

## Terms and Conditions of Carriage Mainfreight N.V.

### 1. Definitions

“**Carrier**” means Mainfreight N.V.

“**Merchant**” includes, jointly and severally, the shipper, the receiver, the consignee, the holder of the Bill of Lading or waybill, any person owning or entitled to the possession of the goods or the Bill of Lading or waybill, and anyone acting, whether as servant or agent or otherwise, of any such person.

“**Vessel**” includes inland barges and seagoing vessels and also includes any substituted vessel and any vessel to which the goods will be transhipped during the performance of this contract.

“**Goods**” means the cargo accepted from the shipper and includes any Containers not supplied by or on behalf of the Carrier.

“**Container**” includes any container, trailer, railway wagon, transportable tank, flat or pallet or any similar article of transport used to consolidate the Goods.

“**SDR**” means Special Drawing Right as defined by the International Monetary Fund.

“**CMR**” means the provisions of Convention on the Contract for the International Carriage of Goods by Road done at Geneva on the 19th of May 1956 as amended by the Protocol to the Convention on the Contract for the International Carriage of Goods by Road (CMR), done at Geneva on the 5th of July 1978.

“**HVR**” means the provisions of the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading signed at Brussels on the 25th August 1924 as amended by the Protocol to Amend the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading signed at Brussels on the 25th August 1924, signed at Brussels on the 23rd February 1968 and the Protocol amending the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading signed at Brussels on the 25th August 1924, as amended by the Protocol of 23 February 1968, signed at Brussels on the 21st December 1979.

“**CMNI**” means the provisions of Budapest Convention on the Contract for the Carriage of Goods by Inland Waterways.

“**CIM**” means the provisions of the Convention concerning International Carriage by Rail of 9 May 1980 as amended by the Protocol signed at Vilnius on 3 June 1999.

“**Montreal Convention**” means the provisions of Convention for the Unification of Certain Rules for International Carriage by Air as signed at Montreal on 28 May 1999.

“**IMDG-Code**” means the International Maritime Dangerous Goods Code.

### 2. Application

2.1. These terms and conditions apply to all offers and contracts made by the Carrier and to all services whether gratuitous or not and to all legal and factual acts performed in that connection.

2.2. Confirmations and/or acceptances by the Merchant of the offers and quotation made by the Carrier are regarded as express acknowledgment and acceptance of these terms and conditions. The Merchant's confirmation and/or acceptance can follow from the written, verbal or electronic confirmation of the Carrier's offer or quotation.

2.3. The Carrier's offers and quotations can be made by (digital) mail, fax, telephone and Internet.

2.4. Unless expressly otherwise agreed in writing, applicability of any terms and conditions used and/or declared applicable by the Merchant is explicitly rejected.

2.5. If any provision of these terms and conditions is void or voidable, such shall not affect the validity of the other provisions.

2.6. In case the Dutch text of these terms and conditions differs from the English text, which is merely a free translation, the Dutch text will prevail.

2.7. No servant or agent of the Carrier shall have the power to waive or vary any provisions of these terms and conditions unless such waiver or variation is in writing and is specifically authorised or confirmed in writing by the board of directors of the Carrier.

2.8. Regardless of the manner in which they have been made, all offers of the Carrier are non-binding and can be revoked without any formality, even after acceptance thereof by the Merchant.

2.9. After the Merchant's confirmation or acceptance of the offer and/or quotation the Carrier can demand an advance payment for the amount as set out in the offer and/or quotation.

2.10. The Merchant is considered to also having accepted the applicability of these Terms and Conditions to any future instructions and contracts with the Carrier.

### 3. Carrier's Tariff

The Carrier has drafted an Applicable Tariff of which the provisions are considered incorporated herein. The Carrier's Tariff may include provisions relating to container and vehicle demurrage. Further, the Carrier's Tariff may include provisions relating to the storage of containers, goods and vehicles. The Carrier's Tariff can be found on the Carrier's website and will also be provided by the

Carrier or his agents upon request. In the case of inconsistency between these terms and conditions and the Carrier's Tariff, these terms and conditions shall prevail except with respect to the calculations of freight and other charges, in which case the tariff shall prevail.

#### **4. Merchant's Warranty**

The Merchant warrants that in agreeing to these terms and conditions, including the Carrier's Tariff, it is in possession of or is entitled to possession of the Goods and/or the Container, or is authorised by the person who is in possession of or entitled to possession of the Goods and/or the Container.

#### **5. Subcontracting/Himalaya**

5.1. The Carrier shall be entitled to sub-contract on any terms the whole or any part of the carriage, loading, unloading, storing, warehousing, handling, stuffing and unstuffing, and without limitation, any and all other duties whatsoever undertaken by the Carrier in relation to the Goods, without prejudice to the applicability of these terms and conditions to the contract between the Carrier and the Merchant.

