

## ***Agreement/authorisation to act as limited fiscal representative***

The Undersigned,

### **Client / direct represented party**

Company Name : .....  
Address : .....  
Postal Code, Place : .....  
VAT-ID : .....  
EORI number : .....

Hereinafter referred to as the "Principal"

### **Customs representative / limited fiscal representative**

Company Name : Global Customs Agency Netherlands B.V.  
Address : Rivierweg 1  
Postcode, City : 3161 GM Rhooon, The Netherlands

hereinafter referred to as 'limited Fiscal Representative'

the parties hereby declare that they have agreed as follows:

Principal hereby states to be a foreign enterprise without permanent establishment in the Netherlands whose activities involve dealing with Dutch turnover tax. Principal hereby designates limited Fiscal Representative to carry out the operations and activities prescribed pursuant to the 'Wet op de Omzetbelasting 1968' [Turnover Tax Act 1968] and associated legislation and regulations concerning consignments of goods brought in by/on behalf of Principal or intended for Principal. Principal hereby give Power of Attorney to limited Fiscal Representative in respect of the work assigned. Principal will not make use of any other Limited Fiscal Representative within the Netherlands.

Limited Fiscal Representative declares to act as limited fiscal representative on behalf of Principal regarding the import of goods and the subsequent delivery of consignments of goods brought in by/on behalf of Principal or intended for Principal.

## **Article 1 – General Conditions**

- 1.1 Limited Fiscal Representative shall at all times be entitled to refuse operations and activities ensuing from this contract.
- 1.2 Use of the VAT identification number of Limited Fiscal Representative by Principal shall only be permitted to the extent that such ensues from the present contract and is necessary in order to meet legal obligations.
- 1.3 limited Fiscal Representative shall only use Principal's documents, information and data for operations / activities ensuing from the present contract. Limited Fiscal Representative shall not make such documents, information or data available to third parties, unless such ensues from the present contract or be required in order to achieve an accurate tax levy or ensues from a legal obligation.

- 1.4 Barring deviations/supplementary rulings in the present contract, the 'Nederlandse Expeditievoorwaarden' [Dutch Forwarding Conditions] shall apply to the relationship between parties, as filed by FENEX at the Offices of the District Courts in Amsterdam and Rotterdam. The latest version of the Dutch Forwarding Conditions at the time such operations/activities are performed shall apply. <sup>1</sup>
- 1.5 The following appendices constitute part of this contract:  
Appendix a) Required information and documentation per transaction  
Appendix b) Dutch Forwarding Conditions
- 1.6 Matters relating to the implementation of the present agreement may be further arranged by parties, supplementary to this agreement, in appendices that shall automatically constitute part of this agreement after having been signed or initialled .
- 1.7 all request for duties back which are done by Limited fiscal representative, must be paid to limited fiscal representative.

## **Article 2 – Description / nature of agreed activities**

- 2.1 Limited Fiscal Representative shall act on behalf of Principal in respect of all obligations ensuing from Dutch regulations concerning Fiscal Representation with a limited licence.
- 2.2 limited Fiscal Representative shall carry out the following activities on behalf of / for the benefit of Principal:
  - a) Monthly VAT declaration under the VAT identification number allocated to Limited Fiscal Representative (aangifte OB)
  - b) Quarterly report of intra-Community supplies (aangifte ICP)
  - c) CBS / Intrastatt report
- 2.3 In his declaration of intra-Community supplies to acquiring parties registered for turnover tax, Limited Fiscal Representative shall, wherever possible on the basis of the invoice supplied or other documents, information and data, apply the zero rate tariff. If so requested by Principal in writing, Limited Fiscal Representative shall periodically verify the VAT identification number of the intra-Community acquiring party with the tax authorities.
- 2.4 Without prejudice to the foregoing, Limited Fiscal Representative is subject to the following legal obligations:
  - Provision of security with the tax authorities.
  - If so required, supply information to the tax authorities.
  - Keep proper records in order to show in the case of audits that correct tax levy has taken place

## **Article 3 – Rights accruing to limited fiscal representative**

- 3.1 For all operations / activities and formalities relating to the agreement, if Limited Fiscal Representative should have any doubts concerning the correct application of the VAT rate (including the zero rate tariff) / transfer of turnover tax, he shall be entitled to file the VAT declaration or amend a VAT declaration already filed, applying the valid rates for turnover tax. <sup>2</sup>
- 3.2 Limited Fiscal Representative shall retain the right to suspend operations and activities until the amount due within the framework of the present agreement or the relevant conditions has been settled. In the case that operations and/or activities should be suspended, Limited Fiscal Representative shall inform Principal accordingly.

<sup>1</sup> The Dutch Forwarding Conditions, deposited at the Registry of the District Court of Rotterdam, may also be consulted at [www.gcan.nl](http://www.gcan.nl)

<sup>2</sup> See article 4.4 for more details

- 3.3 In the case that Principal shall not meet his obligations ensuing from the present contract or if limited Fiscal Representative may reasonably assume that Principal shall fail to fulfil these obligations, Limited Fiscal Representative shall be entitled to offset any payments/refunds by the tax authorities of whatever nature accruing to Principal.
- 3.4 Limited Fiscal Representative shall be entitled but not obliged to consult / negotiate with the tax authorities concerning tax levies, supplementary tax levies and/or other costs and matters falling under the present agreement.  
Consultation with Principal shall take place in respect of calling in third parties to handle claims and negotiations with the tax authorities.  
  
