

## General Terms & Conditions.

### Definitions

**Carrier:** A2B-online Container B.V.

**CMR Convention:** Provisions of the "Convention on the Contract for the International Carriage of Goods By Road" done at Geneva on the 19<sup>th</sup> of May 1956 as amended by the Protocol done at Geneva on the 5<sup>th</sup> of July 1978.

**Contract:** The contract between the Carrier and the Customer for the performance of Services in respect of the Goods (as manifested, among others, by an acceptance of offers and quotes issued by the Carrier and agreed to by the Customer). The Contract is considered to incorporate these General Terms & Conditions (as may be updated periodically) in their totality.

**Customer:** Shall include the owner, sender, receiver and their agents, subcontractors, or any other person or entity and their agents having an interest in the Goods in respect of which Services are carried out or provided by the Carrier.

**Force Majeure:** Circumstances that the Carrier and/or its Subcontractor could not avoid and the consequences of which he could not prevent. Force Majeure circumstances shall include – but shall not be limited to – heavy weather, perils of the sea, issued sea protests, war, war threat, riot, uproar, natural or nuclear disasters, terrorist activities or attacks, cybercrime or cyberattacks, fire, closures or blockades (temporary or permanently) of ports, roads, inland waterways or railway lines, shunting areas, yards or terminals, strikes or similar labor actions, epidemics, pandemics and any governmental measures relating thereto.

**Goods:** The cargo from the Customer that is the subject of the Services and includes the Unit entrusted by the Customer to the Carrier under this Contract.

**General Terms & Conditions:** The General Terms & Conditions as noted in this document.

**HVR:** Provisions of the "International Convention for the Unification of Certain Rules of Law relating to Bills of Lading" signed at Brussels on 25<sup>th</sup> August 1923, as amended by the Protocol signed at Brussels on 23<sup>rd</sup> February 1968 and by the SDR Protocol of 21<sup>st</sup> December 1979.

**Rates:** The rates and prices as agreed by the Carrier and the Customer.

**Services:** All services provided by the Carrier under the Contract, including but not limited to receiving, administrating, transporting a Unit, transshipment, reporting, documentation. Not all services will apply to every shipment.

**Subcontractor:** Any direct and indirect subcontractor of the Carrier, including – but not limited to – agents, servants and independent contractors of the Carrier such as stevedores, terminal operators and transport operators as well as their respective agents, servants and independent contractors.

**SDR:** Special Drawing Rights as defined by the International Monetary Fund.

**Unit:** Any container, tank container or other article of transport used to consolidate and to transport the Goods.

## 1. General Terms & Conditions

1.1 These General Terms & Conditions apply to all quotations, offers, booking confirmations and contracts made by the Carrier and to all legal and factual acts performed in that connection. These General Terms & Conditions are also applicable to all quotations, offers, booking confirmations and contracts made by foreign branch offices of the Carrier/or agents acting on behalf of the Carrier to all legal and factual acts performed by such a branch office or agent in that connection, in which case hereafter instead of the Carrier the name of the involved branch office or agent should be read.

1.2 Unless expressly otherwise agreed in writing between the Carrier's sales department and the Customer, the applicability of the general conditions used by the Customer is explicitly rejected by the Carrier.

1.3 If any (part of a) provision of these General Terms & Conditions is void or voidable, such shall not affect the validity of the other (parts of the) provisions.

1.4 Regardless of the form 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 Customer. Revocation after acceptance by the Customer shall be effected immediately.

1.5 Alteration of or addition to the instruction given to the Carrier only binds the Carrier after it has accepted such in writing.

## 2. Performance of the Contract

2.1 The Carrier is free in the manner and method of performing the Services - which entails that with regard to carriage by sea it has the option of carriage on deck or below deck - unless the Carrier has accepted specific instructions from the Customer in this respect in writing. Insofar as possible, account shall be taken of the wishes of the Customer with regard to the time or duration of the performance, but the Carrier does not give any guarantee in this respect.

2.2 If any document refers to the notice of arrival of the Goods to the Customer or consignee, failure to give such notice shall not result in any liability on the part of the Carrier, nor shall the Customer or any other party involved be released from any obligation under the Contract.

2.3 In the event of temporary Force Majeure as defined under 'Definitions', the Contract shall remain in effect, but the obligations of the Carrier shall be suspended for the term of the Force Majeure, without prejudice to the right of the Carrier, to terminate the Contract and to charge the Customer for the work already executed. All costs arising as a result of Force Majeure are at the Customer's expense.

