



**ECS EUROPEAN CONTAINERS NV**

**BARON DE MAERELAAN 155 – 8380 ZEEBRUGGE/BELGIE – BTW : BE 0435.131.508**

**2XL NV**

**BARON DE MAERELAAN 155 – 8380 ZEEBRUGGE /BELGIE – BTW: BE 0449.424.358**

## **GENERAL CONTRACT CONDITIONS**

### **PART I: General**

1. These conditions of contract will govern all business relations between ECS NV/2XL NV and their contractual parties, irrespective whether the other party to the contract be a trader or private individual. Unless explicitly agreed otherwise by ECS NV/2XL NV, these conditions shall prevail over all the contracting parties' other possible terms and conditions.
2. One or more parts of these general conditions may apply, depending on the actual services ordered by the principal.

Part I applies in all cases.

Part II is applicable when ECS NV/2XL NV acts towards her principal as a forwarding agent within the meaning of clause 1, 3° of the law of 26 June 1967.

Part III applies when ECS NV/2XL NV acts towards her principal as a shipping agent . ECS NV /2XL NV will be considered as a shipping agent in so far ECS NV/2XL NV has committed her selves to perform the transport.

Part IV applies where ECS NV/2XL NV takes custody of goods, whether before or after shipment, irrespective of the mode of transport.

In case several Parts are applicable simultaneously to the assignment being performed by ECS NV/2XL NV, and in case several articles govern the same subject , the article which is the most advantageous to ECS NV/ 2XL NV will apply.

3. ECS NV/2XL NV may exercise a right of lien and/or seizure on all materials and/or merchandise they dispatch, transport or store, or otherwise have in their custody, up to the value of all sums of money owed or falling due by the principal to ECS NV/2XL NV, however brought about.

Those rights extend to capital, interest, prejudice and any costs incurred.

Where such rights have been exercised and merchandise is released by ECS NV/2XL NV but has not been collected by the other party to the contract, or where no supplementary agreement has been reached in this regard, within 90 days after the release , ECS NV/2XL NV shall be entitled to sell that merchandise at any possible way , without that the Principal is entitled to claim compensation or interests.

Where the sums of money are still owing and are not under dispute, those rights shall persist until such time as ECS NV/2XL NV has been paid in full, or until the party to the contract has provided securities for the full amount of the sum owing.

Where an entitlement is under dispute, or cannot be calculated precisely, those rights shall persist until such time as the contract party has provided securities to the full amount of the sums claimed by ECS NV/2XL NV, and the other party to the contract has undertaken to pay the sums claimed once these are established

4. In spite of any insolvency, any transfer of claims, any form of attachment or any concurrence, ECS NV/2XL NV shall be entitled to apply set-offs and/or debt novation with regard to the obligations of ECS NV/2XL NV vis-à-vis its creditors and/or contracting parties, or the obligations of the latter vis-

à-vis ECS NV/2XL NV.

This right is not affected in any manner by notification and/or service of a notice of insolvency, transfer of claim, any form of attachment or any concurrence.

Pursuant to article 14 of the Act of 15.12.2004 on financial securities, article 1295 of the Belgian Civil Code is declared not applicable to the extent required.

The obligations mentioned in the first paragraph include any obligation and any liability between the parties, whether or not on a contractual basis, whether a pecuniary or any other obligation, including, but not limited to, payment and delivery obligations, any debt, any obligation arising from a guarantee, any obligation to provide or keep a security and any other obligation or requirement.

If a contracting party of ECS NV/2XL NV wishes to call upon an agent, they undertake to inform this agent of the existence of this right of set-off and/or debt novation. The contracting party undertakes to indemnify ECS NV/2XL NV against any claim of the agent called upon that is related to set-off and/or debt novation

5. Should confidence in the contracting party's creditworthiness be cast into doubt by legal action being taken against the party to the contract and/or any other event that can be shown to call confidence in that contracting party's ability to fulfil the commitments made into question and/or render these impossible, ECS NV/2XL NV reserves the right to suspend the contract, in full or in part, even after it has been performed in part, in order to obtain adequate securities from the other party to the contract.

Should the contracting party refuse to comply, ECS NV/2XL NV shall be entitled to cancel that assignment, in part or in full.

This will apply regardless of any entitlement to compensation and interest towards ECS NV/2XL NV.

A case of compromised confidence will exist if the contracting party invokes the Law of 30 January 2009 relating to companies that continue trading where the contracting party applies for bankruptcy, or is declared insolvent.

All monies outstanding at the time of bankruptcy shall become payable immediately, and clause 4 of this section may be applied.

If ECS NV/2XL NV has made a fiduciary transfer of ownership to the party declared insolvent, or if that

party has invoked the law of 30 January 2009 concerning the continuation of trading by companies, that transfer of ownership will cease when so requested by ECS NV/2XL NV, and must be paid for in full. In so doing, clause 4 of this section may be applied.

6. Unless explicitly agreed otherwise by the parties in writing, invoices are always payable by the date shown on the invoice, without discount. Should the contracting party wish to pay a driver/operator directly, this is permissible only if agreed with ECS NV/2XL NV in advance and in writing. An agreement to this effect made directly with the driver/operator will not suffice.

Any losses resulting from exchange-rate fluctuations are to be met by ECS NV's/2XL NV's party to the contract.

Payments that are not allocated to any debt by the contracting party may be deducted by ECS NV /2XL NV from amounts owed by the client to the carrier.

The contracting party renounces all rights to invoke any circumstance whereby they would be entitled to defer their payment obligations in full or in part, and will refrain from any debt offset in relation to sums invoiced to them by ECS NV/2XL NV.

Should ECS NV/2XL NV not receive a payment at the due time, they may charge interest from the invoice payment-due date, without first serving notice of default.

Such interest is charged at the interest rate provided for under article 5 Law of 2 August 2002 relating to payment arrears in business transactions.

