

# Samskip Multimodal Conditions



- DEFINITIONS**

"Booking Confirmation" means a written confirmation of the Carrier to the Merchant with the terms and conditions under which the contractual services shall be performed.

"Carrier" means Samskip Multimodal B.V. as defined in the Quotation and/or Booking Confirmation and/or Waybill.

\*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 done at Geneva on the 5<sup>th</sup> of July 1978.

"Force Majeure" means circumstances preventing the Carrier, its employees and/or its Sub-contractors to perform, that they could not have avoided or the consequences of same were unavoidable for them. Force majeure circumstances shall include – but shall not be limited to – heavy weather, perils of the sea, issued sea protests, war, fire, riot, riot, upris, natural disasters, nuclear or attacks, fire, technical problems to Means of Transport, closure or blockades (temporary or permanently) of ports, roads, inland waterways or railway lines, shutting areas, yards or terminals, strikes or similar labor actions, people trying to gain access to Means of Transport, cyber-attacks and cybercrime.

"General Average" shall have the meaning as defined in York-Antwerp Rules of 2016.

"Goods" means the cargo from which is the subject of the contractual services and includes any Units not supplied by or on behalf of the Carrier.

"HVR" means the provisions of the International Convention for the Unification of Certain Rules relating to Bills of Lading signed at Brussels on 25<sup>th</sup> August 1924, 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.

"Means of Transport" means the conveyance or transport mode used by the Carrier, its employees and Sub-contractors in the performance of the contractual services, including but not limited to a train, vehicle, barge or vessel.

"Merchant" includes, jointly and severally, the shipper, the receiver, the consignee, any person owning or entitled to the possession of the Goods, and anyone acting, whether as agent or otherwise on behalf of such person.

"Quotation" means the Carrier's offer to the (potential) Merchant for the performance of the Carrier's services.

"SDR" means Special Drawing Right as defined by the International Monetary Fund.

"Sub-contractor" includes direct and indirect sub-contractors of the Carrier, including – but not limited to – servants, agents or independent contractors of the Carrier such as stevedores, terminal operators and transport operators as well as their respective servants, agents and independent contractors.

"Unit" includes any container, trailer, train wagon, transportable tank, flatrack or pallet or any similar article of transport used to consolidate and to transport the Goods.