All said operations and activities shall be at the expense and risk of Principal.
- 3.5 limited Fiscal Representative shall request instructions from Principal if an unexpected situation should arise in respect of performance of activities that has not been provided for in the present Agreement. However, should Principal fail to respond within a reasonable period of time and immediate action be required in view of urgent circumstances, Limited Fiscal Representative shall deal with the matter at his own discretion, having due regard to the provisions of this Agreement.

#### Article 4 – Principal's obligations

Principal shall be obliged to:

- 4.1 provide Limited Fiscal Representative in good time the nature and quantity of goods consignments;
- 4.2 notify limited Fiscal Representative if the nature and quantity of the goods consignments deviate by more than 10% of the expected amount of import turnover tax;
- 4.3 provide limited Fiscal Representative with all required documents, information and data - also per individual consignment/transaction - required pursuant to the relevant regulations and under the present Agreement, in conformity with Appendix c. Principal shall guarantee the accuracy and validity of said documents, information and data;
- 4.4 make all efforts required in connection with the application of Article 3.1, such upon first request by Limited Fiscal Representative;
- 4.5 hold Limited Fiscal Representative indemnified against claims by third parties in connection with failure on the part of Principal and his contractual parties to meet any obligations that may exist under the present Agreement and/or relevant general conditions, including the provision of correct VAT identification numbers and correct documents, information and data;
- 4.6 in addition to the agreed remuneration, reimburse / pay any other sums/expenses ensuing from the present agreement and/or relevant general conditions. Said obligation to pay shall remain valid in the case of any dispute between parties;

- 4.7 reimburse / pay Limited Fiscal Representative at all times upon first request for any-amounts to be levied or additionally demanded by any authority in connection with the present agreement, as well as any fines imposed and interest due;
- 4.8 notify limited Fiscal Representative in good time of the sale / transfer of his company, any change in control of the company as well as application for a moratorium and bankruptcy.

#### **Article 5 – Prices and rates + yearly adjustment**

- 5.1 Agreed prices and rates for operations and activities by Limited Fiscal Representative will be separately agreed
- 5.2 All sums of whatever nature owed to Limited Fiscal Representative by Principal should be paid immediately upon first demand. Should Principal fail to pay the sum due immediately upon demand or after the applicable term of credit, Limited Fiscal Representative shall be entitled to charge the legal interest in conformity with sections 6:119 and 6:119a of the 'Burgerlijk Wetboek' [Dutch Civil Code].
- 5.3 If according to the judgment of Limited Fiscal Representative it should be necessary to deviate from the rates agreed, for example as a consequence of a return based on articles 4.1 and 4.2, Limited Fiscal Representative may re-determine prices and rates and submit these to Principal for approval.
- 5.4 Prices and rates shall be adjusted annually in December, unless otherwise agreed.

#### **Article 6 – Liability of the parties**

- 6.1 Without prejudice to the provisions of the Dutch Forwarding Conditions, Limited Fiscal Representative shall not be liable for the operations and activities of third parties brought in according to article 3.4.
- 6.2 Principal shall be liable for any damages resulting from failure by Principal and/or his contractual parties to meet any obligations existing pursuant to the present agreement and/or relevant general conditions, including the provision of accurate VAT identification numbers and correct documents, information and data.

#### **Article 7 – Security**

- 7.1 In conformity with the Dutch Forwarding Conditions, Principal has the obligation to provide sufficient security upon first request of Fiscal Representative.<sup>3</sup>
- 7.2 Upon commencement of limited fiscal representation, Principal has the obligation to provide a bank guarantee - the nature and content of which shall be considered adequate by limited Fiscal Representative - to cover anything that may ensue from the present agreement.

#### **Article 8 – Duration / termination agreement**

- 8.1 This agreement has been entered into for:  
An indefinite period, commencing on undersigning of this agreement. The agreement may be terminated with due observance of a period of notice of 6 months

- 8.2 The agreement shall be terminated by written notice by registered letter
- 8.3 Parties engage to ensure correct finalization upon termination of the agreement.

<sup>3</sup> Bulletin 20 "Fiscal Representation for the levy of turnover tax" (Decree of 9 May 1994, nr VB 94/1143) by the State Secretary of Finance deals with security in the case of fiscal representation

- 8.4 Either party may terminate the agreement prematurely by means of dissolution with immediate effect, without consequences and without intervention by the courts/arbitration, provided:
- a) other party to the contract, after written notice of default, does not fulfil its obligations as recorded in the present agreement, or;
  - b) other party to the contract sells or transfers their company to a third party or there is a change in control of the company, or;
  - c) other party to the contract has been granted a moratorium or is in a state of bankruptcy, or;
  - d) it is proven that Limited Fiscal Representative evidently is not able to act in that capacity.
- 8.5 Pursuant to article 8.4 paragraph 1 Limited Fiscal Representative is entitled to terminate the agreement prematurely if such be justified in the judgment of Limited Fiscal Representative on the basis of articles 4.1 and 4.2, in the event that agreement cannot be reached concerning price and/or rates and the bank guarantee to be provided.
- 8.6 Upon termination and dissolution of the agreement, all claims - including future claims - by Limited Fiscal Representative ensuing from the operations and activities carried out by Limited Fiscal Representative within the framework of the present agreement, shall be immediately and fully due and payable.
- 8.7 Principal shall provide adequate security in the judgment of Limited Fiscal Representative for any sums that are or may be due after termination of the agreement, including provision of a bank guarantee the nature and content of which shall be considered adequate, whereby earlier guarantees provided by Principal shall remain in full force.
- 8.8 The provisions of this agreement will continue to apply after termination of the agreement, to the extent that such shall be relevant in connection with amounts to be levied or additionally demanded by any authority, meeting obligations to any authority or any other payments.