5.2. The Merchant undertakes that no claim or allegation shall be made against any vessel or person whatsoever, other than the Carrier, including, but not limited to, any employee, servant, agent or subcontractor of the Carrier, or any independent contractor, including, but not limited to, stevedores, terminal operators, inland transport operators (whether road, rail, inland waterways or air) which imposes or attempts to impose upon any of them or any vessel owned by any of them any liability whatsoever in connection with the Goods, and, if any such claim or allegation should nevertheless be made, to indemnify the Carrier against all consequences thereof. Without prejudice to the foregoing, every such servant, agent and subcontractor shall have the benefit of all exceptions, limitations, provisions, conditions and liberties herein benefiting the Carrier as if such provisions were expressly made for their benefit; and, in entering into this contract, the Carrier, to the extent of these provisions, does so not only on its own behalf, but also as agent and trustee for such servants, agents and subcontractors, and independent contractors, and any such vessel. The Carrier shall be entitled to claim payment from the Merchant of the sums that the Merchant regarding loss, damage, delay or whatsoever recovers or can recover from a servant, agent or subcontractor of the Carrier, if this person claims payment from the Carrier and under the contract or pursuant to these Terms and Conditions liability of the

Carrier towards the Merchant regarding aforementioned loss, damage, delay or whatsoever, could not be established.

5.3. The expression "sub-contractor" in this clause shall include direct and indirect subcontractors and their respective, employees, servants and agents.

5.4. The Merchant further undertakes, if a Bill of Lading or waybill has been issued by the Carrier, that no claim or allegation howsoever in respect of the Goods shall be made against the Carrier by any person other than in accordance with the terms and conditions of the Bill of Lading or waybill which imposes or attempts to impose upon the Carrier any liability whatsoever in connection with the Goods or the Carriage of the Goods, whether or not arising out of negligence on the part of the Carrier and, if any such claim or allegation should nevertheless be made, to defend, indemnify, and hold harmless the Carrier against all consequences thereof.

#### **6. Indemnity**

The Merchant shall indemnify the Carrier including, but not limited to, any employee, servant, agent or subcontractor of the Carrier, or any independent contractor, including, but not limited to, stevedores, terminal operators, inland transport operators (whether road, rail, inland waterway or air) or any vessel owned by any of them, for any claims of third parties, against which third parties these terms and conditions cannot be invoked, in so far as liability would be excluded and/or limited through these terms and conditions if the third party would have been bound by these terms and conditions.

#### **7. Method and Route of Carriage**

7.1. Unless expressly agreed otherwise in writing, the Carrier may at any time and without notice to the Merchant,

- a) use any means of carriage whatsoever;
- b) transfer the Goods from one conveyance to another conveyance, including but not limited to transshipping or carrying them on another vessel/airplane/train than that named in the contract of carriage, Bill of Lading or waybill;
- c) unpack and remove the Goods which have been packed into a Container and forward them in a Container or otherwise;
- d) proceed by any route, place, or (air)port, in his discretion (whether or not the nearest or most direct or customary or advertised route), at any speed, and proceed to or stay at any place or (air)port whatsoever, once or more often and in any order;
- e) load or unload the Goods at any place or (air)port (whether or not such (air)port is named as the port of

loading or port of discharge) and store the Goods at any such place or (air)port;

f) comply with any orders or recommendations given by any government or any other authority, or any person acting or alleged to act as or on behalf of such government or authority, or having under the terms of any insurance on any conveyance employed by the Carrier the right to give orders or directions;

g) to depart or deviate from the Merchant's instructions if in the opinion of the Carrier there is a good and reasonable reason to do so in the Merchant's interest or is otherwise expedient to do so;

i) permit the Vessel to proceed with or without pilots, to tow or be towed or to be repaired.

7.2. The liberties set out in Clause 7.1 may be invoked by the Carrier for any purpose whatsoever, whether or not connected with the Carriage of the Goods, including loading or unloading other Goods, bunkering, undergoing repairs, adjusting instruments, picking up or landing any persons, including but not limited to persons involved with the operation or maintenance of the Vessel and assisting vessels in all situations. Anything done in accordance with Clause 7.1 or any delay arising there from shall be deemed to be within the contractual Carriage and shall not be a deviation, nor shall the Carrier be liable for the possible damage that the Merchant will suffer due to such measures. Possible additional fees shall be paid by the Merchant under first written demand by the Carrier.

## 8. Carrier's Responsibility

8.1. Insofar as this is not contrary to provisions of mandatory law the Carrier cannot be held liable for any damage, unless the Merchant proves that the damages is caused by the personal act or omission of the carrier done with intent to cause damage, or recklessly and with knowledge that damage would probably result.

8.2. If the Carrier undertakes to carry the goods by road alone, the provisions of the CMR shall supplementary apply, as if set out herein. In so far as the CMR contains provisions that derogate from the present Terms and Conditions, these Terms and Conditions apply, unless the CMR applies mandatory.