"Waybill" means any transport document, hardcopy or digital format, issued for the carriage of the Goods, including – but not limited to – a bill of lading, sea waybill, CMR note, proof of delivery or consignment note.
- APPLICATION**
  - These terms and conditions apply to all Quotations, offers and Booking Confirmations made by the Carrier, to all requests for offers or quotations to the Carrier (whether accepted or not), to all contracts entered into by the Carrier and to all services whether gratuitous or not and to all legal and factual acts performed in that connection.
  - A booking made by the Merchant with the Carrier shall be considered as an unconditional acceptance of the Quotation, price indication or offer including these terms and conditions.
  - Applicability of any terms and conditions (e.g. general conditions, standard conditions or any kind of exchange agreement regarding Units or packaging material, e.g. the Bore or Colonge Pallet Exchange Agreements) used and/or declared applicable by the Merchant in requests for offers or quotations, offers, instructions or other communication to the Carrier concerning the underlying or previous services, is explicitly rejected by the Carrier.
  - If any part of any provision of these terms and conditions is void or voidable, such shall not affect the validity of the other (parts of the) provisions.
  - In case the English text of these terms and conditions differs from any other language, this English text shall prevail.
  - No Sub-Contractor 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.
  - In the case of inconsistency between these terms and conditions and the Quotation and/or Booking Confirmation or any other communication or contract, these terms and conditions shall prevail except with respect to the calculations of freight and other charges, in which case the Quotation and Booking Confirmation shall prevail.
- SUBCONTRACTING/HANDLING**
  - 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 whatsoever undertaken by the Carrier in relation to the Goods.
  - The Merchant undertakes that no claim or allegation shall be made against any Sub-Contractor or employee, which imposes or attempts to impose upon any such person 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 such person. If any such claim or allegation should nevertheless be made, the Merchant shall defend, indemnify and hold harmless the Carrier and all consequences thereof. Without prejudice to the foregoing, every Sub-Contractor and employee shall have the benefit of every right, defence, liability, exception and limitation of whatsoever nature contained in these terms and conditions, or – if that has been issued – contained in the applicable terms and conditions thereto or otherwise available to the Carrier as if such provisions were expressly for its benefit; and in entering into a contract with the Merchant, the Carrier, to the extent of these provisions, does so not only on its own behalf but also as agent and trustee for such persons.
- METHOD AND ROUTE OF CARRIAGE**
  - The Carrier may at any time and without notice to the Merchant,
    - use any Means of Transport whatsoever;
    - transfer the Goods from one conveyance to another, including but not limited to transhipping or carrying them on another Means of Transport;
    - unpack and remove the Goods which have been packed into a Unit and forward them in another Unit or otherwise;
    - use any by 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;
    - load or unload the Goods at any port or port (whether or not such port is named as the place and/or port of loading or place and/or port of discharge) and store the Goods at any such place and/or port;
    - unload, destroy or render harmless Goods which are or at any time become dangerous, inflammable, radio-active or damaging at any time or place, without compensation to be paid to the Merchant.
  - The liberties set out in clause 4.1 may be invoked by the Carrier for any purpose whatsoever, whether or not connected with the carriage of the Goods, including loading or unloading of 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 Means of Transport. Anything done in accordance with clause 4.1 of any delay arising therefrom shall be deemed to be within the contractual services and shall not constitute a deviation.
  - In the event of carriage by sea, Goods may be stowed, under notice to the Merchant, on deck, under deck or any space commonly used for the carriage of Goods at sea. Goods or Units so stowed shall be deemed to be stowed under deck for all purposes, including General Average.
  - Goods which are stowed to be carried on deck at 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 seaworthiness or negligence or any other cause whatsoever.
  - The Carrier shall be entitled to use any means of transport, including but not limited to the means of transport, 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 Unit 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.
- PERIOD OF LIABILITY OF THE CARRIER**
  - 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 contractual services and the Carrier, its employees or Sub-contractor has become in effective control of all of the Goods.
  - The period of liability of the Carrier ends at the time of delivery to the consignee or receiver whose name and/or address is mentioned in the Quotation, Booking Confirmation and/or Waybill. Delivery has taken place at the time the first Goods have been made available to the Merchant for discharge and/or first Goods are being discharged from the Means of Transport.