If interests are payable as mentioned in the previous paragraph, the carrier is entitled by operation of law and without a formal notice of default being required to a fixed compensation amounting to minimally 10% of the amount not paid by the contracting partner. This reasonable compensation of 10% does not exclude payment of a compensation for administration of justice nor of any other proven costs of collection.

7. Should the contracting party for any reason have a query concerning a statement, invoice or any other communication from ECS NV/2XL NV, this will be admissible only if the contracting party raises the query within 8 days of the date on which the invoice, statement or letter was sent by ECS NV/2XL NV.

8. Where the schedule for a business operation is entrusted to ECS NV/2XL NV, instructions will be confirmed to ECS NV/2XL NV no later than 15.00 hours the previous day, by e-mail or fax.

If those instructions are not issued till after 15.00 hours the day before dispatch/ shipping/storage, ECS NV/2XL NV will in no circumstances be held liable for any consequential damage that may occur.

The principal is required to comply with the provision of adequate details of the operation to be scheduled. Such details include: full identity of the consignee, details of the people concerned with the contract, relevant telephone numbers, correct delivery addresses, and information relevant to parts II and III.

If those details appear to be incorrect or incomplete, ECS NV/2XL NV will in no circumstances be held liable for any consequential damage. If ECS NV/2XL NV does suffer damage as a result of incorrect or incomplete details, the principal will be required to compensate this in full.

9. All contracting parties explicitly confirm to ECS NV/2XL NV to have knowledge of and to comply fully with General Data Protection Regulation 2016/679 of 27th of April 2016 (GDPR) – European Regulation – becoming enforceable as of 25th of May 2018 and , but not limited , with the Law of 8th December 1992 and its implementing decisions on the protection of privacy of natural persons with regard to the processing of personal data and the free movement of such data ( Privacy Law) .

The provided personal data are only and explicitly used for specific purposes in relation to the transport order / agreement and are only and explicitly saved for the time period of the transport order/agreement or until the statutory retention obligation has expired . Under personal data is understood , name, function/title and contact information ( email addresses ,posting addresses , phone numbers) within the company . By no means personal data is used or saved in relation to the mentioned categories under article 9 of the GDPR .

Whenever personal data is processed in non-EU countries , not achieving an adequate level of personal data protection according to the European Commission , ECS/2XL will take , as controller , the relevant and adequate protecting measures by means of standard protecting contractual personal data conditions in accordance with article 46, section 2 , of the GDPR .

10. In case of any dispute between the parties, the courts of the district where the registered office of ECS NV/2XL NV is established have jurisdiction, without prejudice to the application of art. 31 par. 1 of the CMR Convention. Applicable law is always the law of Belgium.

## **PART II: Freight-forwarding services**

### 1. General: Definition and Scope

- 1.1. Application Unless explicitly agreed otherwise, the present conditions shall apply to any form of service provided by the Freight Forwarder, including any information, offer, contracts and acts, even after the contract has been performed. They may be quoted as General Belgian Freight Forwarding Conditions and represent a commercial and trade practice negotiated with the Client and accepted by him. In the event that any provision in these conditions is null and void or unenforceable, the other provisions shall remain in full force and effect.

### 1.2. Definitions

In the present conditions, the following terms shall have the following meanings:

- the Client: the principal of the Freight Forwarder on whose authority or on whose behalf the Freight Forwarder provides services, information or advice, free of charge or for a fee;
- the Freight Forwarder: the member of FORWARD Belgium or any freight forwarder conducting business under these General Conditions, and who does so as a forwarding agent or carrier;
- the Contract: any order to forward goods offered, accepted for performance, or performed by the forwarding agent, and any related acts, including, among other things, logistics services, storage and handling, VAT and customs operations, and any information or any advice in respect thereof, as well as any order to carry goods offered, accepted for performance, or performed by the carrier, any related acts and any information or any advice in respect thereof;
- the Goods: any and all goods, including their packaging, entrusted by the client to the freight forwarder. They include any and all trade goods, as well any and all titles or documents that represent or will represent such goods;
- the Owner: the owner of the goods to which the service provided by the Freight Forwarder pertains;
- Third Parties: the natural or legal persons with whom the Freight Forwarder concludes contracts in

the performance of his duties, among other things.

### 1.3. Qualification

1.3.1. In the performance of the contract, a distinction is made between the Freight Forwarder who acts:

- a) as a forwarding agent (“commissionnaire-expéditeur”): his task is to forward, as the main contractual obligation, goods in his own name or in the name of his client, yet on his authority and on his behalf and, therefore, including all related services necessary for that purpose, as well as to perform all necessary formalities and to conclude all contracts with third parties required for that purpose.
- b) as a carrier (“commissionnaire de transport”) : his task is to carry, as the main contractual obligation, goods on the authority and on behalf of his client, including all related services necessary for that purpose, as well as to perform all necessary formalities, either himself or by relying on third parties with whom the carrier concludes a contract of carriage. He shall act as a carrier when he performs a carriage of goods using his own vehicles or when he issues a transport document in his own name.

1.3.2. The present conditions do not constitute a waiver of any right on the part of the freight forwarder, nor can they give rise to any liability beyond that to which he would be subject pursuant to any applicable international treaty, mandatory or not, or other applicable legislation or similar regulations.

1.3.3. The Client confirms that the goods which he entrusts to the Freight Forwarder under the Contract are his property, or that, as the authorized agent of the Owner, the consignor or the recipient, he has the right of control of such goods, so that he accepts the present conditions not only for himself but also for his principal, the owner, the consignor or recipient thereof, so that they, too, are bound by them.