8.3. If the Carrier undertakes to carry goods by sea alone (quay-quay), the HVR shall apply. In so far as the HVR contain provisions that derogate from the present Terms and Conditions, these Terms and Conditions apply, unless the HVR apply mandatory. .Further:

a) the liability of the Carrier is in any event limited to 100 SDR per package or unit, with the exclusion of the right of

the entitled party to claim compensation of 2 SDR per gross kilo of lost or damaged goods;

b) in derogation of Article IV, Section 5(c) of the HVR, every container or other transportation equipment together with the eventual contents thereof is deemed to form one package or unit;

c) any liability of the Carrier is excluded in respect of damage to or loss of goods arising before loading or after discharge from the ship;

d) the Carrier shall never be liable for damage resulting from late delivery and/or delay;

e) Article III, Sections 3, 4, 5, 7 and 8 of the HVR do not apply.

8.4. Notwithstanding the provisions of Article 8.3., for carriage of the goods by sea to or from any port of the United States or in case suit is brought in the United States, the provisions of the US *Carriage of Goods by Sea Act* will apply supplementary to the contract of carriage. For limitation purposes under the US *Carriage of Goods by Sea Act*, it is agreed that the meaning of the word "package" shall be every container or other transportation equipment together with the eventual contents.

8.5. If the Carrier undertakes to carry the goods by inland waters alone, the provisions of the CMNI shall apply supplementary, as if set out herein, but with the following amendments. In so far as the CMNI contains provisions that derogate from the present Terms and Conditions, these Terms and Conditions apply, unless the CMNI applies mandatory.

a) the liability of the Carrier is in any event limited to 100 SDR per package or unit, with the exclusion of the right of the entitled party to claim compensation of 2 SDR per gross kilo of lost or damaged goods;

b) in derogation of Article 20 Paragraph 1 and 2 CMNI, every container or other transportation equipment together with the eventual contents thereof is deemed to form one package or unit;

c) any liability of the Carrier is excluded in respect of damage to or loss of goods arising before loading or after discharge from the ship;

d) the Carrier shall never be liable for damage resulting from late delivery.

8.6. If the Carrier undertakes to carry the goods by rail alone, the provisions of the CIM shall apply supplementary, as if set out herein, but with the following amendments. In so far as the CIM contains provisions that derogate from the present Terms and Conditions, these Terms and Conditions apply, unless the CIM applies mandatory.

a) the liability of the Carrier is in any event limited to 100 SDR per package or unit;

b) every container or other transportation equipment together with the eventual contents thereof is deemed to form one package or unit;

c) any liability of the Carrier is excluded in respect of damage to or loss of goods arising before loading onto or after discharge from the train;

d) the Carrier shall never be liable for damage resulting from late delivery.

8.7. If the Carrier undertakes to carry the goods through the air alone, the provisions of the Montreal Convention shall apply supplementary, as if set out herein. In so far as the Montreal Convention contains provisions that derogate from the present Terms and Conditions, these Terms and Conditions apply, unless the Montreal Convention applies mandatory.

8.8. If it is agreed or it follows from the nature of the voyage that the carriage shall take place partly by road and/or partly by sea and/or partly by inland waterways and/or partly by rail and/or partly through the air the provisions of the CMR, HVR, CMNI, CIM or Montreal Convention as incorporated herein shall apply, depending on the stage of the carriage where the loss, damage or delay arose.

If it cannot be established at what stage of the carriage the loss, damage or delay arose, the liability of the Carrier shall be determined in accordance with the rules of law which apply to the carriage by road, sea, inland waterways, rail or air and from which the highest amount in compensation shall follow.

The foregoing does not affect the fact that the CMR applies if the conditions of Article 2 of the CMR have been fulfilled.

8.9. Unless notice of loss or damage and the general nature of such loss or damage be given in writing to the Carrier or his agent at the place of delivery before or at the time of the removal of the goods into the custody of the person entitled to delivery thereof under the contract of carriage, such removal shall be *prima facie* evidence of the delivery by the carrier of the goods as described in the bill of lading or waybill. If the loss or damage is not apparent upon delivery, then the notice has to be given within three days after the delivery.

8.10. The Carrier shall never be liable for lost profit, consequential damage (inter alia as a result of delay) and immaterial damage. Any liability of the Carrier in respect of import duties, excise duty, turnover tax, restitutions and/or other levies or related fines which are imposed by any government or any other authority charged with such duties, which are demanded in connection with the performance of the contractual services, is excluded.

8.11. Any party who enters any premises of the Carrier or of its agent and/or subcontractor, in warehouses, transport

vehicles or any other place where work is executed, shall be there, with all goods he has with him, at his own risk, and he must strictly adhere to any regulations and/or instructions established by any government or any other authority and by the Carrier. The Merchant shall indemnify the Carrier in this respect against claims of third parties which are on site in connection with the performance of the contractual services.