## **Article 9 – Invalid provision / amendments by the state**

- 9.1 If one or more individual provision(s) of this Agreement should be null and void or be annulled, this shall not affect the validity of the remaining provisions hereof.
- 9.2 In the event that stipulations of the agreement should prove null and void / subject to annulment, or if this contract should need to be amended due to changes in legislation / regulations, Limited Fiscal Representative shall retain the right to terminate this contract without consequences or, in consultation, to amend the stipulation into a valid version without prejudice to the other provisions.

## **Article 10 – Prescription**

- 10.1 Article 21 of the Dutch Forwarding Conditions shall apply, with the proviso that contrary to article 21 sub 1, any claims by Limited Fiscal Representative under this agreement in respect of amounts to be levied or additionally demanded by any authority as well as any fines imposed and interest due, shall be prescribed by the mere lapse of five years. In the case of objection and/or appeal, the period of prescription shall commence on the day following that upon which judgment became final.

## Article 11 – Choise of applicable law

- 11.1 This agreement shall be governed by Dutch law.

## Article 12 – disputes

- 12.1 All disputes that may arise between Limited Fiscal Representative and Principal shall – to the exclusion of the ordinary courts of law - be subject to arbitration in accordance with the regulation thereof in the Dutch Forwarding Conditions (Appendix a), unless otherwise agreed. A dispute shall be considered to exist whenever any of the parties declares this to be so. Without prejudice to the provisions of the preceding paragraph, Limited Fiscal representative shall be at liberty to bring before the court claims for sums of money due payable, the indebtedness of which has not been disputed in writing by the opposing party within four weeks after the invoice date.

- 12.2 In case of any disputes, the Dutch law will be applicable.

Drafted up in Rhon, ..... (date), in ..... (Number of) copies.

Each parties acknowledge having received one original copy.

For the Responsible Representative  
(Name and function)

For the Principal,  
legally represented by  
(name and function + stamp)

- .....  
☐ D.R. de Roo - director  
☐ P. Siben – authorized representative

- .....  
☐ proof of identity attached \*

Signator

- ☐ Excerpt of the Chamber of Commerce  
Registration (not older than 2 months)  
to be added

\* copy of ID represented will be securely  
destroyed or de-identified immediately  
after verifying signature.

## APPENDIX A

### INFORMATION AND DOCUMENTS REQUIRED PER TRANSACTION

A licence to act as Limited Fiscal Representative will only be granted by the Dutch tax authorities if certain conditions are fulfilled. One of these conditions is that the Limited Fiscal Representative keeps efficient and well-organized records. These must clearly and convincingly demonstrate to the tax authorities that legislation and regulations have been applied correctly. The period of prescription applicable to a tax levy is 5 years pursuant to article 27 of the 'Invorderingswet 1990' [Collection of State Taxes Act 1990]<sup>1</sup>.

In many cases the Limited Fiscal Representative will not have the required documents, information and data at his disposal, but nevertheless shares responsibility in respect of the tax authorities, Principal should provide these appropriately and in a timely manner. After termination of the agreement, Principal shall continue to have the obligation, pursuant to article 8.8, for the period during which the authorities may impose retrospective-tax<sup>1</sup>, to cooperate in every way and if so required supply all documents, information and data concerning the activities carried out by Limited Fiscal Representative within the framework of the present agreement.

#### § 1 Documents, information and data to be provided by Principal.

##### ➤ GENERAL

- **Written declaration by Principal** concerning the consignment for which Limited Fiscal Representative is to act in this capacity (or by fax, e-mail)

##### ➤ REQUIRED DOCUMENTS, INFORMATION AND DATA IN THE CASE OF IMPORT

- **All documents, information and data required for customs clearance<sup>2</sup>**, such as, for example an invoice

##### ➤ SUBSEQUENT SUPPLIES

#### **Required documents, information and data in the case of Intra-community supplies**

- **VAT identification number of party dealing with Intra-Community acquisitions** should be passed on to Limited Fiscal Representative by Principal prior to the Intra-community supply
- **Invoice** presented to the Intra-community acquiring party. In order to apply the zero rate, this invoice should include both the VAT identification number of the Limited Fiscal Representative and that of the Intra-Community acquiring party (for further general invoice requirements, please refer to §2)
- **Proof of delivery<sup>3</sup>**, for example signed waybill (B/L or CMR)

In accordance with bulletin 38 by the State Secretary for Finance (Decree of 20 June 1995, nr. VB 95/2120), documents that Limited Fiscal Representative may require of Principal, could include the following:

<sup>1</sup> Article 27 of the Collection of State Taxes Act 1990 states that the right to collection under duress and the right of set-off with reference to a tax levy become prescribed five years after commencement of the day following that upon which the tax levy is fully collectable or, if such should lead to a later point in time, five years after commencement of the day following that upon which the last deed of litigation in respect of said tax levy to the party owing taxes has been passed. The second paragraph of article 27 states the cases in which the period of prescription may be extended.

<sup>2</sup> In the case that transport and/or customs clearance are not handled by Fiscal Representative, Principal should make these documents, information and data available to Fiscal Representative, if necessary through a third party brought in by him. In order to transfer the VAT due at importation to the periodical VAT declaration (in accordance with article 23 of the Turnover Tax Act 1968), Fiscal Representative's VAT identification number allocated by the tax authorities should be mentioned on the import declaration.