## 2. Formation of the Contract

### 2.1 Offer and Prices

2.1.1 Unless otherwise stipulated, any offer made by the Freight Forwarder shall be valid for a period of 7 calendar days. The Client knows and accepts that the offer is based on existing rates, wages, freight rates and currency rates and on data provided with reservation, which are valid on the date on which the offer is sent to the client. It is not based on and is not presumed to have taken into account subsequent circumstances and price-increasing factors of, among other things, wages, rates or costs

as a result of, among other things, government measures or laws, freight rates, increases in exchange rates or price adjustments due to market changes in the broadest sense. In the event of any change in one or more of these factors, the prices offered, too, are adjusted accordingly and increased if the offer is accepted more than 7 calendar days after being presented, without the Freight Forwarder also being deemed to communicate, in advance, to the client the rate increases adopted, or to request his approval thereof.

2.1.2 The amount expressed in the offer, the all-in or fixed price, is deemed to include the costs and prices which, in the case of a normal logistical performance of the contract, are to be borne by the Freight Forwarder, to the exclusion of, unless otherwise agreed, fees, levies and taxes of whatever nature, consulate and authentication costs, insurance premiums, extraordinary expenses and wages as a consequence of services rendered outside normal working hours or a consequence of a derogation from the normal or planned performance of the Contract. Extra costs or additional claims in the form of demurrage and detention charges, general average contributions, additional packaging and recovery costs, as well as waiting fees are not deemed to be part of the offer and are charged to the client at a later stage.

2.1.3 Unless otherwise agreed in writing in advance, delivery periods, arrival and departure dates are not guaranteed by the freight forwarder. The mere mention of or reference to a delivery period by the Client does not bind the Freight Forwarder and can never give rise to damages.

2.1.4 Services related to customs operations are based on an explicit order by the Client and must be explicitly agreed. They are not presumed to have been accepted by the Freight Forwarder.

## 2.2 Information to be Provided

2.2.1 The Client undertakes to supply to the Freight Forwarder, in advance and not later than at the time of the order confirmation, any useful information, as well as to provide all documents, in particular as regards the nature and the preservation of the goods, the method of shipment, the place of dispatch and destination, the required route and procedure, as well as, in particular, any information or knowledge that the principal, as a manufacturer, merchant, owner or consignor of the goods, may be presumed to have and that is of such a nature that it ensures their preservation, forwarding, carriage, supply and delivery at the place of destination, including all information that is relevant for the client, his principal, the owner, consignor or recipient of the goods. In addition, the Client guarantees the accuracy, authenticity and completeness thereof, all this in accordance with the applicable international and national laws and regulations, about which he must provide all



information. Information relating to the price of the goods or the related commercial purchase are not of such a nature that it gives an order for debt collection or insurance to the Freight Forwarder.

- 2.2.2 The Freight Forwarder is not presumed to examine the accuracy of the information and particulars provided by the client, nor the authenticity or regularity of the documents supplied by the client; they are accepted in good faith.
- 2.2.3 The Client is, within the meaning of art. 2.2.1., responsible for the method of conditioning of the goods, their packaging, identifying labels as to origin and product, as well as for attaching tags in accordance with the intended forwarding, the carriage and storage under normal transport conditions, including all operations which are a part of thereof. The Client ensures that the goods made available do not constitute a danger or risk to, among others/other things, the persons involved with their forwarding or carriage, their means of transport or other assets, including third parties, and the environment.
- 2.2.4 The Client ensures that the information provided by him to the Freight Forwarder for the acceptance and performance of a customs operation is complete, accurate and correct, and is of such a nature that it makes the requested customs operation lawful.

### 2.3 Formation

The contract is deemed to have been concluded when the offer of the freight forwarder has been accepted in writing by the Client, or when the Freight Forwarder has accepted in writing the order of the Client.

## 3 Performance of the Contract

### 3.1 Execution

- 3.1.1 On the part of the Client The Client is required to make the goods available in a timely manner and in sound packaging at the agreed place and time and in the agreed manner, according to the information, as may be expected of him. The client undertakes to comply fully with all applicable local, national and international laws and regulations. This includes, but is not limited to, all relevant trade sanctions, anti-money laundering, smuggling and anti-corruption laws. The client will also ensure compliance with these laws by their employees, agents, and any third parties acting on their behalf. In addition, the client undertakes to immediately report any violation or suspected violation of these laws to the relevant authorities and to the forwarder. The client further guarantees that

they will not undertake or facilitate any activities that could directly or indirectly violate these laws. The client shall indemnify, defend and hold the forwarder harmless against any claims, liabilities, damages, losses, costs, expenses arising out of or in connection with any violation hereof.

3.1.2 On the part of the Freight Forwarder In the performance of his duties, the Freight Forwarder may rely on third parties, contractors or agents who show normal professional competence to carry out the services entrusted to them in accordance with the law governing their service. In the absence of precise instructions to the contrary or special agreements, the Freight Forwarder may, to the best of his ability, freely choose the means to be used in order to organize and execute the order entrusted to him according to normal business practice, like any other Freight Forwarder faced with the same circumstances. Unless otherwise expressly agreed, indicated routes or execution times are not guaranteed.

### 3.2 Storage, Disposal and Guarding

3.2.1 If it is part of the Contract that the Freight Forwarder must store the goods which are the subject of the contract, this shall mean the storage that the Freight Forwarder can freely arrange.

3.2.2 In principle, the Freight Forwarder himself is not responsible for the storage of such goods, but will rely on Third Parties for such services and, consequently, is not liable himself for the execution of those services. If the Freight Forwarder himself takes goods into custody by storing them in own warehouses or otherwise, his liability is determined and restricted in accordance with art. 6.

3.2.3 Unless otherwise agreed in writing in advance, the Freight Forwarder is not required to guard or to have guarded the goods intended for forwarding, nor to have them insured, no matter where the goods are located, even in the open air.

3.2.4 Unless otherwise instructed in writing, the Freight Forwarder may store, at the expense and risk of the Client or the Owner, any goods that for some reason, and differently than originally planned, cannot be shipped or delivered.

