally accepted rules failing formal legal rules if they are or contain items which are especially susceptible to rust or self-heating and/or inflammable and/or explosive and/or fragile and/or poisonous and/or radio-active and/or in-toxicating and, in general, if they are or contain items which may be injurious or dangerous to men, animals or the environment; also the weight, if more than 1000 kg, must be clearly and accurately indicated on the goods. The stevedore's attention must be drawn to any of the elements referred to in this subarticle and also to goods which, having regard to their value, require special stowage or handling.



3. Furthermore, the stevedore may at any time refuse to perform, suspend or terminate the operations with respect to goods, which do not, in his opinion, comply in any respect with the foregoing requirements and/or take such measures in respect of such goods as he thinks fit (including their destruction), without any liability on his part and for the account of the principal.

4. Indications or descriptions in a foreign language or in technical terms which, in the opinion of the stevedore, are not generally known, shall not be deemed to comply with the foregoing requirements.

## **PERSONS ON OR AT THE PREMISES**

### **Article 7**

1. All persons on or at the premises of the stevedore shall strictly follow the rules and directives issued by any public authority or the stevedore in the interests of order and safety.

2. The vessels and other means of transport and the labourers involved in the delivery and the receiving of goods shall not go under the reach of the cranes in so far as this is not required for the performance of the operations. It is forbidden to smoke on the premises.

3. Persons who enter the stevedore's premises to deliver or receive goods or who are responsible for operations performed or perform operations there for any reason in connection with the operations or the goods involved are responsible to the stevedore for the proper compliance with the provisions of this article and/or the rules and directives referred to in sub-article 1 of this article.

4. The stevedore is entitled at any time to refuse entrance to his premises to persons not wanted there by him or to require such persons to leave.

5. The stevedore is under no obligation to ensure that goods on his premises (whether in sheds or elsewhere ashore) shall be kept above high water.

## **LIABILITY**

### **Article 8**

1. The stevedore is not liable for damage nor for the event which causes such damage, unless and in so far as it is satisfactorily proved these are the result of actual fault or privity or gross negligence of the stevedore or someone for whom he is responsible and, in the latter case, the stevedore has not exercised due diligence in the choice and the supervision of the person(s) involved.

2. Any and all liability of the stevedore ends, if he is not notified in writing of the alleged damage or of the operations which it is alleged were improperly executed before the operations are terminated or before the persons, animals or goods leave his premises (whichever occurs first), unless such notice could not reasonably be given.

3. In the case of the liability of the stevedore, same is limited as follows:

- a. for damage in respect of goods or animals to a maximum of Dfl. 2,000.- per unit or animal and in the case of non-unit cargo Dfl. 2,000.- per 1000 kg;
- b. for damage in respect of persons to a maximum of Dfl. 20,000.- per person;
- c. for damage in respect of goods not covered by sub-article 3a to a maximum of Dfl. 20,000.-

In any event where damages are incurred or suffered in respect of persons and/or animals and/or goods or otherwise, the stevedore's liability shall be limited to Dfl. 50,000.- per assignment or event (at his option), such amount to be divided pro rata between the interests involved according to the damage suffered.

4. If damage occurs or may occur in any form, as well as if any rule or directive is not followed, the stevedore may refuse to perform, suspend or terminate his operations, as well as take such further measures as he thinks fit, without any liability on his part.

5. All damages including costs, loss of profit, losses, fines or other disadvantages incurred by the stevedore in respect of any event for which he is not liable under these General Conditions or otherwise, shall be reimbursed to him at his first request by the principal, irrespective of whether the principal and/or others have

incurred damage themselves. If an event has resulted in damages for which the stevedore is liable as well as damages for which he is not liable, the stevedore shall bear his own damages.

6. The principal shall indemnify the stevedore in respect of any claim whatsoever of third parties, against whom the stevedore might not be entitled to invoke these General Conditions, in so far as such claims would have been excluded if such third parties were bound by these General Conditions.