2.4 If the party entitled to the Goods fails to take receipt of the Goods after arrival thereof, the Carrier is entitled, without further notice, to unload the Goods at the risk of the entitled party and/or to store them on the quay in the open air or under cover. Such storage shall be deemed proper delivery under the contract of carriage and complete fulfillment of the Carrier's contractual obligations, in consequence of which and as of which time the responsibility of the Carrier shall be canceled in full. The costs of such storage are at the Customer's expense.

2.5 Only after the Customer's explicit written order and acceptance thereof by the Carrier in writing, the Carrier shall take out insurance for the benefit of the Customer. Such insurance shall be at the Customer's expense and risk.

2.6 In case customs clearance services are agreed upon between the Carrier and the Customer, the Carrier instructs a customs agent to perform and take care of these services on behalf of the Customer. The customs clearance services are performed on behalf of, and

at the risk and expense of the Customer. The Carrier shall not be liable for any loss or damage caused howsoever during these activities, also in the event the Carrier performs (part of) the customs clearance activities itself.

### **3. Subcontracting and Himalaya clause**

3.1 The Carrier shall be entitled to subcontract on any terms the whole or part of the Services, unless otherwise is agreed in writing. The Customer accepts the (general) terms and conditions used by the Subcontractor and the Carrier shall, at its own discretion, be entitled to invoke those (general) terms and conditions towards the Customer.

3.2 The Customer undertakes that no claim whatsoever shall be made against any employee or Subcontractor of the Carrier. Every employee and Subcontractor shall have the benefit of all provisions of these General Terms & Conditions and the Contract as if such provisions were expressed to be for their benefit as well as for the Carrier. In entering into this Contract, the Carrier does so to the extent of those provisions, both on its own behalf and as agent and trustee for such employees and Subcontractors. If any such claims are made nevertheless, the Customer shall defend, indemnify and hold harmless the Carrier against all consequences thereof.

### **4. Obligations of the Customer**

4.1 Without prejudice to any provisions laid down in law or Convention, the Customer is, in any event, obliged to:

**(a)** ensure that the Goods in respect of which the Carrier has some instruction, are available at the agreed place and time and that the Goods, taking into consideration the nature of the Goods and the intended method of transport and/or handling, are properly and adequately stuffed and packed;

**(b)** give the Carrier timely notice of all the information which he must give to the Carrier of which the Customer knows or should know that such is important for the performance of the Services; the Customer guarantees the completeness, correctness and accuracy of the information provided by him;

**(c)** guarantee the timely presence of the documents required for the execution of the instruction, except insofar as it was agreed in writing that the Carrier would take care of such documents;

**(d)** give timely written notice to the Carrier of the rules which must be followed in accordance with the applicable legislation and/or other government schemes with regard to dangerous goods.

4.2 The Carrier can at any time and any place, at the expense and risk of the Customer, unload, destroy or make harmless in some other way Goods entrusted to the Carrier for whatever reason, which the Carrier, would not have wished to receive, if it had known at the time of taking receipt thereof that they could be dangerous. The Customer is liable for any damage or loss incurred by the Carrier, its employees or Subcontractors caused by the Goods or any other materials that the Customer made available to the Carrier, unless the Customer proves that such damage or loss is the direct result of the fault or negligence of the Carrier.

4.3 In the event that Goods that require refrigeration or heating are involved, the Customer shall promptly provide the Carrier with all necessary instructions and documents such as the particular temperature range to be maintained, and the Customer shall ensure that the Goods have been properly packed to the correct temperature and that the thermostatic controls have been properly set before the Goods are taken over by the Carrier.

4.4 The Customer is obliged to defend, indemnify and hold harmless the Carrier, its employees and its Subcontractors upon first request in the event the Carrier or said employees or Subcontractors are held liable by third parties for any damage or loss in connection with the performance of the Services.

4.5 The Customer is at all times obliged to compensate, indemnify and hold harmless the Carrier against any costs, fines and/or penalties, port charges, expenses, duties, taxes, customs debts or excises, including interests, incurred by or levied upon the Carrier or any Subcontractor by any government or other authority in connection with the performance of the Services, regardless of whether or not such claim is the result of a fault or negligence in the performance on the part of the Carrier or its Subcontractor of its obligations under the Contract. The Customer is obliged to provide security upon the Carrier's first demand for the amounts that the Carrier owes or may owe in relation to the aforementioned.

4.6 The Customer is responsible for the loading, unloading and stowing of the Goods into the Unit, unless the Carrier has in advance expressly confirmed otherwise in writing. Assistance given by the driver in loading and/or stowing does not in any way affect the fact that the Customer has exclusive responsibility in this respect.