## 9. Merchant's Responsibility

9.1. Without prejudice to any provisions laid down in the applicable law or Convention, the Merchant is in any event obliged:

a) to ensure that the goods in respect of which the Carrier has received instructions, are available at the agreed place and time;

b) to ensure that the goods are fit and suitable for the carriage and are packed in a manner adequate to withstand the ordinary risks of Carriage in view of their nature and in compliance with all laws or regulations which may be applicable during the Carriage.

c) to immediately take delivery of the goods at the place of destination or alternatively take delivery through the receiver at that place of destination;

d) to give the Carrier timely notice of the information which he must give the Carrier in respect of the goods and in respect of the handling thereof which the Merchant knows or should know that such is important to the Carrier, unless the Merchant may assume that the Carrier is aware of such information; the Merchant guarantees the accuracy of the information provided by him;

e) to guarantee the proper presence of the documents required for the execution of the instructions, except insofar as it was agreed in writing that the Carrier would take care of such documents;

f) to warrant that the Goods and/or Merchant-packed Containers are lawful Goods and contain no contraband, drugs, other illegal substances or stowaways;

g) with regard to dangerous goods, including but not limited to the goods enumerated in the IMDG-Code, to give timely written notice to the Carrier of the rules which must be followed in accordance with the applicable legislation and/or other governmental schemes, and further, to warrant that these Goods will not cause loss, damage or expenses to the Carrier, or to any other cargo, Containers, Vessel or Person during the carriage

9.2. If the Merchant fails to fulfil the obligations set out in Paragraph 9.1., he is bound to compensate the Carrier for any and all losses, damages, expenses, costs (including

judicial and extrajudicial costs) or liabilities which the Carrier suffers as a result thereof.

9.3. The Carrier can at any time and any place unload, destroy or make harmless in some other way goods entrusted to him, if the Carrier for whatsoever reason would not have taken receipt of the goods, if he would have known at the time of receipt that the goods could be dangerous.

9.4. Without prejudice to the above, the Merchant is liable to the Carrier for all damage caused by goods or materials which the Merchant made available to the Carrier, unless such damage is the Carrier's fault.

9.5. The Merchant is at all times obligated to compensate the Carrier for amounts claimed and penalties imposed on the Carrier or any agent and/or subcontractor engaged by him by any government or other authority in connection with the fulfilment of the contractual services, regardless of whether such claim is the result of an imputable fault on the part of the Carrier in the fulfilment of his obligations under the contract.

9.6. The Merchant is obligated to give security at the Carrier's first demand for the amounts that are owed or will be owed to the Carrier.

9.7. The Merchant is responsible for the loading, unloading and stowing of the goods into the container or any other unit, unless the Carrier has expressly confirmed in writing otherwise in advance. Assistance given by the driver in loading and/or stowing does not in any way affect the fact that the Merchant has exclusive responsibility in this respect. The Carrier does not accept any responsibility for the accuracy of the quantity indicated by the Merchant and all other statements regarding the goods. In the event of receipt of a pre-loaded and sealed container, neither the Carrier nor its sub-carrier shall be deemed to have received the goods contained therein in a good and complete condition, even if no reservation has been made in this respect.

9.8. The Merchant shall be liable towards the Carrier at all times for damages which are caused by it or by third parties to chassis, trailers, railway wagons and/or containers which have been made available at the request of the Merchant to him or these parties for loading or unloading.

9.9. If, upon receipt of a container which has been carried by the Carrier on a "quayquay" basis ("feeder-container"), a reservation is made by the receiver with regard to damages to this container, the Merchant or the receiver, respectively, must submit a claim form to the Carrier within seven days at the latest after the receipt of the container, which claim form must include a copy of the interchange report drawn

up in respect of those damages, failing which all claims against the Carrier shall be barred.

## **10. Compliance with Local Laws**

10.1. The Merchant shall be liable for and shall defend, indemnify, and hold harmless, the Carrier and the Vessel against any payment, expenses, fines, dues, duty, tax, impost, loss, damage or detention, sustained or incurred by or levied upon the Carrier or the Vessel in connection with the Goods for any cause whatsoever, including their nature, quality or condition (whether known to the Carrier or Master or not), any action or requirement of any government or any other authority or person alleging to act under the authority thereof, an arrest or an attempt to arrest, incorrect or insufficient marking, numbering or addressing of packages or description of the contents, failure of the Merchant to obtain consular certificates, Board of Health certificates or other certificates to accompany the Goods or to comply with laws or regulations of any kind imposed with respect to the Goods by the authorities at any port or place or any act or omission of the Merchant. If for any reason whatsoever the import of Goods is refused the Merchant shall be liable for the return of the Goods and is obliged to pay the return freight and charges.

10.2. The Carrier may at any time comply with the orders or recommendations given by any Authority. The responsibility of the Carrier in respect of the Goods shall cease on the delivery or other disposition of the Goods in accordance with such orders or recommendations. If by order of the authorities at any place, Goods are detained and/or seized and/or a Container has to be opened for the Goods to be inspected for any reason whatsoever, including but not limited to a breach or infringement of a trademark, patent or other intellectual property right, the Carrier will not be liable for any loss or damage whatsoever incurred as a result of any opening, unpacking, inspection, re-packing, detention, destruction or delay. The Carrier shall be entitled to recover from the Merchant all charges, fines, costs, losses and expenses (including judicial and extrajudicial costs) and costs resulting from such action, including but not limited to any detention, demurrage and storage charges for the Goods and/or the Container.