  - Except to clause 13 hereof the period of liability of the Carrier also ends by the refusal by the consignee or receiver to take delivery of the Goods at the place of delivery.
  - The Carrier shall be under no liability whatsoever, however occurring, when the cause of such loss or damage arises outside the period of liability defined in this clause 5.
- CARRIER'S RESPONSIBILITY**
  - The relationship between the Carrier and the Merchant and the liability of the Carrier for any loss, damage and/or delay occurring during or in relation to the carriage of the Goods, is governed by the provisions of the CMR, regardless of the Means of Transport used by the Carrier, its employees or Sub-contractors, unless exclusively governed by a law, regulation or convention which mandatorily applies to the carriage of the Goods, in as far as not deviated in the agreement between the Carrier and the Merchant or these terms and conditions. Article 4.1 of CMR shall apply to these terms and conditions.
  - By way of derogation from clause 5.1, the HVR shall apply if any loss, damage and/or delay occurred during the carriage of Goods at sea as provided for in Articles III, Sections 3, 4, 5, 7 and 8 of the HVR.
  - The Carrier does not undertake to deliver the Goods at any particular time or to meet any particular market or use. All departure, arrival and voyage times given by or on behalf of the Carrier are estimates only and cannot be guaranteed. All departure, arrival and voyage times are subject to the Carrier's standard service schedules that are published on the Carrier's website and can be changed by the Carrier without prior notice. The Carrier shall in no circumstances whatsoever be liable for any direct, indirect or consequential loss or damage resulting from delay, unless the Merchant proves that damage has resulted due to the delay in excess of the agreed time slot as agreed in writing by the Carrier and special freight, as required, is paid by the Merchant. In that case the liability of the Carrier shall not exceed the freight paid or payable for the carriage of the Goods delivered with delay.
  - The Carrier shall never be liable for loss or damage arising or resulting from:
    - act, neglect, or default of the master, mariner, pilot, or the servants of the Carrier or its Sub-contractor in the navigation or in the management of the vessel or barge;
    - fire, unless caused by the actual fault or privity of the Carrier; and/or
    - 6.4.3. perils, dangers and accidents of the sea or other navigable waters.
  - 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 contractual services by the Carrier and Articles 8:40 and 8:41 Dutch Civil Code are explicitly excluded.
  - The liability of the Carrier is explicitly excluded for:
    - 6.6.1. lost profit, consequential and/or indirect damage (including – but not limited to – damage as a result of delay, return transport costs, products recalls, loss of use of Units or demurrage) and immaterial damage;
    - 6.6.2. penalties including but not limited to import duties, excise duties, 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.
  - Any party who, in any capacity, is liable for the loss, damage, or delay of the Goods, or any other place where work is executed, shall be there, with all belongings 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.
  - Insofar as this is not contrary to provisions of mandatory law and/or subject to the liability rules set out above in this clause 6, in all other cases the Carrier's liability for damage or loss in relation to the Goods shall be limited to SDR 2 per kilogram of gross weight of the Goods lost or damaged with a maximum of 5,000 SDR per occurrence or series of occurrences with one and the same cause. This clause 6.8 shall not apply to terminal handling activities for the Merchant and in the event the Goods are being held and/or stored during the performance of services by Carrier for a longer period than 24 hours at a terminal, warehouse or other storage facility.
  - For other damages, losses, injuries or expenses, the Carrier's liability however arising shall in all cases be limited to 25,000 SDR per occurrence or series of occurrences with one and the same cause of damage.
  - The limitations of liability of clause 6.8 and 6.9 shall not apply in as far as it is proven by the claimant that the damage or loss resulted from an act or omission of the Carrier or its management, committed with the intent to cause such loss or loss, or recklessly and with knowledge that such would probably result.
  - The Merchant shall indemnify and hold the Carrier harmless from and against any and all third-party claims for payment of compensation relating to the contract between the Merchant and the Carrier, in as far as these claims exceed the Carrier's liability towards the Merchant under these terms and conditions.
- FORCE MAJEURE**
  - The Carrier shall not be liable for damage arising from failure to perform carriage or failure to properly perform carriage if caused by Force Majeure.
  - In the event of Force Majeure on the side of the Carrier, its employees or its Sub-contractors, performance by the Carrier of its contractual services shall be postponed until the circumstances giving rise to Force Majeure shall have ceased.
  - In the event a ship's logbook or a notarized sea protest (ship's protest) reflects Force Majeure, this logbook or protest shall constitute the proof of Force Majeure for the Carrier, its employees and/or its Sub-contractors.