4.7 When the driver assists the Customer, whether with or without equipment (e.g. a forklift, pallet /pump truck etc.) the driver acts under the custody, care and liability of the Customer. The Customer shall be liable and shall indemnify the Carrier for any personal injury and any other type of damage or loss caused by this assistance.

4.8 The Carrier does not accept any responsibility for the accuracy of the quantity indicated by the Customer and all other statements regarding the Goods. In the event of receipt of a pre-loaded and sealed container, neither the Carrier nor its Subcontractor 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.

4.9 The Customer shall be liable towards the Carrier at all times for damages which are caused by it or by third parties acting on behalf of the Customer to Units, chassis, trailers and/or containers which have been made available at the request of the Customer for loading or unloading.

4.10 If the Customer fails in the proper performance of any of its obligations as set out in these General Terms & Conditions, the Customer shall be fully liable towards the Carrier and shall be obliged to defend, indemnify and hold harmless the Carrier against all costs, claims, damages, losses or liabilities resulting thereof.

## **5. Liability of the Carrier**

5.1 The period of liability of the Carrier commences at the time when all of the Goods are loaded into the means of transport for the performance of the Services and the Carrier, its employee or Subcontractor has become in effective control of all of the Goods. The period of liability of the Carrier ends at the time when all Goods are discharged from the means of transport. The period of liability commences again at the time when all Goods are loaded into another means of transport in order to be transported further. The parts in between, including – but not limited to – the parts during which the Goods and/or Units are subject to storage or terminal activities – are not included in the period of liability of the Carrier.

5.2 The Carrier shall not be liable whatsoever for loss of or damage to the Goods or the Unit, and howsoever occurring, when such loss or damage arises outside the period of liability as defined in Article 5.1 of these General Terms & Conditions.

5.3 If the Carrier undertakes to carry Goods by road alone and the place of taking over the Goods or Unit and the place of delivery of the Goods or Unit are situated in two different

countries, the provisions of the CMR Convention shall apply, as if set out herein. If the Carrier undertakes to carry Goods purely domestic by road, the provisions of the General Transport Conditions 2002 (*Algemene Vervoercondities 2002*; AVC) shall apply.

5.4.1 If the Carrier undertakes to carry Goods by sea alone (quay-quay), the provisions of the HVR shall apply, as if set out herein, but with the following deviations:

(a) in derogation from Article IV, Section 5(a) of the HVR, the liability of the Carrier is in any event limited to 666.67 SDRs per package or unit, with the exclusion of the right of the entitled party to claim compensation of 2 SDRs per gross kilo of lost or damaged goods;

(b) in derogation from 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) the Carrier shall never be liable for damage resulting from late delivery;

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

5.4.2 Any liability of the Carrier is excluded in respect of damage to or loss of Goods arising before loading and after discharge from the ship, in accordance with Article 5.1 of these General Terms & Conditions.

5.5 If it is agreed or it ensues from the nature of the carriage route that the carriage shall take place partly by road and partly by sea, the provisions of the CMR Convention or the HVR shall apply, with due observance of the provisions in these General Terms & Conditions, including – but not limited to – Articles 5.4.1 and 5.4.2, 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 carriage by road or sea and from which the highest amount in compensation shall ensue, with the understanding that the Carrier will never have to pay more than what it could recover from its Subcontractor. The foregoing does not affect the fact that the CMR Convention applies if the conditions of Article 2 of the CMR Convention have been met.

5.6 If the Carrier undertakes to carry Goods by rail, air or inland waterways or, without having so undertaken, opts for such carriage, whether or not it forms part of combined transport, the provisions of the CMR Convention shall apply, in as far as not deviated therefrom in these General Terms & Conditions or in the Contract, and insofar as such is not contrary to provisions of mandatory law. Article 41 of the CMR shall not apply. Furthermore, Title 1, Section 2 of Book 8 of the Dutch Civil Code on contracts of combined transport shall not apply to the performance of the Services by the Carrier and Articles 8:40 and 8:41 of the Dutch Civil Code are explicitly excluded.