3.2.5 The Freight Forwarder may, subject to prior notification in writing to the Client and depending on the possibilities to do so, dispose of dangerous, perishable, flammable, explosive goods or other goods that may cause damage to persons, animals or property, by removing, selling or destroying them on behalf and at the risk of the Client. The Client agrees to bear all related costs and risks. In the event that, in the interest of the goods, in case of a threat to persons, animals or property, it is appropriate for the Freight Forwarder to take preservation or decontamination measures before he

is able to inform the Client or to ask him for instructions, or if the Client fails to give instructions, he may, on the authority, at the risk and on behalf of the Client, dispose of the goods.

### 3.3 Suspension

The Freight Forwarder is entitled to suspend the performance of the contract, or even to terminate it while retaining all rights to compensation, if the Client in any way does not or does not sufficiently fulfil his obligations, which is particularly significant for any information and any document, also with respect to provisions on customs and excise duty, and all other matters which, as indicated above, are important for a timely, useful performance of the contract in line with trade practice, including all payment obligations.

### 3.4 Enforceability of Conditions

Unless otherwise agreed in writing in advance, the goods entrusted by the freight forwarder to third parties for storage, handling or carriage are subject to his liability, including all applicable treaty, statutory, contractual or general conditions and limitations thereof, which the Client accepts. The Client agrees that the goods entrusted by him to the freight forwarder can be the subject of rights of retention or security rights of third parties.

### 3.5 Force Majeure and Hardship

3.5.1 Force Majeure The Freight Forwarder shall not be liable for events that prevent him from performing, in whole or in part, the Contract as foreseen and for all the consequences thereof if such events are due to causes beyond his reasonable control ("Force Majeure"), such as, but not limited to, fire, abnormal weather conditions, strikes, labour disputes or other industrial disturbances, (declared or undeclared) war, embargoes, blockades, legal limitations, riots, revolts, government regulations and actions, congestion or scarcity, epidemics, pandemics, cyberattacks, explosions, power outages. The Freight Forwarder shall notify the Client of the situation of Force Majeure. The performance of the Contract is suspended for the duration of the Force Majeure event if it is temporary. Any price increases and circumstances that impact the further performance of the Contract after suspension shall be at the risk and at the expense of the Client. If the Force Majeure event is permanent, the Contract shall end, in which case the Freight Forwarder shall be owed everything he has charged in accordance with the offer. The Client agrees to indemnify and hold harmless the Freight Forwarder for the total of all the claims that might be brought by third parties against the Freight Forwarder in connection with the goods covered by the Contract.

### 3.5.2 Hardship

If unforeseen events or a change in circumstances as a result of changes of an economic, financial, technical, political or legal nature fundamentally alter the balance of the Contract, placing an undue burden on the Freight Forwarder in complying with his contractual obligations, either because the costs of performance increase, or because the value of performance decreases, the Freight Forwarder may, after written notification to the Client, demand that the parties negotiate in good faith with a view to a fair revision of the contract, so that neither party is unduly disadvantaged. In the event of rejection or if the Freight Forwarder and the Client fail to come to an agreement, they are free to go to court as provided for in art. 5.74 of the Law on book 5 "Obligations" of the Civil Code.

#### 4 The Fee

##### 4.1 Payment

4.1.1 The amounts or fees charged by the Freight Forwarder are payable at the registered office of the Freight Forwarder within 15 days from the invoice date. Any loss resulting from exchange rate fluctuations shall be borne by the client. Payments not allocated by the client himself to a specific debt may be freely deducted by the Freight Forwarder from the amount owed by the client to the Freight Forwarder.

4.1.2 The Freight Forwarder is entitled to charge as a lump sum the amounts or fees owed for his expenses and interventions. The Client accepts that the use of a lump sum is not such as to requalify the services provided by the Freight Forwarder.

4.1.3 The Client waives any right to rely on any circumstance which might entitle him to suspend payment in whole or in part and waives any right to set-off or counterclaim with regard to all amounts charged to him by the freight forwarder. Any debt of the Client-merchant not paid on the due date shall, with prior notice of default, be increased by compensatory interest calculated at the legal interest rate and increased by liquidated damages equal to 10 % of the debt, so as to cover any economic and administrative loss, without prejudice to the freight forwarder's right to prove the existence of more extensive damage.

##### 4.2 Protest

Any protest against the invoicing or any services and amounts charged must have been received by the Freight Forwarder in writing within 7 days from the invoice date.

##### 4.3 Providing Securities

The Freight Forwarder is not expected to use own resources to provide security for the payment of freight, duties, levies and taxes or any liabilities whatsoever, should this be required by third parties or any public authority. Where applicable, they must be paid by the client at the first irrevocable request of the Freight Forwarder. If the freight forwarder has provided security using his own resources, the client is obliged, at the Freight Forwarder's first request in writing, to pay to the Freight Forwarder, by way of security, any amount for which the Freight Forwarder has provided security for the benefit of third parties, including governments or authorities.

## 5 Obligations and Liabilities of the Client

### 5.1 Obligations

The Client accepts and undertakes:

- that the order defined by him and his description of the goods are complete, correct and accurate;
- that the goods to be entrusted by him to the Freight Forwarder shall be made available in time, completely and in a useful way, that they are loaded, stowed, packed and marked adequately and sufficiently in accordance with the nature of the goods, the intended forwarding or carriage..., as well as the place of forwarding or destination, for the purposes of which they are entrusted to the Freight Forwarder;
- that all documents provided by him to the Freight Forwarder are complete, correct, valid, authentic and not improperly prepared or used;
- that, unless the Freight Forwarder has been informed previously and in writing, the goods entrusted to him are not of a dangerous, perishable, flammable, explosive nature or likely to otherwise cause damage to third parties, persons or property;
- that he will examine, upon receipt, all documents provided to him by the Freight Forwarder and that he will verify whether they are in accordance with the instructions given to the freight forwarder.
- in the event of failure to comply with any of the obligations set forth above, the Freight Forwarder may at any time refuse the order given or cease or suspend the execution thereof.