- CLAIMS AND TIME BARS**
  - The Merchant warrants to duly check the condition of the Goods at delivery together with the Carrier or its Sub-contractor. The fact of taking delivery of the Goods shall be prima facie evidence that the Merchant has received the Goods in the condition described in the Waybill, unless notice of loss or damage and the general nature of such loss or damage is given in writing to the Carrier not later than at the time of delivery in the case of apparent loss or damage or within seven (7) days of delivery in case of loss or damage which is not apparent.
  - Every claim, including demands for payments, against the Carrier shall lapse after 12 months, unless a time-extension has been agreed in writing by the Carrier and the claimant. The term shall commence on the day following the day on which the Goods have been delivered or should have been delivered.
- MERCHANT'S RESPONSIBILITY**
  - Without prejudice to any obligation of the Merchant laid down in any law or convention, the Merchant is in any event obliged:
    - 9.1.1. to ensure that the Goods or Units in respect of which the Carrier has some instruction, are available at the agreed place and time;
    - 9.1.2. to ensure that the Goods are packed in a manner adequate to withstand the ordinary risks of transport having regard to their nature and in compliance with all laws or regulations which may be applicable during the carriage;
    - 9.1.3. to ensure that the Goods are packed in any other materials or equipment supplied by the Merchant to the Carrier are in excellent, safe and reliable condition, are capable of performing the functions for which they are intended, and comply with all obligations arising from the applicable statutes, rules and regulations with respect to the performance of the contractual services by the Carrier;
    - 9.1.4. to give the Carrier timely notice of information which the Merchant knows or reasonably should have known that this information is important for the Carrier;
    - 9.1.5. to guarantee that all information provided by him is accurate, including but not limited to the accuracy, at the time the Goods were taken in charge by the Carrier, of the description of the Goods, marks, numbers, quantity, weight and customs requirements;
    - 9.1.6. to guarantee that Goods will not cause danger, injury, pollution or damage to any person, the Carrier, its employees or its Sub-contractor, their Units, vessels, other equipment, property, the environment or in general;
    - 9.1.7. to guarantee the proper presence of the documents required for the execution of the instruction, including but not limited to documents required for customs clearance, except insofar as it was agreed in writing that the Carrier would take care of such documents;
    - 9.1.8. with regard to dangerous Goods, inflammable, radio-active, or of damaging nature 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, to mark the Goods and the Unit or other packaging 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.
    - 9.1.9. to ensure that Units made available by the Carrier to the Merchant will be returned by the Carrier for any other purpose and/or in any other way than agreed; and
    - 9.1.10. to ensure that Units made available by the Carrier to the Merchant shall be returned within the agreed time, in excellent condition, free from leakage, clean and odorless.
  - For the purpose of ascertaining the actual facts, the Carrier reserves the right to obtain from the Merchant the packing list, original invoice and/or to have the contents inspected and the weight, measurement or value verified.
- GENERAL AVERAGE**
  - The Carrier shall not be liable towards the Merchant for claims in respect of or relating to General Average, including – but not limited to – recovery claims from the Merchant or any third party.
  - For any residual liability for General Average arising 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 and amount acceptable to the Carrier. The Merchant shall provide such security before the Goods are delivered or, at the Carrier's option, within three months after delivery of the Goods, whether or not at the time of delivery the Merchant had notice of Carrier's possessory lien.
  - The Merchant shall ensure that it has and maintains sufficient insurance for General Average.
- GOVERNMENT DIRECTIONS, WAR, EPIDEMICS, ICE, STRIKES ETC.**
  - The Carrier, its employees or its Sub-contractors shall have liberty to comply with any orders, directions or recommendations as to loading, departure, routes, stoppages, destination, arrival, discharge, delivery or in any other ways whatsoever given by any government or any person or body acting or purporting to act with the authority of such government or by any committees or person having the right to give any orders, directions or recommendations.
  - If on account of any hindrance, risk, delay, difficulty, or disadvantage of any kind and however arising (even though the circumstances giving rise to such hindrance, delay, difficulty or disadvantage existed at the time the contract was entered into or the Goods were received for carriage) and including, but without limitation, attack or threatening war, warlike operations, hostilities, acts of terrorists, piracy, riots, civil unrest, seizures or blockades (epidemic, quarantine, ice, strike, lockout, labor troubles, interdict, congestion or difficulties in loading or discharge, the Carrier or Sub-contractor at any time is in doubt as to whether the Means of Transport can, safely and without delay, leave the place of loading or reach or enter the place of discharge, the Goods may be discharged at any place considered safe and convenient by the Carrier or Sub-contractor.
