

## Terms and Conditions Samskip Multimodal Container Logistics B.V.

Version 2009

### 1. Definitions

“**Carrier**” means Samskip Multimodal Container Logistics B.V.

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

“**Vessel**” includes any substituted vessel and any vessel to which transshipment may be made in 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, 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 19<sup>th</sup> 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 5<sup>th</sup> 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 25<sup>th</sup> 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 25<sup>th</sup> August 1924, signed at Brussels on the 23<sup>rd</sup> 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 25<sup>th</sup> August 1924, as amended by the Protocol of 23 February 1968, signed at Brussels on the 21<sup>st</sup> December 1979.

### 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. Unless expressly otherwise agreed in writing, applicability of any terms and conditions used and/or declared applicable by the Merchant, including any kind of exchange agreement regarding Containers, e.g. the Bonn or Cologne Pallet Exchange Agreements, is explicitly rejected.
- 2.3. If any provision of these terms and conditions is void or voidable, such shall not affect the validity of the other provisions.
- 2.4. 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.

- 2.5. 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 Carrier.
- 2.6. 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. Revocation after acceptance by the Merchant shall be effected immediately.

### **3. Carrier's Tariff**

The Carrier has set up an Applicable Tariff the provisions of which are considered incorporated herein. The Carrier's Tariff may include provisions relating to Container and vehicle demurrage. The Carrier's Tariff can be found on the Carrier's website and is also obtainable from 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, or has the authority of, the person owning or entitled to the 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.
- 5.2. The Merchant undertakes that no claim or allegation shall be made against any person or vessel whatsoever, other than the Carrier, including, but not limited to, any 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, 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 consequence thereof. Without prejudice to the foregoing, every such servant, agent and sub-contractor 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 sub-contractors, and independent contractors, and any such vessel. The Carrier shall be entitled to be paid by the Merchant on demand any sum recovered or recoverable by such Merchant from any servant, agent, or sub-contractor of the Carrier, or independent contractor, or any such vessel, for any loss, damage, delay or otherwise.

- 5.3. The expression “sub-contractor” in this clause shall include direct and indirect sub-contractors and their respective servants and agents.
- 5.4. The Merchant further undertakes, if a Bill of Lading 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 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. Method and Route of Carriage**

- 6.1. 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, including but not limited to transshipping or carrying them on another vessel than that named on the face hereof;
  - 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 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 port whatsoever, once or more often and in any order;
  - e) load or unload the Goods at any place or port (whether or not such port is named as the port of loading or port of discharge) and store the Goods at any such place or port;
  - f) comply with any orders or recommendations given by any government or any other authority, or any person acting or purporting 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) permit the Vessel to proceed with or without pilots, to tow or be towed or to be dry-docked.
- 6.2. The liberties set out in Clause 6.1 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 6.1 or any delay arising there from shall be deemed to be within the contractual Carriage and shall not be a deviation.

## **7. Carrier's Responsibility**

- 7.1. If the Carrier undertakes to carry goods by road, the provisions of the CMR shall apply, as if set out herein.

- 7.2. If the Carrier undertakes to carry goods by sea alone (quay-quay), the HVR shall apply, as if set out herein, but with the following amendments:
- a) 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) 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;
  - e) Article III, Sections 3, 4, 5, 7 and 8 of the HVR do not apply.
- 7.3. 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 or the HVR as incorporated herein shall apply, depending on the stage of the carriage where the loss, damage or delay arose.  
If it cannot be established on 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.  
The foregoing does not affect the fact that the CMR applies if the conditions of Article 2 of the CMR have been met.
- 7.4. If the Carrier undertakes to carry goods by rail and/ or inland waterway or, without having so undertaken, opts for such carriage, whether or not it forms part of combined transport, the provisions of the CMR shall nevertheless apply, on the understanding that the liability for any damage as a result of delay is excluded and that the provisions of Articles 31 and 32 of the CMR shall not apply.
- 7.5. The Carrier shall never be liable for lost profit, consequential damage (inter alia as a result of delay) and immaterial damage.  
Any liability 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.
- 7.6. Any party who enters any premises of the Carrier or of its agent and/or 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 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.
- 7.7. Insofar as this is not contrary to provisions of mandatory law and/or subject to the liability rules set out above in this article, in all other cases the Carrier shall only be liable to the maximum amount set out below for damage or injury, loss or expense howsoever arising in so far as it is proved by the claimant that the damage or injury, loss or expense resulted from an act or omission, committed with the intent to

cause such damage or injury, loss or expense, or recklessly and with knowledge that such would probably result.