## **11. Containers furnished by or on behalf of the Carrier**

Regarding Carrier owned Containers, the Carrier allows a period of free time for the use of the Container in accordance with the Tariff and as advised by the Carrier's local agent at the Places of Receipt and Delivery. Free time commences from the day the Container is collected by the

Merchant at the Place of Receipt or is delivered to the Place of Delivery. The Merchant is required and has the responsibility to return to a place nominated by the Carrier the Container before or at the end of the free time allowed at the Place of Receipt or the Place of Delivery. Demurrage, per diem and detention charges will be levied and payable by the Merchant thereafter in accordance with the Tariff.

## 12. Refrigerated or Heated Cargo

12.1. The Merchant undertakes not to tender for carriage any Goods which require refrigeration or heating without previously giving written notice and instructions of their nature and particular temperature range to be maintained and in case of a refrigerated or heated container packed by or on behalf of the Merchant, further warrants and undertakes that the Goods have been properly, and at such correct temperature, stowed in the Container and that its thermostatic controls have at all material times been appropriately set by him before receipt of the Goods by the Carrier. If the above requirements are not complied with, the Carrier shall not be liable for any loss of or damage to the Goods, howsoever arising.

12.2. The Carrier shall not be liable for any loss of or damage to the Goods arising from latent defects, breakdown, defects, stoppage of the refrigerating or heating system, plant, insulation and/or any apparatus of the Container, the Vessel, conveyance and any other facilities whatsoever, provided that the Carrier shall before or at the beginning of the carriage exercise due diligence to maintain the refrigerating or heating controls at the agreed temperature range.

## 13. Containers

13.1. Goods may be stowed by the Carrier or his employees, servants or agents in Containers. Containers, whether stowed as aforesaid or received in a stowed condition from the Merchant may be carried on or under deck without notice to the Merchant and, subject always to Clause 15.2, if they are so carried the HVR, as incorporated herein shall be applicable notwithstanding carriage on or under deck and the Goods and/or Containers shall contribute in General Average whether carried on or under deck.

13.2. If a Container has not been filled, packed, stuffed or loaded by the Carrier, the Carrier shall not be liable for loss of or damage to the contents and the Merchant shall indemnify the Carrier against any loss, damage, liability, expenses or costs (including extrajudicial and judicial costs) incurred by the Carrier, if such loss, damage, liability, expenses or costs have been caused by:

- a) the manner in which the Container has been filled, packed, stuffed or loaded; or
- b) the unsuitability of the contents for carriage in Containers; or
- c) the unsuitability or defective condition of the Container arising without any want of due diligence on the part of the Carrier to make the Container fit for the purpose for which it is required; or
- d) the unsuitability or defective condition of the Container which would have been apparent upon reasonable inspection by the Merchant at or prior to the time when the Container was filled, packed, stuffed or loaded; or
- e) packing refrigerated or heated Goods that are not at the correct temperature for the carriage as agreed under the contract;
- f) The Carrier shall be entitled, but under no obligation, to open any Container at any time and to inspect the contents. If it thereupon appears that the contents or any part thereof cannot safely or properly be carried or carried further, either at all or without incurring any additional expenses or of taking any measures in relation to the Container or its contents or any part thereof, the Carrier may abandon the carriage thereof and/or take any measures and/or incur any reasonable additional expenses to carry or to continue the Carriage or to store the same ashore or afloat under cover or in the open, at any place, which storage shall be deemed to constitute an in time delivery. The Merchant shall indemnify the Carrier against any reasonable additional expenses that have been incurred in view of the foregoing.

13.3. It is agreed that superficial rust, oxidation or condensation inside the Container or any similar condition due to moisture is not the responsibility of the Carrier, unless said condition arises out of the Carrier's failure to furnish a seaworthy Container to the Merchant prior to loading.

13.4. If the Merchant requires special arrangements or care for the carriage of the Goods, he must request the same in writing from the Carrier and said arrangements must be set out on the face of the Bill of Lading or waybill and all freight, in accordance with the request, must be paid by the Merchant.

13.5. Where the Goods in respect of which Bills of Lading or waybills have been issued form part of an LCL shipment which has been consolidated into a Container on behalf of either the Merchant or the Carrier, the Carrier shall have liberty to unstuff such Container in order to effect delivery of the said Goods.

13.6. The Merchant engages with the Carrier (for itself and as agent and trustee for the relevant insurer, owner,

lessee, or other third party) to defend, indemnify, and hold harmless the insurer/owner/lessee (or other interested party) of Containers (whether the owner/lessee be the Carrier or not) against all loss of or damage to any such Container and against all loss and damage occasioned in or by any Container or any defect therein to the assurer/lessee of the Container or to any third party to whom the owner/lessee of the Container or to any third party to whom the owner/lessee of the container may be liable by reason of such loss or damage where such loss or damage occurs or is sustained while the Container is on the premises or in the custody of the Merchant or any agent thereof and howsoever such loss or damage may be caused (even by the breach of the contract, fault or negligence of the Carrier and/or the owner/lessee of the Container).