  - In the cases referred to in all the preceding paragraphs under this clause 11.1, the Carrier may at any time postpone, suspend or cancel the contract even before the Goods have been received and/or loaded. The discharge of any Goods under the provisions of this clause 11 and/or the conclusion of the venture consequent upon compliance with any orders or directions referred to above, whether the Goods are discharged or not, shall be deemed a fulfilment of the contract.
  - The Merchant shall be liable for all additional freight and demurrage charges and expenses incurred in connection with the discharge of the Goods referred to above.
  - The Merchant shall be informed, if possible, but without liability on the part of the Carrier regarding claims referred to in this clause 11.
- REFRIGERATED OR HEATED CARGO**
  - 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 Unit packed by or on behalf of the Merchant, further warrants and undertakes that the Goods have been properly to the correct temperature, before storage in the Unit and that the thermometric controls have been appropriately set by the Merchant before taking over 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, however arising. The Carrier shall not be liable for any loss of or damage to the Goods arising from latent defects, damage, break-down, stoppage, of the refrigerating or heating machinery, plant, insulation and/or any apparatus of the Unit, the Means of Transport 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.
  - In the event that the Carrier, its employee or Sub-contractor fails to comply with the Merchant's temperature instructions, the Carrier will not be liable unless the Merchant proves that there is a substantial change in the physical condition of the Goods and that such damage actually results from the failure to observe the Merchant's temperature instructions.
- NOTIFICATION & DELIVERY**
  - The Carrier shall take delivery of the Goods within the time provided for in the Carrier's Quotation, Booking Confirmation or as otherwise agreed. If the Merchant fails to do so, the Carrier may without notice unclose the Goods if packed in Units 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.
  - If the Goods are unsecured within a reasonable time, or the Merchant fails to provide the Carrier with instructions to mitigate any loss or damage to the Goods, or when 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.
  - The Merchant by the Merchant to take delivery of the Goods or provide instructions in accordance with the terms of this clause 13 and/or to mitigate any loss or damage to the Goods, 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 claim payments, for the cleaning and disposal of Goods refused and/or abandoned by the Merchant.
- FREIGHT AND PAYMENT CONDITIONS**
  - Regardless of the manner in which they have been made, all Quotations of the Carrier are non-binding and can be revoked by the Carrier at any moment without any formality or obligation to pay damages.
  - Quotations, price indications or offers shall be considered valid if a booking is made by the Merchant within 30 days from the date of issuance of such Quotation, price indication or offer, unless expressly agreed otherwise in writing.
  - In the event the Carrier issues a new Quotation, price indication or offer or a previous one has been amended, such new or amended Quotation, price indication shall only be considered valid if a booking is made by the Merchant within 14 days from the date of issuance or amending of such Quotation, price indication or offer, unless expressly agreed otherwise in writing.
  - Quotations, price indications or offers shall only include those services that are mentioned. Those services not mentioned shall not be considered included and, if performed, the Carrier is entitled to invoice for these services performed separately.
  - The freight quoted by the Carrier is exclusive of all additional and/or variable charges and special services, unless otherwise specifically quoted. The Carrier reserves the right to re-negotiate and/or to increase freight and charges in the event of a substantial or significant increase of costs factors and/or currency rates.
  - The freight has been calculated on the basis of particulars furnished by or on behalf of the Merchant. The Carrier may at any time open any Unit or other package in order to reweigh, reinspect, recheck or reverify the contents, if the particulars furnished by or on behalf of the Merchant are incorrect, 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 – increased with the expenses incurred in determining the correct particulars, shall be payable to the Carrier.
  - 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 such payment shall be borne by the Merchant.
  - Freight, increased or not, and any other charges and special services, shall be deemed payable by the Carrier upon receipt of the Goods by the Carrier, its employees or Sub-contractor and shall be paid in full by the Merchant within 14 days after the date of invoice, unless otherwise expressly agreed by separate credit terms agreement or conditions. Freight shall be non-refundable in any event or circumstance, and therefore irrespective of whether proof of delivery (e.g. Waybill signed for delivery) is provided by the Carrier.