5.7 The Carrier's liability is explicitly excluded for:

(a) any lost profit, consequential and/or indirect damage (including – but not limited to – lost profit, loss as a result of delay, return transport costs, product recalls, demurrage and detention costs);

(b) any immaterial damage;

(c) 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 Services;

(d) any damage or loss resulting from Force Majeure circumstances;

And in case of loss of or damage to Units:

(e) for any damages of EUR 250.- or less; and

(f) for wear and tear (various dents and scratches);

5.8 In the event of any alleged damage to or loss of the Goods due to any failure or non-compliance by the Carrier, its employees or Subcontractors, for example with the Customer's temperature instructions, the Carrier shall only be liable – subject to the other liability provisions in these General Terms & Conditions and/or any other regime as referred to herein – in case the Customer proves that there is a substantial change in the physical condition of the Goods and that such damage or loss actually results from the failure or non-compliance by the Carrier, its employees or its Subcontractors.

5.9 The Carrier shall not be liable for claims in respect of or relating to general average (as within the meaning of the York-Antwerp Rules 2016), including – but not limited to – recovery claims from the Customer or any third party. If for any reason a liability for general average arises in connection with the Goods, the Customer shall promptly provide security to the Carrier or to any other party designated by the Carrier. The Customer shall ensure that it has and maintains sufficient insurance for general average.

5.10 Any party who enters any premises of the Carrier or of its Subcontractor, in sheds, 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 the government and by the Carrier. The Customer shall indemnify the Carrier in this respect against claims from third parties that are on site in connection with the performance of the Services.

5.11 Insofar as such is not contrary to provisions of mandatory law and without prejudice to the liability rules set out above in this Article, the liability of the Carrier shall never exceed an amount greater than 7,500 SDRs per event or series of events with the same cause of damage, on the understanding that in the event of damage, reduction in value or loss of Goods the liability shall never exceed 4 SDRs per kilo of damaged or lost weight with a maximum of 2,000 SDRs per shipment, except insofar as the damage arose from acts or omissions of the Carrier itself (which means the management or supervisory personnel within the Carrier's business) with the intention to cause damage or recklessly with the knowledge that such damage would probably ensue there from.

5.12 The Customer is obliged to hold harmless and indemnify the Carrier, its employees and its Subcontractors for any claim from a third party in connection with the Services, in so far as the claim exceeds the liability of the Carrier under these General Terms & Conditions, including the applicable conventions as referred to therein.

5.13 No liability will be accepted by the Carrier for damages to parts that cannot be seen through the available inspection methods present at the ports, such as visual manual checks or photo gates.

## **6. Reporting claims, time limits and lapsing of rights**

6.1 To report a claim, the Customer must adhere to the most recent claims procedure and the rules described therein.

6.1.1 Damage must initially be reported to the Carriers Claim Department within the period stated in the Claims Procedure mentioned in Article 6.1 of these General Terms & Conditions. The initial report must contain: the unit number, pictures of the damage and the countersigned interchange from the relevant port(s).

6.1.2 In addition to Article 6.1.1, full documentation must be provided to the Carrier's Claim Department within the period stated in the Claims Procedure mentioned in Article 6.1 of these General Terms & Conditions, and must contain: the nature, extent and exact location of the damage, evidence of the condition of the Unit prior to receipt for shipment and a repair estimate with the costs of labour and material both specified.

6.2 Without prejudice to the relevant provisions of the HVR and the CMR Convention, if applicable, the Carrier shall, in any event be released of all liability whatsoever and howsoever arising in respect of any claim under or in connection to the Services and/or these General Terms & Conditions and/or the Contract after twelve (12) months, unless suit is brought before the competent court within the meaning of Article 10 of these General Terms & Conditions and written notice of these proceedings are given to the Carrier, unless the Carrier and the Customer have agreed in writing on an extension of the time limit, and in the event of customs clearance services within eight (8) months. The aforementioned period(s) commences on the day on which the Unit and/or the Goods were delivered or should have been delivered, or – if no day of delivery can be established or is not relevant for the claim at hand – on the day on which the Customer became aware of the claim or loss or should have become aware of the claim or loss. A request for a time extension must be made at least three (3) months prior to the expiry of the time limit and must be done in writing and addressed to the Carrier's Claims Department.

6.3 The Carrier shall not be liable unless reasonable opportunity has been given to the Carrier to investigate the circumstances of the loss including, but not limited to, inspection of the alleged damage.

6.4 In case the Carrier is not given the opportunity to inspect damages this will result in non-admissibility of the claim.

6.5 Except when the damaged Unit is less than three (3) months of age, all claim estimates shall be subject to a reduction of 25% of the total amount to reflect wear and tear and depreciation.

## **7. The Rates**

7.1 The Rates of the Carrier are based on the Services agreed at the time the Contract is made with the understanding that these are based on flexible loading and unloading times. In the event of substantial or significant increases of cost price factors and/or currency rates, the Carrier is entitled to increase the original Rate accordingly.