<sup>3</sup> In the case that Fiscal Representative does not have the transport documents/proof of delivery at his disposal (for example: not arranging transportation) Principal should make these documents available to Fiscal Representative, if necessary through a third party brought in by him. Please initial or paraphrase this page to confirm that you have read and approved

- **Order confirmation<sup>4</sup>**
- **Proof of payment by acquiring party**
- **Carrier(s)' invoice**
- **Insurance policy covering transport of the goods**
- **Acquiring party** should send Limited Fiscal Representative a **FAX of receipt of goods<sup>5</sup>**
- **Declaration by acquiring party** that he has reported/will report an **Intra-community acquisition** in the VAT declaration in the member state where the goods were acquired<sup>5</sup>
- Copies of the **VAT declaration by acquiring party** should be sent to Limited Fiscal Representative<sup>5</sup>

#### **Required documents, information and data for supplies within the Netherlands**

- **Invoice** presented to the Dutch acquiring party. In order to transfer the VAT to a company with domicile in the Netherlands and registered for VAT, this invoice should include both the VAT identification number of the acquiring party and the statement "verlegging conform artikel 12 lid 3 Wet op de Omzetbelasting 1968" [Transfer in conformity with article 12 paragraph 3 Turnover Tax Act 1968]. Supplies to Dutch acquiring parties other than a company registered for turnover tax or with an unknown VAT identification number are not eligible for transfer under article 12 paragraph 3 Turnover Tax Act 1968. Invoice should include VAT (for further general invoice requirements, please refer to §2)
- **Proof of delivery<sup>3</sup>**, for example signed waybill or other documents that may serve as proof of delivery

Depending on the situation, documents required of Principal by Limited Fiscal Representative may include:

- **Order confirmation<sup>4</sup>**
- **Proof of payment by acquiring party**
- **Declaration by acquiring party** that he has submitted or will submit a **VAT declaration<sup>5</sup>**

#### **Required documents, information and data for export**

- **Invoice** presented to acquiring party of the goods (for further general invoice requirements, please refer to §2)
- **3<sup>rd</sup> copy of the customs export document, validated by customs at EU border**
- **Proof of delivery<sup>3</sup>**, for example signed waybill (B/L or CMR)

Depending on the situation, documents required of Principal by Limited Fiscal Representative may include:

- **Order confirmation<sup>4</sup>**
- **Import documents non-EU countries**
- **Proof of payment** foreign (non-EU) acquiring parties
- **Carrier(s)' Invoice<sup>3</sup>**
- **Insurance policy covering transport of the goods<sup>3</sup>**

**Documents, information and data required for pick-up shipments** (meaning that the Limited Fiscal Representative places the goods at disposal of acquiring party, without arranging further transportation)

- **Invoice** presented to acquiring party of the goods<sup>6</sup> (for further general invoice requirements, please refer to §2)
- Acquiring party shall provide Limited Fiscal Representative with a **declaration** (prior to transport) **as referred to in section 4.3 of Bulletin 38<sup>5</sup>**. If this declaration is not available, we strongly advise charging VAT, as this declaration is crucial for the correct application of the zero rate

<sup>4</sup> Correspondence between seller and acquiring party

<sup>5</sup> In the case that Principal is not the party who acquired the goods, Principal should instruct the acquiring party accordingly.

<sup>6</sup> For the various invoice requirements, depending on domicile of acquiring party, please refer to the relevant sections in this Appendix and to the general invoice requirements included in §2

Please initial or paraphrase this page to confirm that you have read and approved



- Other considerations are:
  - **Fax** in which acquiring party of the goods declares to Limited Fiscal Representative that he has actually taken delivery of the goods<sup>5</sup>
  - Copies of the **VAT declaration by acquiring party** should be sent to Limited Fiscal Representative<sup>5</sup>
- **Further documents, information and data** should be supplied in conformity with the relevant sections of this Appendix, depending upon domicile of acquiring party

**Required documents, information and data for intra-Community supplies under connected contracts (simplified A-B-C scheme)**

A transaction is considered to be a simplified ABC transaction if:

- several transactions take place with reference to the same item between three parties who are each established in a different EU member state, and
- parties 'A' and 'B' reach agreement over carriage of the goods to 'C', and
- goods are transported directly from the Netherlands to 'C' in 'C's country.
- **Documents, information and data** should be provided in accordance with the section on Intra-community supplies in this Appendix. Furthermore, Limited Fiscal Representative's Principal 'A' should instruct the other party to the contract 'B' that all required information should be sent to Limited Fiscal Representative (for example, a CMR waybill signed by 'C')
- Moreover Principal 'A' should instruct the other party to the contract 'B' with respect to the following:
  - **Invoice to client 'C'** should show the VAT identification number of both 'B' and 'C' as well as the indication that the VAT on the supply to 'C' will be transferred to client 'C' "conform artikel 28 quater.E.3 Zesde richtlijn" [in conformity with article 28 quater.E.3 of the Sixth Directive]
  - **Declaration by client 'B'** should be sent to Limited Fiscal Representative<sup>7</sup>, implying that 'B' has reported or will report an Intra-community acquisition in the **VAT declaration** in the member state of establishment

**§ 2 General invoice requirements**

An invoice must be made up for all goods and services to an entrepreneur or a legal entity who is not an entrepreneur. An invoice should be sent before the 15<sup>th</sup> day of the month following the month in which the goods were supplied. In the case that the services of a Limited Fiscal Representative are called in, the following information should be mentioned on the invoice.<sup>8</sup>