In all such cases the Carrier's liability shall in all cases be limited to 10,000 SDR per occurrence or series of occurrences with one and the same cause of damage, on the understanding that in the event of damage, loss of value or loss of the goods included in the contractual services, the liability shall be limited to 4 SDR per kilogram damaged or lost gross weight with a maximum of 2,000 SDR per shipment, except insofar as the damage arose from the personal act or omission of the Carrier committed with the intent to cause such damage or injury, loss or expense, or recklessly and with knowledge that such would probably result.

## 8. Merchant's Responsibility

- 8.1. Without prejudice to any provisions laid down in law or Convention, the Merchant is in any event obligated:
- a) to ensure that the goods in respect of which the Carrier has some instruction, are available at the agreed place and time;
  - b) to ensure that the goods are packed in a manner adequate to withstand the ordinary risks of Carriage having regard to their nature and in compliance with all laws or regulations which may be applicable during the Carriage.
  - c) 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 for 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;
  - d) to guarantee the proper 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;
  - e) with regard to dangerous goods to 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.
- 8.2. If the Merchant fails to perform the obligations set out in Paragraph 3.1, he is bound to compensate the Carrier for any and all loss, damage, expense or liability which it suffers as a result thereof.
- 8.3. The Carrier can at any time and any place unload, destroy or make harmless in some other way goods entrusted to the Carrier for whatever reason, which the Carrier, if it had known at the time of taking receipt thereof that they could be dangerous, it would not have wished to receive.
- 8.4. 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 fault of the Carrier.
- 8.5. 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

performance of the contractual services, regardless of whether such claim is the result of an imputable fault in the performance on the part of the Carrier of his obligations under the contract.

- 8.6. The Merchant is obligated to give security on the Carrier's first demand for the amounts that the Carrier is or will be owed.
- 8.7. 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.

- 8.8. 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 and/or containers which have been made available at the request of the Merchant, to these parties for loading or unloading.
- 8.9. If, upon receipt of a container which has been carried by the Carrier on a "quay-quay" 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, which must enclose a copy of the interchange report drawn up in respect of those damages, failing which all claims against the Carrier shall lapse.

## **9. Compliance with Local Laws**

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 purporting to act under the authority thereof, seizure under legal process or attempted seizure, incorrect or insufficient marking, numbering or addressing of packages or description of the contents, failure of the Merchant to procure consular, Board of Health 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 Goods are refused importation the Merchant shall be liable for and shall pay return freight and charges thereon.

## 10. Refrigerated or Heated Cargo

- 10.1. The Merchant undertakes not to tender for carriage any Goods which require refrigeration or heating without previously giving written notice 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.
- 10.2. The Carrier shall not be liable for any loss of or damage to the Goods arising from latent defects, derangement, breakdown, stoppage of the refrigerating or heating machinery, 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.

## 11. Containers

- 11.1. Goods may be stowed by the Carrier or his 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 13.2 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.
- 11.2. 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 or expense incurred by the Carrier, if such loss, damage, liability or expense has 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 reasonably 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 carriage hereunder.
  - 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 expense 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 expense 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 due delivery. The Merchant shall indemnify the Carrier against any reasonable additional expense so incurred.

- 11.3. It is agreed that superficial rust, oxidation or condensation inside the Container or any like condition due to moisture is not the responsibility of the Carrier, unless said condition arises out of Carrier's failure to provide a seaworthy Container to the Merchant prior to loading. If the Merchant requires special arrangements or care for the carriage of such Goods, he must request same in writing to the Carrier and said arrangements must be noted on the face of this Bill and all special freight, as required, must be paid by the Merchant.
- 11.4. Where the Goods in respect of which Bills of Lading 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.
- 11.5. 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).
- 11.6. 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 to the point designated by the Carrier, his servants or agents, forthwith or within the prescribed time. The Merchant shall be liable for demurrage (as aforesaid), loss and expenses which may result from any failure or delay in return of the Containers.