#### **Article 9**

Except in case of his actual fault or privity or gross negligence, the stevedore shall never be liable for non-material damage nor for consequential damages in any form whatsoever (such as loss of profit or income, fines and similar charges), nor for the event from which such damage arises, nor for damage of any kind, nor for the event from which such damage arises in the following circumstances:

- a. owing to the condition, nature or stowage of the goods or the nature or condition of any means of transport involved or any part thereof;
- b. The unavoidable result of the method of working, if neither the principal nor the carrier nor other interested parties timely objected in writing concerning such method if working or of the speed required necessitated this method of working in the opinion of the stevedore;
- c. owing to incorrect stowage, if the principal or the carrier or other interested parties gave insufficient guidelines or information and did not object in writing concerning the stowage to the stevedore during the operations;
- d. as a result of the breaking of hoisting devices, ropes, wires and other gear unless where such equipment is the property of the stevedore, it can be proved that such equipment had not been adequately maintained or did not conform to legal requirements or, failing such requirements, to requirements generally considered reasonable
- e. incurred during operations normally performed by others e.g. ships' crew or agent, irrespective of the reason why the stevedore carried out such work and if he received or will receive payment;
- f. as a result of work done by the stevedore in connection with customs formalities;
- g. owing to strikes of labourers, casual or regular, general or partial, official or unofficial, regardless whether the result of a breach of contract, previous notice of dismissal of labourers, lock out, agitation by or lack of labourers, labour trouble or delay in any other form; irrespective whether labourers in the service of the stevedore or in the service of others (including the principal) are involved;
- h. owing to war, riots, sabotage, seizure, arrest, detention, destruction, terrorism or taking hostage;
- i. owing to burglary, fire or explosion;
- j. owing to the non-compliance by the principal or by third parties or by persons for whom the stevedore is responsible of any rule or directive issued by any public authority or by the stevedore himself (including those contained in these General Conditions);
- k. owing to high water, storm or similar perils;
- l. owing to other goods, latent defects in piping, buildings or machinery, any accident connected with the operations, changes in the quality of goods, leakage, perishing, infestation or insufficient or faulty packing;
- m. owing to any negligence in the performance of anything which the stevedore was not specifically asked to perform;
- n. owing to causes which the stevedore could not reasonably prevent or unknown causes.

#### **Article 10**

1. If the stevedore is under obligation to indemnify the principal in respect of damages payable to third parties, the amount of any damages to be paid shall be fixed in consultation with the stevedore. The stevedore shall only be bound to pay the principal, if satisfied that such damages have been or will be paid to the third party.

2. In case of damage, for which the stevedore would appear to be liable, the parties interested are under an obligation to claim such damages in the first instance under any policy or scheme of private or public insurance available to them or the parties which suffered the damages.
3. The stevedore is at any time entitled to invoke provisions relating to the exclusion or limitation of liability, in agreements between his principal and/or the carrier and third parties, or legal rules applicable to such agreements to similar effect.
4. All provisions relating to the exclusion or limitation of liability of the stevedore and the indemnification by the principal in respect of claims by third parties, as well as the provisions for arbitration and any legal rules such as those referred to in sub-article 3 of this article and all other rights intended to benefit the stevedore in connection with possible claims (such as sub-article 6 of article 8), are made also to the benefit of those persons referred to in sub-article 1 of article 4 of these General Conditions, as well as to the benefit of any persons employed by the stevedore and in general to the benefit of any party, for whose acts the stevedore may be responsible or who can be held liable for operations performed by the stevedore.

The stevedore shall, where appropriate be deemed to have acted as agent for the persons referred to in this sub-article when concluding agreements.

Moreover, the stevedore is irrevocably authorized by the principal to waive such rights as the principal may have against the persons mentioned.

## **TARIFF CONDITIONS**

### **Article 11**

1. The tariffs and the conditions attached thereto issued or to be issued by the Association of Rotterdam Stevedores are deemed to form part of the present General Conditions save in so far as the stevedore has expressly agreed the contrary in writing.
2. In case of conflict between any provision of these General Conditions and any Tariff condition, it is for the stevedore to decide on which provision he wishes to rely,

## **EXPIRATION OF CLAIMS**

### **Article 12**

Any claim against the stevedore shall lapse, irrespective of whether there has been compliance with the provisions of sub-article 2 of article 8, six months after the claim has arisen, unless such claim has been made the subject of arbitration in accordance with article 13.