### 5.2 Liabilities

#### 5.2.1 General

The Client is liable vis-à-vis the Freight Forwarder and shall, regardless of the amount, upon first

written request, indemnify him, hold him harmless, provide sufficient guarantee:

- from and against any damage or loss that the Freight Forwarder suffers or expects to suffer, directly or indirectly, in the performance of contract as a result of the nature and the packaging of the goods, the incorrectness, inaccuracy or incompleteness of instructions given, data or information provided, the non-delivery or untimely delivery of the goods to the Freight Forwarder at the agreed time and place, as well as the failure to provide, or to provide in a timely manner, documents or instructions, any fault or negligence in general on the part of the client or on the part of the third parties whose services he enlisted;
- from and against any damage or loss, costs and expenditure which are claimed from the freight forwarder by authorities, contractors, agents or third parties, for whatever reason, with regard to, among other things, the goods, any damage, expenditure, costs, duties, claimed directly or indirectly as a result of the service provided or to be provided on the authority of the Client, unless the Client shows that the claim was directly, to the exclusion of any liability on his part, caused by a fault for which only the Freight Forwarder is liable, to the exclusion of any third party whose services were enlisted by the Freight Forwarder;
- from and against any damage or loss, in connection with the order given to the Freight Forwarder, costs and expenditure which are claimed from the Freight Forwarder in cases where, under Community or national laws and regulations, the freight forwarder is under any personal and/or joint and several liability for the payment or settlement of customs duties and/or other tax debts; - damage or loss shall mean in the broadest sense: among other things, material or immaterial damage or loss, direct and indirect damage, consequential damage, including economic loss, fines and interest, forfeitures, claims caused by product liability or intellectual property rights, legal fees and costs associated with legal assistance.

#### 5.2.2 Customs Liabilities

If the claim for which the Freight Forwarder requires compensation or indemnity from the Client pertains to a customs or other tax claim caused by a customs operation entrusted to him by or on behalf of his Client, the Client undertakes to provide, for the benefit of the Freight Forwarder and at his first written request, or for the benefit of a third party or public authority appointed by the Freight Forwarder, a sufficient irrevocable and unconditional financial guarantee, up to the amount of the claim brought or reserved, which is such as to warrant, in principal, interest and costs, the Client's liability towards the freight forwarder or third parties.

## 6 Obligations and Liability of the Freight Forwarder

### 6.1 As a Forwarding Agent.

#### 6.1.1 Obligations

The Freight Forwarder shall perform his duties under the contract with reasonable care, diligence and perception, and he shall ensure a normal professional performance of the contract entrusted to him as an obligation of means in accordance with the present general terms and conditions.

#### 6.1.2 Liabilities

- a) The liability of the Freight Forwarder is limited to faults or omissions made/committed by him in the execution of the order given to him. He is not liable for gross misconduct, nor for that of the person for whom he vouches. His liability can only be invoked after the freight forwarder has been declared in default in advance in writing and in a timely manner. 7 The freight forwarder is not responsible and not liable for the performance of agreements entered into by the Freight Forwarder with third parties.
- b) The Freight Forwarder is not liable for the performance of any contract entered into by him, on behalf of his client, with contractors or agents, pertaining to, among other things, storage, carriage, customs clearance or goods handling, unless it is demonstrated by the client that the defective performance thereof was caused directly and solely by a fault or omission of the freight forwarder and that the third party could not have prevented that.
- c) The liability of the Freight Forwarder for damage to or loss of goods is limited to a liability for direct or immediate damage in the form of only material damage and material loss of the goods which are the subject of the Contract, and to the extent that it was not caused by Third Parties with whom the Freight Forwarder, on the authority of the Client, had entered into a contract, or for which Third Parties are liable. The Freight Forwarder is, within the meaning of this article, not liable for damage to or loss of goods due to causes or circumstances for which, according to the present General Conditions, liability lies with the Client or for which the Freight Forwarder has excluded his liability. The Freight Forwarder is not liable for damage to or loss of goods which he has in storage or custody following complete or partial theft or destruction of goods due to, among other things, fire, explosion, lightning, impact of aircraft, water damage, own defect of the goods and their packaging, hidden defects and force majeure. The Freight Forwarder is not liable for damage or loss following complete or partial theft or destruction of goods if such risk, in accordance with local regulations or business practice, is attached to the goods.
- d) The Freight Forwarder is not liable for any indirect or collateral damage or loss, including economic loss,

consequential or immaterial damage or future damage in the broadest sense.

- e) The Freight Forwarder is not responsible for the successful outcome of the collection orders given to him, unless it is proven that the bad outcome is due to negligence which can be equated with a gross misconduct on his part.
- f) The Freight Forwarder bears no extra-contractual liability, and he rejects any extra-contractual liability.

#### 6.1.3 Compensation and limitation:

- a) The eligible compensation is limited to legally proven damage.
- b) To the extent that such faults or omissions caused any direct material damage or, in whole or in part, any loss to the Client, the Freight Forwarder is entitled to limit his liability to 4 SDR per kilogramme of gross weight that is damaged, lost or reduced in value of the goods accepted, with a maximum of 32.500 SDR per loss or series of losses that have the same cause, but not higher than the invoice value of the goods or their price on the world market at the time of acceptance of the order, on the understanding that the limitation is equal to the lowest of those amounts.
- c) For all other claims within the meaning of, among others, art. 6.1.2 combined, the liability of the Freight Forwarder is limited to a maximum of 32.500 SDR per loss or series of losses having the same cause, on the understanding that the liability for all losses combined as stipulated under (a) and (b) shall not exceed 40.800 SDR per loss or series of losses having the same cause. A Freight Forwarder who, for the performance of the contract, relies on auxiliary personnel can invoke, vis-à-vis the Client, the release clauses agreed between the freight forwarder and the auxiliary personnel.