    - any invoice is not paid within the agreed payment term; and/or
    - the credit limit under the separate credit terms agreements/conditions is exceeded; and/or
    - the Merchant or its agent breaches the separate credit terms agreements/conditions; and/or
    - the Merchant ceases trading or enters 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 clause 14.8 or under the agreed credit terms agreement or conditions;
      - to demand immediate payment of all outstanding amounts;
      - to cancel all current and future transports already booked by the Merchant; and/or
      - to exercise a right of retention or lien or similar right as described under clause 16 on all Goods, monies or documents of the Merchant or its subsidiary or agent – which the Carrier has in its possession.
  - The Merchant shall be deemed to have accepted 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. Disputing (a part of) the invoice shall not release the Merchant from its obligation to pay the invoice in full within the applicable payment term. A demand by the Merchant for proof of delivery (e.g. Waybill signed for delivery) by the Carrier shall not be considered a notification by the Merchant to dispute an invoice.
  - The Merchant is obliged to provide financial security on the Carrier's first demand for any amount the Merchant is due or will be due to the Carrier.
  - The standard or agreed payment term shall be considered as a term within the meaning of article 6:83 (a) of the Dutch Civil Code. Hence, in the event of late payment, the Merchant is liable to the Carrier for any interest or default on behalf of the Carrier. As of the day following the due date (clause 14.8) the Merchant owes on the outstanding amount owed by him of 1 % (one percent) interest per month, including part of a month.
  - If the Merchant is in 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 150,- (one hundred and fifty Euro).
  - Failure by the Carrier to collect and/or to invoice freight, charges, demurrage, duties, expenses etc. from the consignee or any other party shall not release the Merchant from his obligation to pay for such costs on receipt of evidence of proper demand. The Merchant shall be liable for the payment of all such costs which the Carrier cannot obtain from the consignee or other party as a result of whatever reason.
  - 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.
  - 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 invoice article 6:44 Dutch Civil Code.
  - Any and all dues, 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 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. All freight shall be paid without any set-off, counter claim, deduction or stay of execution before delivery of the Goods.
- TERMINATION CONTRACT OF CARRIAGE**
  - In addition to clause 14.9, the Carrier will be entitled to terminate the contract of carriage between the Carrier and the Merchant or a part of it by giving not less than 24 hours' prior written notice to the Merchant, if a Force Majeure circumstance lasts for a period longer than 7 calendar days, if the Carrier made a writing error in the Quotation, price indication or offer, in case of a lack of availability, capacity, equipment or Units, or if the Carrier is in any other way not reasonably able to perform the services.
- PLEDGE AND RIGHT OF RETENTION**
  - The Carrier shall have a pledge and a right of retention (a lien or similar right) on the Goods, monies and any documents relating thereto for all and 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 whomsoever due, and for the cost of recovering the same.
  - In order to enforce its pledge and/or right of retention or similar right, the Carrier shall have the right to sell the Goods by public auction or privately and recover all his costs therefrom without notice to the Merchant.
  - The Carrier or not in default of its right of retention or similar right can be enforced at the loading or discharging place, the Carrier may discharge Goods at any other convenient place. Such discharge of any of the Goods shall be deemed due fulfilment of the 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 incurred with the enforcement of the pledge and/or right of retention or similar right, and the net proceeds of the Goods.
- ASSIGNMENT, TRANSFER AND ENCUMBRANCE**
  - The rights and obligations of the legal relationship of the Merchant under the contract can and may not be assigned, transferred or encumbered without the prior written consent of the Carrier. The Carrier may at all times assign, transfer or encumber any rights or obligations or the legal relationship of the Carrier under the contract of carriage.
- APPLICABLE LAW AND JURISDICTION**
  - In the event any dispute shall not be 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 clause 18 shall prevent the Carrier from invoking another law as may be necessary to enforce the pledge or right of retention or lien or similar right as described in clause 16.
  - Any and all disputes between the Merchant and the Carrier however 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.
  - If any law or convention is deemed to be mandatorily applicable to (part of) the contractual services, which does not allow for an exclusive jurisdiction clause, clause 18.2 shall be considered to be a non-exclusive jurisdiction clause.
  - Notwithstanding clause 18.2, 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.