## **ARBITRATION**

### **Article 13**

1. Any dispute which arises between the stevedore and his principal or his representative shall be decided by three arbitrators to be appointed after consultation between the parties or, failing agreement thereon within a reasonably short time, by the Chairman of the Chamber of Commerce at Rotterdam at the request of either party, of which request the other party must have been notified. The Chairman of the arbitrators shall be a lawyer practising at Rotterdam.
2. The arbitrators shall decide "as good men in equity".
3. Each party shall notify the request to arbitrate and the result of the arbitration to the Secretariat of the Association of Rotterdam Stevedores and shall deposit the arbitration award there.
4. The stevedore is entitled to waive the provisions of this article, in particular in respect of claims for unpaid invoices, in which event the competent civil courts at Rotterdam shall have jurisdiction.

## **APPLICABLE LAW**

### **Article 14**

All operations of the stevedore shall be subject to the law of the Netherlands.

## **EFFECTIVE DATES**

### **Article 15**

1. These General Conditions can be referred to as the "Rotterdam Stevedoring Conditions". They shall come into effect on the day of their deposit at the registry of the District Court at Rotterdam. General Conditions deposited earlier shall cease being effective at that time, except for agreements to which they are applicable and in which the present General Conditions cannot be incorporated.
2. 2. With respect to offers or operations current at the time of the deposit of the present General Conditions at the above-mentioned Registry, these General Conditions shall be applicable as from the date of the deposit. Modifications, which may be made to these General Conditions thereafter, shall come into effect as from the day on which they shall be deposited and shall, as from that day, be applicable to all current operations of the stevedore.
3. 3. In case of doubt, it is for the stevedore to decide on which General Conditions or on which provision(s) he wishes to rely, even if this would be contrary to the provisions of this article.

**DUTCH FORWARDING CONDITIONS**

**GENERAL CONDITIONS  
OF  
FENEX (Netherlands Association for Forwarding and Logistics)**

deposited at the Registry of the District Courts at Amsterdam and Rotterdam on 1 May 2018

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## Definitions

### Article 1. Definitions

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

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

## Scope

### Article 2. Scope

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

### 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

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Client. The Freight Forwarder must be able to prove the changes.

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

## **Insurance**

### **Article 7. Insurance**

1. Insurance of any kind shall only be arranged at the Client's expense and risk following acceptance by the Freight Forwarder of the Client's explicit written order, in which the Client clearly specifies the goods to be insured and the value to be insured. A mere statement of the value or the interest is not enough.
2. The Freight Forwarder will take out the insurance (or arrange for this to be taken out) through an insurer / insurance broker / insurance intermediary. The Freight Forwarder is neither responsible nor liable for the solvency of the insurer / insurance broker / insurance intermediary.

3. When the Freight Forwarder uses equipment, such as derricks, cranes, fork-lift trucks and other machines to perform the Services that do not form part of its usual equipment, the Freight Forwarder shall be entitled to take out insurance at the Client's expense to cover the Freight Forwarder's risks arising from the use of such equipment. Where possible, the Freight Forwarder shall consult in advance with the Client about the use of such equipment. If no timely prior consultation is possible, the Freight Forwarder will take the measures that seem to it to be in the best interests of the Client and shall inform the Client of that.

## **Execution of the Agreement**

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

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

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

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

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

1. All operations such as inspecting, sampling, taring, tallying, weighing, measuring, etc. and receiving goods subject to appraisal by a court-appointed expert, shall take place only on the Client's specific instructions and upon remuneration of the costs thereof.
2. Notwithstanding the provisions in paragraph 1, the Freight Forwarder shall be entitled, but not obliged, on its own authority and at the Client's expense and risk, to take all such actions

as it deems necessary in the Client's interest. Where possible, the Freight Forwarder shall consult in advance with the Client. If this is not possible, the Freight Forwarder shall take the measures that seem to it to be in the best interests of the Client and shall inform the Client of the measures taken and the associated costs, as soon as this is reasonably possible.

3. The Freight Forwarder is not an expert with respect to the Goods. The Freight Forwarder shall therefore in no way be liable for any damage that arises from or that is related to any notification by the Freight Forwarder with regard to the state, nature or quality of the Goods; nor shall the Freight Forwarder be under any obligation to ensure that the shipped Goods correspond with the samples.