6.1.4 The value of the goods is limited to their value at the time they are shipped or should have been shipped. The value of SDR is calculated on the date on which the claim is received in writing by the freight forwarder.

## 6.2 As a Carrier.

### 6.2.1 Liabilities

The Freight Forwarder is not liable for any indirect or collateral damage or loss, including economic loss, consequential or immaterial damage or future damage in the broadest sense.

The Freight Forwarder is not liable for damage to or loss of goods which he has in storage or custody following complete or partial theft or destruction of goods due to, among other things, fire, explosion, lightning, impact of aircraft, water damage, own defect of the goods and their packaging,



hidden defects and force majeure. The Freight Forwarder bears no extra-contractual liability, and he rejects any extra-contractual liability.

#### 6.2.2 Fee and limitation

The Freight Forwarder is liable as carrier in the cases provided for in article 1.3.1 b).

His liability is regulated by national law and the international treaties which, both, apply to this on a mandatory basis.

To the extent that such liability is not regulated by any mandatory provision or that it cannot be determined during on which part of the transport the damage or the loss occurred, the liability of the Freight Forwarder is successively regulated as follows:

- a) for material loss and material damage, the liability of the Freight Forwarder as a carrier is limited in accordance with art. 6.1.3. b).
- b) for a delay in the loading, transport or delivery of the goods, his liability is limited to the freight that relates to the goods.
- c) for all other claims, his liability is limited in accordance with art. 6 1.3 c).

#### 7 Privilege and Lien

The amounts owed by the Client to the Freight Forwarder are, pursuant to the law and in accordance with the present conditions, privileged.

The Freight Forwarder has an extensive right of retention to all goods entrusted to him by the Client for the performance of the contract, the monies and all titles and documents that represent these goods, and has the right to sell them in order to settle, in full, any claims the Freight Forwarder has against the Client on account of any service whatsoever, including all previous and subsequent services; they also serve as a pledge, regardless of whether the Client is the owner of the goods.

The claims of the Freight Forwarder against his client are privileged under article 14 of the Commercial Pledge Act of May 1872, article 20.7° of the Mortgage Act, and article 136 of the General Customs and Excise Act with regard to all the goods, documents or monies that he has in his possession and will have in his possession, regardless of whether the claim pertains in whole or in part to the receipt or forwarding of other goods than those in his possession.

#### 8 Insurance

The Freight Forwarder is not expected to take out insurance for the goods on the authority and on behalf of the client.

9 Confidentiality, Information Handling and Cyber Security

The Client and the Freight Forwarder undertake to treat as confidential any information they receive from each other. Each party has to ensure that their employees and advisors adhere to the obligations set out above.

The Client and the Freight Forwarder shall take appropriate technical and organizational measures to ensure the information security of the services, the storage and the use of the information processed in their information system, as well as to protect the confidentiality and integrity of the content of the data.

The access to and the use of the information systems of the Client and the Freight Forwarder must be used in a manner that does not compromise the security of the information systems.

The parties shall take reasonable care in complying with such obligation, which also applies after the performance of the contract, taking into account available technology and the associated risks and costs.

10 Termination and Cancellation

Termination of the contract is, in principle, only possible if this is explicitly agreed upon by the parties. If there is no such agreement, the Client is required to pay, in full, the costs and expenses already incurred, as well as the work and services already carried out, along with the materials and supplies already delivered.

11 Prescription and extinction of Rights

Any imposition of liability on the Freight Forwarder must be notified to him in writing, stating the grounds, within 14 days following the delivery of the goods, or the forwarding of the goods insofar as the liability pertains to the forwarding of the goods.

Any liability of the freight forwarder pertaining to the forwarding of the goods shall be extinguished automatically and definitively when the Client has taken delivery of the documents pertaining to a specific operation in connection with the services, without the Client having formulated, against the Freight Forwarder, not later than on the 10th day after the sending of these documents, a substantiated written imposition of liability or a substantiated reservation.

Any liability action against the freight forwarder shall be extinguished as a result of prescription if it is not brought before the competent court within a period of 9 months.

Prescription shall run from the day following the day on which the goods were delivered or should have been delivered, or, in the absence of delivery, from the day following the day the event giving rise to the action took place.

## 12 Jurisdiction and Applicable Law

- 12.1 Any dispute arising directly or indirectly from the service provided by the Freight Forwarder, and any claim for damages against the Freight Forwarder must be settled exclusively by the competent court of the Freight Forwarder's registered office as the place of formation and performance of the agreement, without prejudice to the Freight Forwarder's right to bring, himself, any claim before another court.
- 12.2 The contract of the Freight Forwarder with the Client is governed by Belgian law, as are the General Conditions.

## 13 Redress and Litigation

- 13.1 If the Freight Forwarder is aware of any loss of or damage to the goods entrusted to him, or of any delay in the delivery, he shall notify the Client. The Client may instruct the Freight Forwarder to take measures to protect, recover or clean up the goods, to submit redress claims against third parties. The Freight Forwarder shall not conduct judicial and arbitration proceedings against third parties, unless he is prepared to do so by written and timely order of the client and on his behalf and at his risk, and the Freight Forwarder has, in advance, been provided sufficient funds to cover all assessment costs, legal fees and expenses for legal assistance, including a guarantee for litigation risks.
- 13.2 Such proceedings are then instituted on behalf of and at the risk of the Client who, to that end, shall give, in advance and in a timely manner, specific, as well as legal, instructions, and shall take the necessary steps in that regard after a requested provision for loss and expenses has been paid. If the Freight Forwarder cedes such redress claims, the Client must provide security to cover the costs and risk for any act performed in the name of the Freight Forwarder

## **PART III: Transport**

1. The CMR provisions are applicable, regardless the fact whether it is a national, international, standard, heavy or exceptional transport. Parties expressly agree that when the containers, containing the goods, are unloaded from the trailer , the conditions prescribed by law or agreed between ECS NV/2XL NV and third parties for the carriage of goods by that means of transport (carriage by sea, rail, inland waterways, air ) or on a terminal will apply in their legal and contractual relationship.