7.2 Unless the Carrier expressly accepted in writing, the Rates do not encompass completion of customs documents and assumes that the Goods are not held or carried under customs seal.

7.3 If additional Services are provided, it is agreed that the Carrier may invoice separately for these Services.

## **8. Payment**

8.1 Payment must be made within 30 calendar days after the invoice date, in currency by deposit on a bank account designated by the Carrier.

8.2 In the event of late payment, the Customer is legally in default without any need for a notice of default to be sent by or on behalf of the Carrier. As of the day following the due date, the Customer owes an interest of 1% per month on the outstanding amount owed by him, including part of a month, as well as a compensation for extrajudicial collection costs and legal costs actually incurred by the Carrier. The extrajudicial collection costs shall be fixed at 15% of the principal amount with a minimum of EUR 150.-.

8.3 The Carrier is at all times entitled to demand payment in advance from the Customer, or satisfactory security, for the performance of his obligations. If the Customer does not immediately comply with a request to this effect, the Carrier is entitled to terminate or suspend its work.

8.4 The Customer is not permitted to suspend, to make any deduction in relation to, or to set off any payments.

8.5 If, upon payment, a dispute arises about the amount due or if for the determination of this amount a calculation is necessary which cannot be made on short notice, the Customer is obliged at the Carrier's request to pay without delay the part of the amount being due and payable that is undisputed or on which the parties have reached agreement and furthermore, 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 the Carrier's option.

## **9. Right of retention and pledge**

9.1 The Carrier is entitled to refuse to hand over any Goods, objects, documents and monies of the Customer and/or owner, which the Carrier holds or will hold for whatever reason and with whatever destination, in respect of any party or person.

9.2 The Carrier has a right of retention in respect of any and all Goods, objects, documents and monies, which the Carrier holds or will hold for whatever reason and with whatever destination, for all claims the Carrier has or might have in the future against the Customer and/or the owner, also in respect of claims that do not relate to the Goods, objects, documents or monies.

9.3 The Carrier has a right of pledge on all Goods, objects, documents and monies, which the Carrier holds or will hold for whatever reason and with whatever destination, for all claims which the Carrier has or might have in the future against the Customer and/or the owner.

9.4 The Carrier may also exercise the right of retention and the right of pledge referred to in this Article for the amount the Customer still owes to the Carrier in relation to previous orders or agreements.

9.5 The sale of Goods, objects or documents in respect of which the Carrier exercises a right of retention or a right of pledge will take place at the Customer's expense in the manner prescribed by law or privately if there is consensus.

9.6 The Customer shall not be entitled to exercise a right of retention or pledge.

## **10. Applicable law and competent court**

10.1 All legal relationships between the Carrier and the Customer, as well as these General Terms & Conditions and the Contract, and all other contracts which might ensue therefrom, are governed by the laws of the Netherlands.

10.2 Any dispute between the Customer and the Carrier, howsoever arising under, in relation to, or in connection with the Contract, the General Terms & Conditions or the Services performed by the Carrier, shall exclusively be brought before the competent court in Rotterdam, the Netherlands.

10.3 If mandatory law should preclude the exclusive nature of the jurisdiction clause of Article 10.2 of these General Terms & Conditions, this jurisdiction clause will confer additional jurisdiction on the court referred to hereinabove to the extent allowed by such mandatory law.



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**(b)** give the Carrier timely notice of all the information which he must give to the Carrier of which the Customer knows or should know that such is important for the performance of the Services; the Customer guarantees the completeness, correctness and accuracy of the information provided by him;

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**(d)** give timely written notice to the Carrier of the rules which must be followed in accordance with the applicable legislation and/or other government schemes with regard to dangerous goods.

4.2 The Carrier can at any time and any place, at the expense and risk of the Customer, unload, destroy or make harmless in some other way Goods entrusted to the Carrier for whatever reason, which the Carrier, would not have wished to receive, if it had known at the time of taking receipt thereof that they could be dangerous. The Customer is liable for any damage or loss incurred by the Carrier, its employees or Subcontractors caused by the Goods or any other materials that the Customer made available to the Carrier, unless the Customer proves that such damage or loss is the direct result of the fault or negligence of the Carrier.

4.3 In the event that Goods that require refrigeration or heating are involved, the Customer shall promptly provide the Carrier with all necessary instructions and documents such as the particular temperature range to be maintained, and the Customer shall ensure that the Goods have been properly packed to the correct temperature and that the thermostatic controls have been properly set before the Goods are taken over by the Carrier.