## **Liability**

### **Article 11. Liability**

1. All Services shall be at the Client's expense and risk.
2. Without prejudice to the provisions in Article 17, the Freight Forwarder shall not be liable for any damage whatsoever, unless the Client can prove that the damage has been caused by fault or negligence on the part of the Freight Forwarder or the latter's employees.
3. The Freight Forwarder's liability shall in all cases be limited to 10,000 SDR per occurrence or series of occurrences with one and the same cause of damage. Taking into account the aforementioned limit, in the event of damage, loss of value or loss of the Goods in the Agreement, the liability shall be limited to 4 SDR per kilogram of damaged or devalued Goods or lost gross weight.
4. The loss to be indemnified by the Freight Forwarder shall never exceed the invoice value of the Goods, to be proved by the Client, in default whereof the market value, to be proved by the Client, at the time when the damage occurred, shall apply.
5. The Freight Forwarder shall never be liable for lost profit, consequential loss and immaterial damage, however that occurred.
6. If during the execution of the Agreement damage occurs for which the Freight Forwarder is not liable, taking into account the provisions in Article 19 of these Conditions, the Freight Forwarder shall make efforts to recover the Client's damage from the party that is liable for the damage. The Freight Forwarder shall be entitled to charge to the Client the costs incidental thereto. If so requested, the Freight Forwarder shall waive in the Client's favour its claims against Third Parties whose services it engaged for the purpose of executing the Agreement.
7. The Client shall be liable vis-a-vis the Freight Forwarder for any damage - including but not limited to material and immaterial damage, consequential damage, fines, interest, as well as penalties and confiscation, including damage on account of non-clearance or tardy clearance of customs documents and claims due to product liability and/or intellectual property rights

– suffered directly or indirectly by the Freight Forwarder as a result of (amongst other things) the non-compliance by the Client of any obligation pursuant to the Agreement or pursuant to applicable national and/or international legislation, as a result of any incident that is within the control of the Client, as well as a result of the fault or negligence in general of the Client and/or its employees and/or Third Parties whose services the Client engages and/or Third Parties that work on behalf of the Client.

8. The Client shall indemnify the Freight Forwarder at all times against third-party claims, including employees of both the Freight Forwarder and the Client, connected with or ensuing from the damage referred to in the previous paragraph.
9. Even where all-in or fixed rates, as the case may be, have been agreed, the Freight Forwarder that is not a carrier but always a party that arranges transportation in accordance with title 2, section 3 of Book 8 of the Dutch Civil Code, shall be liable, whereby the liability is governed by these Conditions.
10. If a claim is made against the Freight Forwarder by the Client outside of the Agreement in respect of the damage that occurs during the execution of the Services, then the Freight Forwarder's liability shall be limited to the liability under the Agreement.
11. If to defend its liability for conduct of a Third Party or employee the Freight Forwarder derives a defence from the Agreement vis-a-vis the Client, then if it is held liable by the Client under this defence, a Third Party or employee can invoke this defence as if the Third Party or employee were also party to the Agreement.
12. In the event a Freight Forwarder is held liable outside of the Agreement with regard to damage to or loss of a Good or delay in delivery by someone who is not party to the Agreement or a transport agreement entered into by or on behalf of the Freight Forwarder, then the Freight Forwarder has no further liability than it would have under the Agreement.

#### Article 12. Force majeure

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

#### Article 13. Refusal of carriers

1. 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**

1. 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

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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

1. 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

1. 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 in the branch of trade or 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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# **DUTCH WAREHOUSING CONDITIONS**

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

## **GENERAL PROVISIONS**

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

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

### **Section 2 Definitions**

In these conditions it is understood by:

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

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

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

### **Section 3 Applicable law**

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

### **Section 4 Disputes**

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

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

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

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

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

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

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

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

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

## **Section 5 Filed conditions**

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

## CHAPTER I

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

### **Section 17 Working hours**

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

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

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

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

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

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

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

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

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

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

## **Section 21 Performance of activities**

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

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

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

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

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

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

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

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

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

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

The balance shall be paid to the principal.