13.7. Where a Container owned or leased by the Carrier is unpacked at the Merchant's premises the Merchant is responsible for returning the empty Container, free from labels etc., with interior brushed and cleaned, odour free, in the same condition as received and in every respect fit for immediate reuse at the place designated by the Carrier, his employees, servants or agents, immediately or within the prescribed time. The Merchant shall be liable for demurrage and detention (as aforesaid), loss and expenses which may result from any failure or delay in return of the Containers.

#### **14. Dangerous Goods**

14.1. The Merchant undertakes not to tender for carriage any Goods which are of a dangerous, inflammable, radio-active, or damaging nature without previously giving written notice of their nature to the Carrier, marking the Goods and the Container or other covering on the outside as required by any laws or regulations, including but not limited to the IMDG-Code, which may be applicable during the carriage. The Carrier, in its absolute discretion, may reject any Goods so tendered.

14.2. Should the Merchant breach its duties as provided in Article 14.1. and nevertheless deliver any such goods to the Carrier or cause the Carrier to accept or handle or deal with any such goods, then whether or not the Carrier is aware of the nature of such goods, the Merchant shall be liable and indemnify, hold harmless and defend the Carrier, its employees, servants, agents, and subcontractors and any third party for all loss, delay, claims, personal injury, death or expenses including fines and penalties, and all reasonable legal expenses and costs (judicial and extrajudicial) caused to the Carrier, the Vessel, any cargo, and other property, whether on board or ashore, arising

from such Goods, and damages whatsoever caused by or in connection with the goods howsoever arising, and any other liabilities.

14.3. Goods which are or at any time become dangerous, inflammable, radio-active or damaging may at any time or place without notice to the Merchant, be unloaded, destroyed, or rendered harmless without compensation.

14.4. The expression "Dangerous Goods" includes but is not limited to goods likely to harbour or encourage vermin or other pests.

#### **15. Optional Stowage**

15.1. The Containers and Goods may be stowed, without notice to the Merchant, on the vessel's deck generally, or any space commonly used in the trade for the carriage of Goods, and Goods so stowed shall be deemed to be stowed under deck for all purposes, including General Average. In case of sea carriage the HVR or the US *Carriage of Goods by Sea Act* shall apply to such Carriage of Goods so stowed.

15.2. Containers and Goods which are stated on the face of the Bill of Lading or waybill to be carried on the vessel's deck at shipper's or Merchant's risk, are carried without responsibility on the part of the Carrier for loss or damage of whatsoever nature arising during Carriage by sea or inland waterways whether caused by unseaworthiness or negligence or any other cause whatsoever.

#### **16. Bullion etc.**

Except under special arrangements previously made in writing the Carrier will not accept or deal with bullion, coins, precious stones, jewellery, valuables, antiques, pictures, livestock or plants. Should the Merchant nevertheless deliver any such goods to the Carrier or cause the Carrier to handle or deal with any such goods, the Carrier shall be under no liability whatsoever for or in connection with the goods or any part thereof (including without limitation any loss or damage or non-delivery or misdelivery or delay) howsoever caused and notwithstanding that the value may be shown, declared or indicated on any documents accompanying the shipment.

#### **17. Notification & Delivery**

17.1. The Merchant shall take delivery of the Goods at the agreed place of delivery, within the time provided for in the Carrier's Tariff or as otherwise agreed. If the Merchant fails to do so or due to other reasons delivery is not possible, the Carrier may without notice unpack the Goods if packed in Containers and/or store the Goods ashore, afloat, in the open or under cover at the sole risk of the Merchant. Such

storage shall constitute an in time delivery hereunder, and thereupon all liability whatsoever of the Carrier in respect of the Goods, including for misdelivery or nondelivery, shall cease and the costs of such storage shall immediately upon demand be paid by the Merchant to the Carrier.

17.2. If the Goods are unclaimed within a reasonable time or whenever in the Carrier's opinion the Goods are likely to deteriorate, decay or become worthless, or incur charges whether for storage or otherwise in excess of their value, the Carrier may at its discretion and without prejudice to any other rights which it may have against the Merchant, without notice and without any responsibility attaching to it, sell, abandon or otherwise dispose of the Goods at the sole risk and expenses of the Merchant and apply any proceeds of sale in reduction of the sums due to the Carrier from the Merchant under or in connection with the carriage.

17.3. Refusal by the Merchant to take delivery of the Goods in accordance with the terms of this Article and/or to mitigate any loss or damage thereto shall constitute an absolute waiver and abandonment by the Merchant to the Carrier of any claim whatsoever relating to the Goods or the carriage thereof. The Carrier shall be entitled to an indemnity from the Merchant for all costs whatsoever and howsoever incurred due to the Merchant's refusal (including judicial and extrajudicial costs) and the costs regarding the cleaning and disposal of the Goods refused and/or abandoned by the Merchant.