- Name and address of selling party (in full)
- Name and address of acquiring party (in full)
- '(name and address of Limited Fiscal Representative)' shall act as Limited Fiscal Representative
- Fiscal Representative's VAT identification number<sup>9</sup>
- Invoice date
- Invoice number (invoices should be numbered consecutively)
- Detailed description of nature and quantity of goods supplied (HS-code / GN-code if any)
- Date on which the supply of goods was made or completed
- Unit price excluding VAT<sup>9</sup>
- Any advance payments, discounts and rebates if these have not been included in the unit price<sup>9</sup>
- Taxable amount per rate or exemption<sup>9</sup>
- Price excluding VAT, unless a special ruling applies
- VAT rate applied<sup>9</sup>
- Price including VAT
- The amounts which appear on the invoice may be expressed in any currency, provided that the amount of tax to be paid is expressed in the national currency of the Member State where the supply of goods takes place.

<sup>7</sup> If 'B' can show that he acquired the goods for the purpose of selling them on to 'C', 'B' does not need to be registered in 'C's state and ultimately 'B' will not have to pay VAT

<sup>8</sup> Principal who is not seller, should instruct other party to the contract relating to the goods transaction on invoice requirements

<sup>9</sup> Expected per 1-1-2004 (Council Directive 2001/115/EG)

Please initial or paraph this page to confirm that you have read and approved

- There are supplementary invoice requirements for various transactions, also in relation to fiscal representation, in the case that a transfer or exemption ruling applies.

**in the case of Intra-community supplies / simplified A-B-C transactions**

- VAT identification number of (Intra-Community) acquiring party
- VAT zero rate, statement for levy criterion “nihil conform artikel 9 lid 2 sub b jo. Tabel II post a 6” [nil in conformity with article 9 par 2 sub b jo. Table II item a 6]

**in the case of supplies within the Netherlands to a for VAT-registered enterprise**

- VAT identification number of Dutch acquiring party
- statement “verlegging conform artikel 12 lid 3 Wet op de Omzetbelasting 1968” [transfer in conformity with article 12 par 3 Turnover Tax Act 1968]
- Neither VAT rate nor price including VAT should be mentioned

**in the case of deliveries outside the European Union (export)**

- zero VAT rate, statement for levy criterion “nihil conform artikel 9 lid 2 sub b jo. Tabel II post a 2” [nil in conformity with article 9 par 2 sub b jo. Table II item a 2]

## ANNEX B

### DUTCH FORWARDING CONDITIONS

#### Definitions

##### Article 1. Definitions

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

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

#### Scope

##### Article 2. Scope

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

a stipulation (legally permissible) that is the closest to the purport of the void or voided stipulation.

##### Article 3. Third Parties

The Client gives the Freight Forwarder free rein to engage the services of Third Parties to execute the Agreement, and to accept the (general) terms and conditions of those Third Parties at the Client's expense and risk, unless agreed otherwise with the Client. At the Client's request, the Freight Forwarder is obliged to provide (a copy of) the (general) terms and conditions under which it has entered into a contract with those Third Parties.

#### Conclusion of the Agreement

##### Article 4. Conclusion of the Agreement

1. All offers made by the Freight Forwarder are non-binding.
2. Agreements, as well as amendments of and additions to these agreements, shall only become effective if and insofar as the Freight Forwarder has confirmed these in writing or the Freight Forwarder has started to perform the Services.

#### Customs work

##### Article 5. Customs work

1. The provision of information to the Freight Forwarder, that is reasonably provided to enable customs formalities to be carried out, shall imply an order, unless otherwise agreed in writing.
2. This order is accepted by the Freight Forwarder by means of an explicit written confirmation or by the Freight Forwarder starting to carry out the customs formalities. The Freight Forwarder is never obliged to accept an order to carry out customs formalities.
3. If the Freight Forwarder becomes familiar with information or conditions which would indicate that the Client has not complied with article 9 paragraph 3 of these Conditions (has provided incorrect and/or incomplete information and/or documents) and on the basis of which the Freight Forwarder has not accepted the order to carry out customs formalities, the Freight Forwarder is at all times entitled to end this order and not carry this out (any further), which may or may not be set out in an additional agreement and/or authorisation, without any obligation to pay damages.