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

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

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

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

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

## **Section 25 Removal of goods**

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

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

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

## **Section 27 Payment**

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

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

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

## **Section 29 Public sale**

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

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

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

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

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

### **Section 31 Complaints**

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

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

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

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

## **Section 33 Issue of receipts**

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

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## CHAPTER II

### PROVISIONS REGARDING THE RECEIPT

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

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

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

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

35.2 If the receipt contains the clause:

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

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

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

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

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

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

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

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

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

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

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

### **Section 38 Indemnification**

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

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

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

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

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

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

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

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

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

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

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

## **Section 44 Amounts of claims**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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## **R.B.C. Terminal B.V. General Terms and Conditions for Tank Heating**

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### **Article 1 – Definitions**

1. In these terms and conditions the following expressions have the meanings stated:
  - a. Object: any (tank) container, (road) tanker and any other equipment presented by the Client for heating purposes;
  - b. Tank: a tank with a capacity greater than 1m<sup>3</sup> being a fixed tank or a demountable tank;
    - i. Fixed tank: a tank mounted permanently on a vehicle, which so becomes a road tanker or a tank which form an integral part of such a vehicle;
    - II. Demountable tank: a tank with a capacity greater than 1,000 litre, not being a fixed tank, a tank container or a tank battery, which is not designed for the transport of substances without having to refill and which typically cannot be handled, unless the tank is empty.
  - c. Heating: keeping or bringing cargo and tank containers up to a temperature indicated by the Client by means of connecting steam, hot water or electricity to the facilities applied to the tank container for heating purposes.
2. In the event of any differences between the Dutch text of these terms and conditions and the translation thereof into English, the Dutch text shall prevail.

### **Article 2 – Information**

1. The Client should, at the request of RBC at the time of giving the order, in writing place RBC in possession of all information of which he knows or should know that this information is of interest to RBC.
2. For Heating purposes and/or for keeping the equipment at a specific temperature by RBC, the Client shall communicate the heating method and the mode of operation to be followed. The Client is also obliged to inform RBC in writing on:
  - a. the nature of the cargo; and
  - b. the technical specifications of the equipment.
3. At the request of RBC, the Client is obliged to complete and sign a form stating all the information pertaining to heating (plus any specific information).
4. RBC may rely on the information and statements provided without being bound to investigate the correctness and completeness of that information and is entitled, but not obliged, to verify this information and the statements for correctness and completeness.
5. The Client warrants the information and statements provided to be correct and complete and is liable towards RBC as well as towards third parties for all damage and costs arising from the fact that the information provided by him has been incorrect and/or incomplete.
6. RBC is allowed to refuse work if the provisions of this article are not complied with. The handling fee involved will be borne by the Client.

### **Article 3 – Instructions**

1. RBC is to ensure that the equipment is handled with due regard for the precautionary measures by the Client and will exercise all possible care.
2. The Client is obliged to promptly follow the instructions given to him in the framework of the safety guarantees of his equipment, as well as the equipment and the persons of RBC. The Client is therefore liable towards RBC as well as towards third parties for all damage and costs arising out of the fact that the instructions given by RBC were incorrectly and/or incompletely carried out by the Client.

### **Article 4 – Heating up agreement per event**

Unless expressly otherwise agreed in writing, agreements will be concluded per equipment unit per heating up event and/or per event of maintaining a specific temperature level.

### **Article 5 – Loading**

Upon the commencement of the heating up agreement, the Client is obliged to present the cargo exclusively in properly sealed equipment. The load factor must leave sufficient room for the expansion of the cargo and/or pressure build-up as a result of the heating up, in terms of which the statutory provisions applicable to the load factor shall, in any event, never be exceeded.

### **Article 6 – Client's duty of care in respect of heating up**

1. The Client shall ensure the presence of properly functioning appendages, including a properly functioning temperature gauge and heating system.
2. The temperature gauge must be placed in such a position that the temperature of the liquid can be measured regardless of the level of the liquid. RBC is not obliged to check the internal condition of the material nor the quality of the cargo.

### **Article 7 – Urgent maintenance**

1. Any costs incurred by RBC in respect of urgent maintenance work on equipment presented for heating up or maintaining a specific temperature will be for the account of the Client.

### **Article 8 – Liability**

Liability, if any, on the part of RBC is governed by the General Terms and Conditions of R.B.C. Terminal B.V., in particular by article 3, where, among other things, the liability of RBC towards the Client is limited to EUR 10,000.- for each incident or series of incidents ensuing from the same cause, up to an annual maximum amount of EUR 100,000.- for each Client.