4.4 The Customer is obliged to defend, indemnify and hold harmless the Carrier, its employees and its Subcontractors upon first request in the event the Carrier or said employees or Subcontractors are held liable by third parties for any damage or loss in connection with the performance of the Services.

4.5 The Customer is at all times obliged to compensate, indemnify and hold harmless the Carrier against any costs, fines and/or penalties, port charges, expenses, duties, taxes, customs debts or excises, including interests, incurred by or levied upon the Carrier or any Subcontractor by any government or other authority in connection with the performance of the Services, regardless of whether or not such claim is the result of a fault or negligence in the performance on the part of the Carrier or its Subcontractor of its obligations under the Contract. The Customer is obliged to provide security upon the Carrier's first demand for the amounts that the Carrier owes or may owe in relation to the aforementioned.

4.6 The Customer is responsible for the loading, unloading and stowing of the Goods into the Unit, unless the Carrier has in advance expressly confirmed otherwise in writing. Assistance given by the driver in loading and/or stowing does not in any way affect the fact that the Customer has exclusive responsibility in this respect.

4.7 When the driver assists the Customer, whether with or without equipment (e.g. a forklift, pallet /pump truck etc.) the driver acts under the custody, care and liability of the Customer. The Customer shall be liable and shall indemnify the Carrier for any personal injury and any other type of damage or loss caused by this assistance.

4.8 The Carrier does not accept any responsibility for the accuracy of the quantity indicated by the Customer and all other statements regarding the Goods. In the event of receipt of a pre-loaded and sealed container, neither the Carrier nor its Subcontractor 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.

4.9 The Customer shall be liable towards the Carrier at all times for damages which are caused by it or by third parties acting on behalf of the Customer to Units, chassis, trailers and/or containers which have been made available at the request of the Customer for loading or unloading.

4.10 If the Customer fails in the proper performance of any of its obligations as set out in these General Terms & Conditions, the Customer shall be fully liable towards the Carrier and shall be obliged to defend, indemnify and hold harmless the Carrier against all costs, claims, damages, losses or liabilities resulting thereof.

## **5. Liability of the Carrier**

5.1 The period of liability of the Carrier commences at the time when all of the Goods are loaded into the means of transport for the performance of the Services and the Carrier, its employee or Subcontractor has become in effective control of all of the Goods. The period of liability of the Carrier ends at the time when all Goods are discharged from the means of transport. The period of liability commences again at the time when all Goods are loaded into another means of transport in order to be transported further. The parts in between, including – but not limited to – the parts during which the Goods and/or Units are subject to storage or terminal activities – are not included in the period of liability of the Carrier.

5.2 The Carrier shall not be liable whatsoever for loss of or damage to the Goods or the Unit, and howsoever occurring, when such loss or damage arises outside the period of liability as defined in Article 5.1 of these General Terms & Conditions.

5.3 If the Carrier undertakes to carry Goods by road alone and the place of taking over the Goods or Unit and the place of delivery of the Goods or Unit are situated in two different

countries, the provisions of the CMR Convention shall apply, as if set out herein. If the Carrier undertakes to carry Goods purely domestic by road, the provisions of the General Transport Conditions 2002 (*Algemene Vervoercondities 2002*; AVC) shall apply.

5.4.1 If the Carrier undertakes to carry Goods by sea alone (quay-quay), the provisions of the HVR shall apply, as if set out herein, but with the following deviations:

- (a) in derogation from Article IV, Section 5(a) of the HVR, the liability of the Carrier is in any event limited to 666.67 SDRs per package or unit, with the exclusion of the right of the entitled party to claim compensation of 2 SDRs per gross kilo of lost or damaged goods;
- (b) in derogation from 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) the Carrier shall never be liable for damage resulting from late delivery;
- (d) Article III, Sections 3, 4, 5, 7 and 8 of the HVR do not apply.

5.4.2 Any liability of the Carrier is excluded in respect of damage to or loss of Goods arising before loading and after discharge from the ship, in accordance with Article 5.1 of these General Terms & Conditions.

5.5 If it is agreed or it ensues from the nature of the carriage route that the carriage shall take place partly by road and partly by sea, the provisions of the CMR Convention or the HVR shall apply, with due observance of the provisions in these General Terms & Conditions, including – but not limited to – Articles 5.4.1 and 5.4.2, 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 carriage by road or sea and from which the highest amount in compensation shall ensue, with the understanding that the Carrier will never have to pay more than what it could recover from its Subcontractor. The foregoing does not affect the fact that the CMR Convention applies if the conditions of Article 2 of the CMR Convention have been met.