## **12. Dangerous Goods**

- 12.1. 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 which may be applicable during the carriage. The Carrier, in its absolute discretion, may reject any Goods so tendered.

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

### **13. Optional Stowage**

- 13.1. The Containers and Goods may be stowed, without notice to the Merchant, on 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. The HVR shall apply to such Carriage of Goods so stowed.
- 13.2. Containers and Goods which are stated on the face hereof to be carried on 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 whether caused by unseaworthiness or negligence or any other cause whatsoever.

### **15. Notification & Delivery**

- 15.1. The Merchant shall take delivery of the Goods within the time provided for in the Carrier's Tariff or as otherwise agreed. If the Merchant fails to do so, 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 due delivery hereunder, and thereupon all liability whatsoever of the Carrier in respect of the Goods, including for misdelivery or non-delivery, shall cease and the costs of such storage shall forthwith upon demand be paid by the Merchant to the Carrier.
- 15.2. 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 expense 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.
- 15.3. Refusal by the Merchant to take delivery of the Goods in accordance with the terms of this clause 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 incurred, including legal costs, for the cleaning and disposal of Goods refused and/or abandoned by the Merchant.

### **16. Freight and Payment Conditions**

- 16.1. Freight shall be deemed earned 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. 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 designed by the Carrier in a form acceptable to the Carrier.

- 16.2. 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 a 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 smaller, and the expenses incurred in determining the correct particulars, shall be payable as liquidated damages to the Carrier.
- 16.3. Payment shall be made in the country, to bank account and in the currency stipulated on the invoice, unless it has been otherwise agreed. In the latter case any exchange losses suffered by the Carrier shall be for account of the Merchant. All bank charges associated with transfer of such payment shall be for account of the Merchant.
- 16.4. Unless otherwise expressly agreed by separate credit terms agreement or condition, all invoices are to be paid promptly (i.e. within the standard payment term, if applicable, of maximum 14 days after the invoice date) before delivery of the goods or the goods should have been delivered by deposit on a bank account designated by the Carrier. 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.
- 16.5. 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 article 16.4 or under the agreed credit terms agreement or condition and also in these circumstances the Carrier has the right to demand immediate payment of all outstanding amounts.
- 16.6. 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 14 days of its date.
- 16.7. 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 not 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.

- 16.8. 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 16.4 and 16.5) the Merchant owes on the outstanding amount owed by him of 1 % (one percent) per month, including part of a month.
- 16.9. 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 en extrajudicial, relating to the claim. The extrajudicial collection costs on the amount owing are fixed at 15 % (fifteen percent) of the principal, with a minimum of EUR 150,00 (one hundred and fifty Euro).
- 16.10. 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 from his obligation to pay for such services, duties, charges, expenses etc. on receipt of evidence of proper demand.
- 16.11. The Merchant shall at no time whatsoever be entitled to any set off or make any deduction in relation to invoices submitted by the Carrier .
- 16.12. The shipper c.q. the sender shall be liable for the payment of all freights, charges, demurrage etc., which the Carrier cannot obtain from the consignee as result of whatever reason.
- 16.13. As soon as the Merchant is in default with any payment all remaining payments fall 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.
- 16.14. 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 denomination 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.

- 16.15. 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-observance of Custom House or import or export regulations or any anti-drug abuse act.
- 16.16. 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. All freight shall be paid without any set-off, counter claim, deduction or stay of execution before delivery of the Goods.

**17. Lien**

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, 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 whom due, and for the cost of recovering the same, and for that purpose the Carrier shall have the right to sell the Goods by public auction or private treaty and recover all his Costs there from without notice to the Merchant. Whether or not the lien can be enforced at the loading or discharging port, the Master may discharge and lien the Goods at any other convenient port or place. Such discharge of any of the Goods shall be deemed due fulfillment 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.

**18. Applicable Law and Jurisdiction**

- 18.1. 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 17 or otherwise.
- 18.2. Any and all 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 exclusively be brought before the competent Court in Rotterdam.
- 18.3. Notwithstanding Article 18.2 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.