ECS NV/2XL NV is only liable for damage to the goods transported in accordance with the applicable

provisions of the CMR Convention.

If other goods that are under the care of the consignor, shipper or consignee but that are not the goods to be transported are damaged within the context of the transport, the liability of ECS NV/2XL NV is limited to the damage caused by their fault or negligence. In any case and except in case of intent, the extent of the carrier's liability for damage to goods other than the goods to be transported is limited to maximally 8.33 units of account for each gross kilogramme of weight of the cargo transported.

2. The parties explicitly agree that the container will be loaded ,stowed and unloaded by the sender and /or the addressee . In as far as the ECS NV/2XL NV drivers or drivers of a transport company appointed by ECS NV/2XL NV are asked by the sender or addressee to carry out acts of loading, stowing or unloading, it is understood that the drivers carry out these actions under the explicit supervision , control and responsibility of the sender and/or address. ECS NV/2XL NV does not bear any responsibility for damage caused by and/or during the loading , stowing or unloading of the container.

Unless indicated otherwise in writing, the parties explicitly agree that the loading and unloading operations are performed by the consignor and the consignee respectively. If the driver of ECS NV/2XL NV is requested by the consignor or the consignee to perform these operations, they take place under the explicit supervision, control and responsibility of the consignor and the consignee respectively.

ECS NV/2XL NV accepts no liability for any damage caused by and/or during the loading and unloading operations.

Unless indicated otherwise in writing and if possible and/or necessary, the stowage is carried out by the carrier on the basis of the instructions of the consignor or the shipper, given in accordance with the applicable legislation and depending on the route. If the vehicle used by the carrier or the stowage methods used appear to be unsuitable because incorrect or incomplete information was provided by the consignor or the shipper or if the packaging material used for transport appears to lack the required solidity to ensure the appropriate securing of the cargo, any resulting costs and damage will be entirely charged to the consignor.

3. Where it is evident from the Customer's instructions that delivery needs to take place before normal operations can commence at the delivery site, the Customer will ensure that someone will be on site to receive the delivery and to sign the necessary documents.

The Customer will provide contact details for that person, including as a minimum his/her name and

telephone number, at the time of the transport order to ECS NV/2XL NV.

If no authorised representative is present on site at the agreed moment of delivery, ECS NV/2XL NV receives the instruction to unload the goods to be delivered on site, after which ECS NV/2XL NV shall inform the consignor/client of the delivery in any manner and the latter is deemed having accepted the delivery without any reservations.

If no person is designated, or if that person is not present at the time of making the delivery, the Customer will be considered as having unconditionally accepted the delivery as defined in this clause.

4. After delivery of the goods as specified in III.3, ECS NV/2XL NV will accept no responsibility whatsoever in relation to these goods , remaining at the delivery place at the entire risk and responsibility of the Principal.

The Principal has to fully safeguard ECS NV/2XL NV against all possible liabilities in relation to these delivered goods ( such as but not limited to Authority fines , contractual and non- contractual liabilities of third parties of whatever nature).

5. ECS NV/2XL NV is entitled to a compensation for the standstill times of the vehicle.

Unless otherwise agreed, it is assumed that ECS NV/2XL NV will bear the costs for two(2) hours of loading and two(2) hours of unloading whereas the waiting period for the coupling is fixed at one(1) hour.

If unloading, loading or coupling operations take more time than the agreed free time, the carrier is entitled to a compensation of 50 EUR/ 45 GBP per commenced hour.

For containers, the first four(4) calendar days (to calculate inclusive as of the day of arrival of the container on quay) are free of charge, as of the fifth(5) calendar day till the eight(8) calendar day waiting periods on quay will be charged at a rate of 50 EUR /45 GBP per calendar day/per container, as of ninth (9) calendar day at a rate of 65 EUR / 60 GBP per calendar day / per container.

For temperature related containers, the first two (2) calendar days (to calculate inclusive as of the day of arrival of the container on quay) are free of charge, as of the third (3) calendar day till the sixth (6) calendar day at a rate of 75 EUR/ 65 GBP per calendar day/per container, as of seventh (7) calendar day at a rate of 130 EUR/ 115 GBP per calendar day/ per container.

ECS NV/2XL NV is moreover entitled to a compensation for all costs resulting from other standstill

times which, taking into account the circumstances of the transport, exceed the customary standstill time.

6. Any transport order is to be described by the Principal in the fullest possible detail. The exact weight and dimensions of items to be shipped are to be given.

Especially relating the gross weight of the cargo ECS NV/2XL NV refers to the SOLAS Convention, applicable as of the 1ST of July 2016, that clearly stipulates that for each loaded CSC container for an international Sea carriage the correct VGM ( = verified Gross Mass ) is to be provided so this information can be relayed in time to the captain, his representative and/or terminal. In case of an incorrect or late notification of the VGM by the principal , the relevant container will not be loaded / refused for shipment.

The Principal needs to take care that he can calculate this VGM in a correct and calibrated manner in accordance with the Royal Decree of 25 September 2016 with regard to verified gross mass of loaded containers.

Ultimately at the moment of collection of the cargo by ECS NV/2XL NV, the principal needs to provide the driver against receipt the necessary information in writing with regard to the VGM and the applied method of weighing.