## Remunerations and other costs

### Article 6. Remunerations

1. All prices quoted shall be based on the prices that apply at the time of the offer (quotation). If between the time of the offer and the time of execution of the Agreement, one or more of the cost factors (including fees, wages the cost of social measures and/or laws, freight prices and exchange rates, etc.) increase, the Freight Forwarder is entitled to pass on this increase to the Client. The Freight Forwarder must be able to prove the changes.
2. If the Freight Forwarder charges all-in or fixed rates, these rates shall be deemed to include all costs that, in the normal process of handling the order, are for the account of the Freight Forwarder.
2. Unless provided otherwise, all-in or fixed rates shall not include at any rate: duties, taxes and levies, consular and attestation fees, costs of preparing bank guarantees and insurance premiums.
4. In the event of circumstances that are of such a nature that when concluding the Agreement it was not deemed necessary to take into account the risk that they could occur, that cannot be attributed to the Freight Forwarder and that significantly increase the costs of the Services being performed, the Freight Forwarder is entitled to an additional payment. Where possible, the Freight Forwarder shall consult in advance with the Client. In such a case, the additional payment shall consist of the additional costs that the Freight Forwarder has had to incur in order to perform the Services, plus an additional payment - deemed fair and equitable - for the services to be performed by the Freight Forwarder.
5. Expenses of an exceptional nature and higher wages arising whenever Third Parties, by virtue of any provision in the relevant agreements between the Freight Forwarder and Third Parties, load or unload goods in the evening, at night, on Saturdays or on Sundays or public holidays in the country where the Service is being carried out, shall not be included in the agreed prices, unless specifically stated. Any such costs shall therefore be remunerated by the Client to the Freight Forwarder.
6. Other than in cases of intent or deliberate recklessness on the part of the Freight Forwarder, in the event of the loading and/or unloading time being inadequate, all costs resulting therefrom, such as demurrage, waiting times, etc. shall be borne by the Client, even when the Freight Forwarder has accepted the bill of lading and/or the charter party from which the additional costs arise without protestation. The Freight Forwarder must make every effort to avoid these costs.
2. The Freight Forwarder will take out the insurance (or arrange for this to be taken out) through responsible nor liable for the solvency of the insurer/insurance broker/insurance intermediary.
3. When the Freight Forwarder uses equipment, such as derricks, cranes, fork-lift trucks and other machines to perform the Services that do not form part of its usual equipment, the Freight Forwarder shall be entitled to take out insurance at the Client's expense to cover the Freight Forwarder's risks arising from the use of such equipment. Where possible, the Freight Forwarder shall consult in advance with the Client about the use of such equipment. If no timely prior consultation is possible, the Freight Forwarder will take the measures that seem to it to be in the best interests of the Client and shall inform the Client of that.

## Execution of the Agreement

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

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

### Article 9. Commencement of the Services

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

### Article 10. Goods Handling

1. All operations such as inspecting, sampling, taring, tallying, weighing, measuring, etc. and receiving goods subject to appraisal by a court-

## Insurance

### Article 7. Insurance

1. Insurance of any kind shall only be arranged at the Client's expense and risk following acceptance by the Freight Forwarder of the Client's explicit written order, in which the Client clearly specifies the goods to be insured and the value to be insured. A mere statement of the value or the interest is not enough.

appointed expert, shall take place only on the Client's specific instructions and upon remuneration of the costs thereof.

- 1 Notwithstanding the provisions in paragraph 1, the Freight Forwarder shall be entitled, but not obliged, on its own authority and at the Client's expense and risk, to take all such actions as it deems necessary in the Client's interest. Where possible, the Freight Forwarder shall consult in advance with the Client. If this is not possible, the Freight Forwarder shall take the measures that seem to it to be in the best interests of the Client and shall inform the Client of the measures taken and the associated costs, as soon as this is reasonably possible.
- 2 The Freight Forwarder is not an expert with respect to the Goods. The Freight Forwarder shall therefore in no way be liable for any damage that arises from or that is related to any notification by the Freight Forwarder with regard to the state, nature or quality of the Goods; nor shall the Freight Forwarder be under any obligation to ensure that the shipped Goods correspond with the samples

#### **Liability**

##### **Article 11. Liability**

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

7. The Client shall be liable vis-a-vis the Freight Forwarder for any damage - including but not limited to material and immaterial damage, consequential damage, fines, interest, as well as penalties and confiscation, including damage on account of non-clearance or tardy clearance of customs documents and claims due to product liability and/or intellectual property rights- suffered directly or indirectly by the Freight Forwarder as a result of (amongst other things) the non-compliance by the Client of any obligation pursuant to the Agreement or pursuant to applicable national and/or international legislation, as a result of any incident that is within the control of the Client, as well as a result of the fault or negligence in general of the Client and/or its employees and/or Third Parties whose services the Client engages and/or Third Parties that work on behalf of the Client.
8. The Client shall indemnify the Freight Forwarder at all times against third-party claims, including employees of both the Freight Forwarder and the Client, connected with or ensuing from the damage referred to in the previous paragraph.
9. Even where all-in or fixed rates, as the case may be, have been agreed, the Freight Forwarder that is not a carrier but always a party that arranges transportation in accordance with title 2, section 3 of Book 8 of the Dutch Civil Code, shall be liable, whereby the liability is governed by these Conditions.
10. If a claim is made against the Freight Forwarder by the Client outside of the Agreement in respect of the damage that occurs during the execution of the Services, then the Freight Forwarder's liability shall be limited to the liability under the Agreement.
11. If to defend its liability for conduct of a Third Party or employee the Freight Forwarder derives a defence from the Agreement vis-a-vis the Client, then if it is held liable by the Client under this defence, a Third Party or employee can invoke this defence as if the Third Party or employee were also party to the Agreement.
12. In the event a Freight Forwarder is held liable outside of the Agreement with regard to damage to or loss of a Good or delay in delivery by someone who is not party to the Agreement or a transport agreement entered into by or on behalf of the Freight Forwarder, then the Freight Forwarder has no further liability than it would have under the Agreement.

##### **Article 12. Force majeure**

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

**Article 13. Refusal of carriers**

1. If the carriers refuse to sign for quantity, weight, etc., the Freight Forwarder shall not be liable for the consequences thereof.

**Imperative law**

**Article 14. The Agreement to organise transportation of goods**

1. These Conditions shall not affect articles 8:61 paragraph 1, 8:62 paragraphs 1 and 2 and 8:63 paragraphs 1,2 and 3 of the Dutch Civil Code.