## 18. General Average

In case the Goods are carried by sea, the Carrier or the Carrier's subcontractor entrusted with the ocean carriage of the Goods may declare General Average, which shall be adjustable at any port or place at the option of the Carrier or its subcontractor in accordance with the most recent York-Antwerp Rules and the New Jason Clause as approved by BIMCO and to be considered as incorporated. If for any reason a liability for general average arises in connection with the goods the Merchant shall promptly provide security to the Carrier or to any other party designated by the Carrier in a form acceptable to the Carrier.

## 19. Warehousing

Pending forwarding or delivery, goods may be warehoused or otherwise held at the risk of the Merchant at any place at the sole discretion of the Carrier and the cost therefore shall be for the account of the Merchant.

## 20. Freight and Payment Conditions

20.1. Freight shall be deemed fully earned by the Carrier upon receipt of the goods by the Carrier and shall be paid and non-returnable in any event or circumstance, and therefore irrespective of whether proof of delivery (e.g. CMR waybill signed for delivery) is provided by the Carrier.

20.2. The Freight has been calculated on the basis of particulars furnished by or on behalf of the Shipper. The Carrier may at any time open any Container or other package or unit in order to reweigh, remeasure or revalue the contents and if the particulars furnished by or on behalf of the Shipper are incorrect, it is agreed that an extra sum equal to either five times the difference between the correct Freight and the Freight charged or to double the correct Freight less the Freight charged, whichever sum is the lowest, and the expenses incurred in determining the correct particulars, shall be payable as damages to the Carrier.

20.3. Payment shall be made in the country, to a bank account and in the currency set out on the invoice, unless it has been otherwise agreed. In the latter case any exchange losses suffered by the Carrier shall be for the account of the Merchant. All bank charges associated with the transfer of such payment shall be for the account of the Merchant.

20.4. Unless otherwise expressly agreed by separate credit terms agreement or condition, the Merchant shall pay to the Carrier the agreed freight and other resulting costs, duties, etc., ensuing from the contract and/or these conditions, upon arrival or despatch of goods which are being received. The risk of exchange rate fluctuations shall be borne by the Merchant.

The agreed freight and other resulting costs, rights, etc., ensuing from the contract and/or these conditions, shall also be due if in the performance of the contract damage has occurred.

In case of failure, the Carrier shall be entitled to withhold delivery of the goods or of any other goods being in transit of the Merchant until payment in full has been received.

20.5. If at any time:

(a) any invoice is not paid within the agreed payment term; and/or

(b) the credit limit under the separate credit terms agreements/conditions is exceeded; and/or

(c) the Merchant or any of its subsidiaries or their agents breach the separate credit terms agreements/conditions; and/or

(d) the Merchant or any of its subsidiaries or their agents cease trading or enter into any form of liquidation, bankruptcy, merger, take-over and the like;



the Carrier has the right to suspend or terminate the Merchant's right to take advantage of the standard payment term by the Merchant as mentioned under the agreed credit terms agreement or condition and also in these circumstances the Carrier has the right to demand immediate payment of or security for all outstanding amounts.

20.6. The Merchant shall be deemed to have approved the invoice as correct and to have acknowledged the debt if the invoice has not been protested in writing within fourteen (14) days of the invoice date.

20.7. If the Merchant disputes any invoice, in whole or part, the Carrier must be notified in writing, including by e-mail, but not later than upon delivery of the goods to the Merchant or on receipt of the invoice, after which the Merchant shall no longer be entitled to dispute the invoice. Any part of an invoice not being disputed must be paid within the agreed payment term.

A disputed part of an invoice is exempted from the standard payment period or agreed payment terms until the dispute has been settled. As soon as the dispute is settled, payment of the outstanding amount must be made within the payment term or, if this period had already been expired, immediately.

A demand by the Merchant for proof of delivery (e.g. CMR waybill signed for delivery) by the Carrier shall not be considered a notification by the Merchant to dispute an invoice.

20.8. In the event of late payment the Merchant is legally in default without any need for notice of default on behalf of the Carrier. As of the day following the due date (refer to articles 20.4. and 20.5.) the Merchant owes on the outstanding amount owed by him of 1 % (one percent) interest per month, including part of a month.

20.9. If the Merchant is in default, after written notice of default, he shall be taken to have accepted liability for all losses and costs, both judicial and extrajudicial, relating to the claim. The extrajudicial collection costs on the amount owing are fixed at 15 % (fifteen percent) of the principal claim amount, with a minimum of EUR 500.00 (five hundred Euro).

20.10. Failure by the Carrier to collect and/or to invoice freight, charges, duties, expenses etc. from the consignee or any other party shall not release the Merchant, including but not limited to the sender or shipper, from his obligation to pay for such services, duties, charges, expenses etc. on receipt of evidence of proper demand.

20.11. All freight shall be paid without any set-off, counter claim, deduction, suspension or stay of execution before delivery of the Goods. The Merchant shall at no time

whatsoever be entitled to set off his (alleged) damages or incurred costs against the freight, charges, duties, expenses etc. that he owes to the Carrier, or suspend payment.

20.12. The shipper or the sender shall be liable for the payment of all freights, charges, demurrage, detention etc., which the Carrier cannot obtain from the consignee as result of whatever reason.