5.6 If the Carrier undertakes to carry Goods by rail, air or inland waterways or, without having so undertaken, opts for such carriage, whether or not it forms part of combined transport, the provisions of the CMR Convention shall apply, in as far as not deviated therefrom in these General Terms & Conditions or in the Contract, and insofar as such is not contrary to provisions of mandatory law. Article 41 of the CMR shall not apply. Furthermore, Title 1, Section 2 of Book 8 of the Dutch Civil Code on contracts of combined transport shall not apply to the performance of the Services by the Carrier and Articles 8:40 and 8:41 of the Dutch Civil Code are explicitly excluded.

5.7 The Carrier's liability is explicitly excluded for:

- (a) any lost profit, consequential and/or indirect damage (including – but not limited to – lost profit, loss as a result of delay, return transport costs, product recalls, demurrage and detention costs);
- (b) any immaterial damage;
- (c) 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 Services;
- (d) any damage or loss resulting from Force Majeure circumstances;

And in case of loss of or damage to Units:

- (e) for any damages of EUR 250.- or less; and
- (f) for wear and tear (various dents and scratches);

5.8 In the event of any alleged damage to or loss of the Goods due to any failure or non-compliance by the Carrier, its employees or Subcontractors, for example with the Customer's temperature instructions, the Carrier shall only be liable – subject to the other liability provisions in these General Terms & Conditions and/or any other regime as referred to herein – in case the Customer proves that there is a substantial change in the physical condition of the Goods and that such damage or loss actually results from the failure or non-compliance by the Carrier, its employees or its Subcontractors.

5.9 The Carrier shall not be liable for claims in respect of or relating to general average (as within the meaning of the York-Antwerp Rules 2016), including – but not limited to – recovery claims from the Customer or any third party. If for any reason a liability for general average arises in connection with the Goods, the Customer shall promptly provide security to the Carrier or to any other party designated by the Carrier. The Customer shall ensure that it has and maintains sufficient insurance for general average.

5.10 Any party who enters any premises of the Carrier or of its Subcontractor, in sheds, 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 the government and by the Carrier. The Customer shall indemnify the Carrier in this respect against claims from third parties that are on site in connection with the performance of the Services.

5.11 Insofar as such is not contrary to provisions of mandatory law and without prejudice to the liability rules set out above in this Article, the liability of the Carrier shall never exceed an amount greater than 7,500 SDRs per event or series of events with the same cause of damage, on the understanding that in the event of damage, reduction in value or loss of Goods the liability shall never exceed 4 SDRs per kilo of damaged or lost weight with a maximum of 2,000 SDRs per shipment, except insofar as the damage arose from acts or omissions of the Carrier itself (which means the management or supervisory personnel within the Carrier's business) with the intention to cause damage or recklessly with the knowledge that such damage would probably ensue there from.

5.12 The Customer is obliged to hold harmless and indemnify the Carrier, its employees and its Subcontractors for any claim from a third party in connection with the Services, in so far as the claim exceeds the liability of the Carrier under these General Terms & Conditions, including the applicable conventions as referred to therein.

5.13 No liability will be accepted by the Carrier for damages to parts that cannot be seen through the available inspection methods present at the ports, such as visual manual checks or photo gates.

## **6. Reporting claims, time limits and lapsing of rights**

6.1 To report a claim, the Customer must adhere to the most recent claims procedure and the rules described therein.

6.1.1 Damage must initially be reported to the Carriers Claim Department within the period stated in the Claims Procedure mentioned in Article 6.1 of these General Terms & Conditions. The initial report must contain: the unit number, pictures of the damage and the countersigned interchange from the relevant port(s).

6.1.2 In addition to Article 6.1.1, full documentation must be provided to the Carrier's Claim Department within the period stated in the Claims Procedure mentioned in Article 6.1 of these General Terms & Conditions, and must contain: the nature, extent and exact location of the damage, evidence of the condition of the Unit prior to receipt for shipment and a repair estimate with the costs of labour and material both specified.