**Payment**

**Article 15. Payment conditions**

1. The Client shall pay to the Freight Forwarder the agreed remunerations and other costs, freights, duties, etc. ensuing from the Agreement upon commencement of the Services, unless agreed otherwise.
2. The risk of exchange rate fluctuations shall be borne by the Client.
3. The amounts referred to in paragraph 1 shall also be due if damage has occurred during the execution of the Agreement.
4. If, in contravention of paragraph 1 of this article, the Freight Forwarder allows deferred payment, the Freight Forwarder shall be entitled to make a credit limit charge.
5. In the event of termination or dissolution of the Agreement, all claims of the Freight Forwarder - including future claims - shall be due and payable forthwith and in full. All claims shall be due and payable forthwith and in full in any case, if:
  - the bankruptcy of the Client is announced, the Client applies for suspension of payment or otherwise loses the unrestricted disposition over a significant part of its assets;
  - The Client offers a settlement to his creditors, is in default of fulfilling any financial obligation owed to the Freight Forwarder, ceases to trade or - where the Client is a legal entity or corporate body - if the legal entity or the corporate body is dissolved.
6. Upon first demand by the Freight Forwarder, the Client must provide security for the amount owed or that shall be owed by the Client to the Freight Forwarder. This obligation remains if the Client also has to provide or has provided security in relation to the amount owed.
7. The Freight Forwarder shall not be obliged, from its own means, to provide security for the payment of freight, duties, levies, taxes and/or other costs should the same be demanded. All the consequences of non-compliance or of failure to comply forthwith with a demand from the Freight Forwarder to provide security shall be borne by the Client.

If the Freight Forwarder has provided security from of its own means, it may demand that the Client immediately pays the amount for which security has been provided.

Where possible, the Freight Forwarder shall consult in advance with the Client. If no timely prior consultation is possible, the Freight Forwarder will take the measures that seem to it to be in the best interests of the Client and shall inform the Client of that.

8. The Client shall at all times be obliged to indemnify the Freight Forwarder for any amounts to be levied or additionally demanded by any authority in connection with the Agreement, as well as any related fines imposed upon the Freight Forwarder.

The Client shall also reimburse the said amounts to the Freight Forwarder if a Third Party brought in by the Freight Forwarder demands payment for the said amounts within the framework of the Agreement.

9. The Client shall at all times indemnify the Freight Forwarder for any amounts, as well as for all additional costs that may be claimed or additionally claimed from the Freight Forwarder in connection with the order, as a result of incorrectly levied freight and costs.
10. It shall not be permissible for claims receivable to be set off against payment of remunerations arising from the Agreement on any other account in respect of the Services owed by the Client or of other costs chargeable against the Goods with claims of the Client or suspension of the aforementioned claims by the Client.

**Article 16. Allocation of payments and judicial and extrajudicial costs**

1. Cash payments shall be deemed in the first place to have been made on account of non- preferential debts.
2. The Freight Forwarder shall be entitled to charge to the Client extrajudicial and judicial costs for collection of the claim. The extrajudicial collection costs are owed as from the time at which the Client is in default and these amount to 10% of the claim, with a minimum of € 100.00.

**Article 17. Sureties**

1. The Freight Forwarder has the right to refuse the delivery of Goods, documents and monies, that the Freight Forwarder has or will obtain, for whatever reason and with whatever destination, in respect of another party.
2. The Freight Forwarder has a right of retention in respect of all Goods, documents and monies that the Freight Forwarder holds or will hold for whatever reason and with whatever destination, for all claims the Freight Forwarder has or might have in future on the Client and/or the owner of the Goods, including in respect of all claims which do not relate to those Goods.
3. The Freight Forwarder has a right of lien in respect of all Goods, documents and monies that the Freight Forwarder holds or will hold for



whatever reason and with whatever destination, for all claims the Freight Forwarder has or might have in future on the Client and/or the owner of the Goods.

4. The Freight Forwarder shall regard anyone who, on behalf of the Client, entrusts Goods to the Freight Forwarder for performing Services, as the Client's agent for creating a lien on those Goods.
5. If when settling the invoice a dispute arises over the amount due or if there is need for a calculation to be made for the determination of what is due that cannot be made quickly, then at the discretion of the Freight Forwarder, the Client or the party that demands delivery at the request of the Freight Forwarder is obliged to pay forthwith the part which the parties agree is due and to furnish security for the part in dispute or for the part for which the amount has not yet been established.
6. The Freight Forwarder can also exercise the rights outlined in this article (right of lien, right of retention and right to refuse delivery) for what is still owed to it by the Client in relation to previous orders and for any amounts payable by way of delivery C.O.D. in respect of the Goods.
7. The sale of any security shall take place at the account of the Client in the manner prescribed by law or - if there is consensus thereon – privately.
8. At the Freight Forwarder's first request, the Client shall furnish security for costs paid or to be paid by the Freight Forwarder to Third Parties or government authorities and other costs that the Freight Forwarder incurs or anticipates incurring, on behalf of the Client, including freight, port costs, duties, taxes, levies and premiums.
7. The sale of any security shall take place at the account of the Client in the manner prescribed by law or - if there is consensus thereon – privately.
8. At the Freight Forwarder's first request, the Client shall furnish security for costs paid or to be paid by the Freight Forwarder to Third Parties or government authorities and other costs that the Freight Forwarder incurs or anticipates incurring, on behalf of the Client, including freight, port costs, duties, taxes, levies and premiums.
9. In the absence of documents, the Freight Forwarder is not obliged to give indemnities or furnish securities. If the Freight Forwarder has given indemnification or furnished security, the Client is obliged to indemnify the Freight Forwarder from all consequences thereof.