20.13. As soon as the Merchant is in default with any payment all remaining payments are immediately due and the Merchant is immediately in default with those other payments without further formalities.

The Merchant waives the right to apply for mitigation of the penalty (legal) interest and out of court expenses.

The Carrier shall at all times remain entitled to invoke Article 6:44 Dutch Civil Code. This means that the payments made by the Merchant first of all will be deducted from the outstanding costs, subsequently from the accrued interest and finally against the oldest outstanding invoices and accrued interest, even if the Merchant notifies that a payment relates to a subsequent invoice.

20.14. The Merchant shall be liable for all expenses of fumigation and of gathering and sorting loose cargo and of weighing on board and all costs incurred in repairing damage to and replacing of packing and for any and all costs caused by extra handling of the Goods for any of the aforementioned or other reasons.

Any and all dues, tolls, canal tolls, levies, duties, taxes, VAT, charges and surcharges which under any definition may be levied on any basis such as weight/measurement of the Goods, tonnage of the Vessel or amount of freight including agency commission assessed on the basis of the amount of freight shall be paid by the Merchant prior to the delivery of the Goods.

20.15. The Merchant shall be liable for any and all duties, taxes, tolls, fines, penalties, expenses or losses which the Carrier, the Vessel or the Goods may incur through non-compliance of Custom House or import or export regulations or any anti-drug abuse act.

20.16. The Merchant shall be liable for any and all consequences in case of incorrect declaration of contents, weights, measurements or value of the Goods and shall pay double the amount of freight which would have been due if such declaration had been correctly given. For the purpose of ascertaining the actual facts, the Carrier reserves the right to obtain from the Merchant the original invoice and to have the contents inspected and the weight, measurement or value verified.

20.17. If it is agreed that credit will be provided, then an advance commission of 3% applies on the advanced VAT,

import duties and other advanced governmental charges, as well as all other amounts advanced by the Carrier, such as sea freight, etc. Payment of invoices relating to advanced amounts have to be paid ultimately within eight (8) days of the invoice date.

### **21. No Duty to Preserve Rights**

The Carrier shall not be under any duty or obligation to the Merchant to give any notice or otherwise take any action to preserve or protect the right of the Merchant in relation to any claim or remedy which the Merchant may have against any third parties.

### **22. Lien**

Regarding the present contract of carriage and also regarding everything the Merchant owes to the Carrier as a result of previous contracts of carriage, the Carrier shall have a lien (which includes a right of retention and pledge) on the Goods, moneys and any documents relating thereto for any and all sums, including but not limited to freight, dead freight, demurrage, detention, costs (including extrajudicial and judicial costs), dues, taxes, tolls, fines, penalties or claims for damages or indemnity payable by the Merchant to the Carrier or related with the Carriage, and for general average and/or salvage contributions to whomsoever due, and for the cost of recovering the same, and for that purpose the Carrier shall have the right without notice to the Merchant to sell the Goods by public auction or private contract and recover all his costs through the sale. Whether or not the lien can be enforced at the place of receipt or delivery, the Carrier may discharge and lien the Goods at any other convenient (air)port or place. Such discharge of any of the Goods shall be deemed due fulfilment of this contract and shall not be deemed to be a contractual deviation. The Carrier shall be entitled to claim from the Merchant the difference between the total amount due to him including any extra expenses (including Costs) incurred under the provisions of this clause and the net proceeds of the Goods, if the net proceeds do not fully cover the total amount due to the Carrier.

### **23 Electronic messages**

23.1. If information, including that pertaining to the waybill, is exchanged by electronic means, the parties shall not dispute the admissibility of electronic messages as evidence in the event of disputes.

23.2. Electronic messages shall have the same evidential value as written documents unless these messages were not sent, stored and recorded in accordance with the

format, level of security and method of sending agreed between the parties.

### **24. Time bar**

The claims against the Carrier, including, but not limited to claims against any employee, servant, agent or subcontractor of the Carrier, or any independent contractor, including, but not limited to, stevedores, terminal operators, inland transport operators (whether road, rail, inland waterways or air) or any vessel owned by any of them, go time barred twelve (12) months after the day the goods have been delivered or the day the goods should have been delivered.

### **25. Applicable Law and Jurisdiction**

25.1. In so far as anything has not been dealt with in these terms and conditions, all legal relationships, whether contractual or extra-contractual between the Merchant and the Carrier shall be governed by and construed according to the laws of the Netherlands. Nothing contained in this Article shall prevent the Carrier from invoking another law as may be necessary to enforce a right of lien under Article 22 or otherwise.

25.2. Except if pursuant to mandatory law provided otherwise, disputes between the Merchant and the Carrier howsoever arising under, in relation to, or in connection with the contract or the services performed by the Carrier, shall be brought before the competent Court in Rotterdam.

25.3. Notwithstanding Article 25.2 above, the Carrier may, at his exclusive option, bring any claim or action against the Merchant before the Courts of the place where the Merchant has its registered office or a branch office, or where the Merchant has tangible assets, or before the Court of the place of receipt or delivery.