6.2 Without prejudice to the relevant provisions of the HVR and the CMR Convention, if applicable, the Carrier shall, in any event be released of all liability whatsoever and howsoever arising in respect of any claim under or in connection to the Services and/or these General Terms & Conditions and/or the Contract after twelve (12) months, unless suit is brought before the competent court within the meaning of Article 10 of these General Terms & Conditions and written notice of these proceedings are given to the Carrier, unless the Carrier and the Customer have agreed in writing on an extension of the time limit, and in the event of customs clearance services within eight (8) months. The aforementioned period(s) commences on the day on which the Unit and/or the Goods were delivered or should have been delivered, or – if no day of delivery can be established or is not relevant for the claim at hand – on the day on which the Customer became aware of the claim or loss or should have become aware of the claim or loss. A request for a time extension must be made at least three (3) months prior to the expiry of the time limit and must be done in writing and addressed to the Carrier's Claims Department.

6.3 The Carrier shall not be liable unless reasonable opportunity has been given to the Carrier to investigate the circumstances of the loss including, but not limited to, inspection of the alleged damage.

6.4 In case the Carrier is not given the opportunity to inspect damages this will result in non-admissibility of the claim.

6.5 Except when the damaged Unit is less than three (3) months of age, all claim estimates shall be subject to a reduction of 25% of the total amount to reflect wear and tear and depreciation.

## **7. The Rates**

7.1 The Rates of the Carrier are based on the Services agreed at the time the Contract is made with the understanding that these are based on flexible loading and unloading times. In the event of substantial or significant increases of cost price factors and/or currency rates, the Carrier is entitled to increase the original Rate accordingly.

7.2 Unless the Carrier expressly accepted in writing, the Rates do not encompass completion of customs documents and assumes that the Goods are not held or carried under customs seal.

7.3 If additional Services are provided, it is agreed that the Carrier may invoice separately for these Services.

## **8. Payment**

8.1 Payment must be made within 30 calendar days after the invoice date, in currency by deposit on a bank account designated by the Carrier.

8.2 In the event of late payment, the Customer is legally in default without any need for a notice of default to be sent by or on behalf of the Carrier. As of the day following the due date, the Customer owes an interest of 1% per month on the outstanding amount owed by him, including part of a month, as well as a compensation for extrajudicial collection costs and legal costs actually incurred by the Carrier. The extrajudicial collection costs shall be fixed at 15% of the principal amount with a minimum of EUR 150.-.

8.3 The Carrier is at all times entitled to demand payment in advance from the Customer, or satisfactory security, for the performance of his obligations. If the Customer does not immediately comply with a request to this effect, the Carrier is entitled to terminate or suspend its work.

8.4 The Customer is not permitted to suspend, to make any deduction in relation to, or to set off any payments.

8.5 If, upon payment, a dispute arises about the amount due or if for the determination of this amount a calculation is necessary which cannot be made on short notice, the Customer is obliged at the Carrier's request to pay without delay the part of the amount being due and payable that is undisputed or on which the parties have reached agreement and furthermore, 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 the Carrier's option.

## **9. Right of retention and pledge**

9.1 The Carrier is entitled to refuse to hand over any Goods, objects, documents and monies of the Customer and/or owner, which the Carrier holds or will hold for whatever reason and with whatever destination, in respect of any party or person.

9.2 The Carrier has a right of retention in respect of any and all Goods, objects, documents and monies, which the Carrier holds or will hold for whatever reason and with whatever destination, for all claims the Carrier has or might have in the future against the Customer and/or the owner, also in respect of claims that do not relate to the Goods, objects, documents or monies.

9.3 The Carrier has a right of pledge on all Goods, objects, documents and monies, which the Carrier holds or will hold for whatever reason and with whatever destination, for all claims which the Carrier has or might have in the future against the Customer and/or the owner.

9.4 The Carrier may also exercise the right of retention and the right of pledge referred to in this Article for the amount the Customer still owes to the Carrier in relation to previous orders or agreements.

9.5 The sale of Goods, objects or documents in respect of which the Carrier exercises a right of retention or a right of pledge will take place at the Customer's expense in the manner prescribed by law or privately if there is consensus.

9.6 The Customer shall not be entitled to exercise a right of retention or pledge.

## **10. Applicable law and competent court**

10.1 All legal relationships between the Carrier and the Customer, as well as these General Terms & Conditions and the Contract, and all other contracts which might ensue therefrom, are governed by the laws of the Netherlands.

10.2 Any dispute between the Customer and the Carrier, howsoever arising under, in relation to, or in connection with the Contract, the General Terms & Conditions or the Services performed by the Carrier, shall exclusively be brought before the competent court in Rotterdam, the Netherlands.

10.3 If mandatory law should preclude the exclusive nature of the jurisdiction clause of Article 10.2 of these General Terms & Conditions, this jurisdiction clause will confer additional jurisdiction on the court referred to hereinabove to the extent allowed by such mandatory law.