#### Final provisions

##### Article 18. Termination of the Agreement

1. The Freight Forwarder can terminate the Agreement with immediate effect in the event the Client:

- loses the power to dispose of its assets or a substantial part thereof;
- loses its legal personality, is dissolved or effectively liquidated;
- is declared bankrupt
- offers an agreement excluded from the bankruptcy proceedings;
- applies for moratorium on payment;
- loses the power to dispose of its goods or a substantial part thereof as a result of seizure.

2. If the Freight Forwarder consistently imputably fails to fulfil one or more of its obligations under the Agreement, without prejudice to its right to compensation for any damage that may have been suffered in accordance with article 11, the Client can dissolve the Agreement with immediate effect in full or in part after:
  - it has notified the Freight Forwarder by registered letter with reasons how the Freight Forwarder has failed to comply, stipulating a period of time of at least thirty days for fulfilment of the obligations, and;
  - on expiry of that deadline, the Freight Forwarder has not yet fulfilled the obligations.
3. If the Client consistently imputably fails to fulfil one or more of its obligations under the Agreement, without prejudice to its right to compensation for any damage that may have been suffered, the Freight Forwarder can dissolve the Agreement with immediate effect in full or in part after, by registered letter, it has stipulated a deadline to the Client of at least fourteen days for fulfilment of the obligations and upon expiry of that deadline, the Client has not yet fulfilled its obligations. If, by stipulating such a period, the Freight Forwarder's interests in the undisturbed conduct of its business would be impaired disproportionately, the Freight Forwarder may dissolve the Agreement without observing a time limit.
4. Neither of the Parties may dissolve the Agreement if, considering its special nature or limited significant, the failure does not justify dissolution with all implications thereof.

##### Article 19. Proceedings against Third Parties

1. Legal and arbitration proceedings against Third Parties shall not be conducted by the Freight Forwarder unless it agrees to do so at the Client's request and at the latter's expense and risk.

##### Article 20. Prescription and limitation

1. Notwithstanding the provisions in paragraph 5 of this article, every claim is subject to prescription by the expiry of a period of nine months.
2. Every claim vis-a-vis the Freight Forwarder shall be time-barred by the mere expiry of a period of 18 months.
3. The periods of time stated in paragraphs 1 and 2 commence on the day following the day on which the claim has become due and payable, or the day following the day on which the prejudiced party had the

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principal \_\_\_\_\_

knowledge of the loss. Notwithstanding the foregoing provisions, the aforementioned periods of time for claims with regard to damage, value depreciation or loss of the Goods, commence on the day following the day on which the Goods are delivered by the Freight Forwarder or should have been delivered.

4. In the event that the Freight Forwarder is held liable by Third Parties including any public authority, for damages, the periods of time stated in paragraphs 1 and 2 commence as from the first of the following days:
  - the day following the day on which the Third Parties have brought action against the Freight Forwarder;
  - the day following the day on which the Freight Forwarder has settled the claim brought against it.
 If the Freight Forwarder or the Third Party whose services it has engaged objects and/or appeals, the periods of time stated in paragraphs 1 and 2 commence on the day following the day on which a final ruling has been given on the objections and/or appeal.
5. Unless the situation referred to in paragraph 4 of this article occurs, if following the term of prescription a claim is brought against one of the parties for that payable by that party to a Third Party, a new term of prescription of three months commences.

#### Article 21. Choice of law

1. All Agreements to which these Conditions apply are governed by Dutch law.
2. The place of payment and settlement of claims shall be the Freight Forwarder's place of business.

#### Article 22. Reference title

1. These general terms and conditions can be cited as "Dutch Forwarding Conditions".

#### Disputes

#### Article 23. Arbitration

1. All disputes which may arise between the Freight Forwarder and its Other Party shall be decided by three arbitrators to the exclusion of the ordinary courts of law, in accordance with the FENEX Rules of Arbitration. The FENEX Rules of Arbitration and the current fees for the arbitration process can be read and downloaded from the FENEX website. A dispute shall exist whenever either of the parties declares that this will be so.

Without prejudice to the provisions of the preceding paragraph, the Freight Forwarder shall be at liberty to bring before the competent Dutch court in the Freight Forwarder's place of business, claims for sums of money due and payable, the indebtedness of which has not been disputed in writing by the Other Party within four weeks after the invoice date. The Freight Forwarder is also at liberty to institute interim relief proceedings for claims of an urgent nature at the competent Dutch court in the Freight Forwarder's place of business.

2. The arbitration shall be settled by three arbitrators, unless neither of the parties has submitted a request for arbitrators to be appointed and the parties have jointly informed the FENEX secretariat in writing that they wish to have the arbitration settled by an arbitrator who they have appointed jointly, appending the written declaration of the arbitrator who they have appointed jointly containing his/her acceptance of the appointment and the force and validity of the FENEX Arbitration Rules
3. One arbitrator shall be appointed by the Chairman or the Vice-Chairman of the FENEX; the second shall be appointed by the Dean of the Bar Association of the district in which the aforesaid Freight Forwarder has its registered office; the third shall be appointed by mutual agreement between the two arbitrators so appointed.
4. The Chairman of the FENEX shall appoint an expert on forwarding and logistics; the Dean of the Bar Association shall be asked to appoint a specialised lawyer in forwarding and logistics; the third arbitrator shall preferably be an expert in the branch of trade or industry in which the Freight Forwarder's Other Party is engaged.

FENEX: Netherlands Association for Forwarding and Logistics  
PortcityII, Waalhaven Z.z. 19, 3<sup>rd</sup> floor, Havennummer 2235, 3089 JH Rotterdam  
P.O. Box 54200, 3008 JE Rotterdam