Insofar the timing of the transport requires a quicker communication of the VGM to the captain, his representative and/or terminal, the principal is held to take the adequate steps.

The acceptance by ECS NV/2XL NV of the cargo implies in no way any control of this information in writing, nor does the acceptance involve any liability for ECS NV/2XL NV with regard to this information in writing. Insofar the Principal omits to procure ECS NV/2XL NV this information in writing, the Principal recognizes that she is itself is liable for informing in time the captain, his representative and/or terminal of the VGM.

If the Principal fails to procure the VGM, ECS NV/2XL NV is in no way liable for the determination / timely procurement of the VGM.

All costs and consequences with regard to the VGM, the Royal Decree of 25 September 2016 related to the verified gross mass of loaded containers, as well as any sanctions hereabout will be for the account of the Principal.

Special features such as an asymmetrical center of gravity, highly delicate or vulnerable constituents

in the material, specific fulcrum points, hazardous products, are always to be indicated.

Unless the consignor explicitly requested the carrier to check the gross weight of the cargo within the meaning of art. 8 par. 3 of the CMR Convention, the consignor remains responsible for any excess weight, even per axle, during transport. The consignor shall pay all resulting costs, including a compensation for any damage caused by the standstill of the vehicle and any resulting fines or other legal costs.

Should a vehicle deployed by ECS NV/2XL NV prove to be unsuitable due to incorrect or incomplete information provided by the Principal, all costs will be fully charged to the Principal.

7. Carriers and drivers appointed by ECS NV/2XL NV do not have measuring equipment to verify the temperature of goods at the time of loading. The temperature of the goods noted by the sender on the loading document(s) is recognized as the correct temperature of the loaded goods. The driver /carrier appointed by ECS NV/2XL NV will not make any reservation regarding this aspect on the loading document(s). ECS NV/2XL NV will not accept any liability whatsoever for possible damage resulting from a non-compliant temperature at the time of loading.

The Principal of ECS NV/2XL NV is liable to report the with regard to the goods specific set temperature whereby the set temperature is defined as the setting of the temperature on the display of the cooling unit of the refrigerator or the reefer used for transport.

For lack of a specific set temperature in the written instructions to ECS NV/2XL NV, the latter may assume that the temperature indicated will be agreed as the set temperature.

8. If ECS NV/2XL NV needs to apply for a permit or authorization in order to arrange a transport, they will always be acting on behalf of the Principal, and for their account. As such, ECS NV/2XL NV acts only as an intermediary.
9. On the premises of the consignor, shipper or consignee, the vehicle can only be moved in accordance with the instructions and on the responsibility of the latter. However, the carrier can object to these instructions if in their opinion, the local conditions jeopardise the vehicle or the cargo.
10. Any cancellation of the intended transport assignment by the Principal up to 24 hours before providing the vehicle at the place of dispatch will result in the Principal being required to pay fixed compensation in the sum of 50% of the agreed freight price, also any costs already incurred by ECS NV/2XL NV.

Any cancellation of the intended transport assignment by the Principal after this period, will result in

the Principal being required to pay fixed compensation in the sum of 100% of the agreed freight price, also any costs already incurred by ECS NV/2XL NV.

## **PART IV General Logistic Conditions**

### **1. DEFINITIONS**

Hereinafter the following conditions shall mean:

- 1.1. G.L.C : General Logistic Conditions.
- 1.2. CC: Civil Code.
- 1.3. ABAS-KVBG-conditions: general terms and conditions for the handling of goods and related activities in the Port of Antwerp.
- 1.4. CEB/VEA-conditions: Belgian Freight Forwarders Standard Trading Conditions.
- 1.5. Logistic Service Agreement: the agreement binding the Logistics Service Provider to perform Logistic Services for the Principal.
- 1.6. Logistic Services: all agreed services of any nature whatsoever related to the handling and distribution of goods, including but not restricted to collection, purchase, storage, stock management, order handling, preparing for shipment, invoicing, regarding the goods as well as the related data exchange and its management, customs, transport and expedition. Under no circumstances will fiscal representation be subject to this Logistic Service Agreement.
- 1.7. Logistic Service Provider: the party performing the Logistic Services as described in the Logistic Service Agreement concluded with the Principal.
- 1.8. Logistic Centre: place where the Logistic Services will be performed.
- 1.9. Additional Activities: activities ordered after the original Logistic Service Agreement had been entered into.
- 1.10. Consignee: the party to whom the Logistic Service Provider must deliver the goods in accordance with the Logistic Service Agreement.



- 1.11. Principal: the party that has entered into an agreement with the Logistic Service Provider.
- 1.12. Reception: the moment in time at which the Goods are handed over to the Logistic Service Provider, subject to his reservations as the case may be, and from whereon the Goods are under his care.
- 1.13. Delivery: the moment in time at which the Goods are handed over to the Consignee, as the case may be subject to his reservations, and after which the Goods are no longer in Logistic Service Provider's care.
- 1.14. Force majeure: All circumstances beyond the control of the Logistic Service Provider or that he does not have under his control and which humanly-speaking make it practically impossible to meet his obligations.
- 1.15. Working days: all calendar days, excluding Saturdays, Sundays, as well as all recognised public holidays in Belgium.
- 1.16. Stock Difference: the difference, between physical stock in the Logistic Centre and the stock as recorded in the warehouse management system of the Logistic Service Provider, which cannot be explained unless proven to the contrary by the Principal.
- 1.17. CMR: Convention on the Contract for the International Carriage of Goods by Road (Geneva, May 19th 1956).
- 1.18. CIM: Uniform Rules Concerning the Contract of International Carriage of Goods by Rail dd. July 1st 2006.
- 1.19. FIATA: Fiata model rules for freight forwarding services.
- 1.20. CMNI: the Budapest Convention on the Contract for the Carriage of Goods by Inland Waterways (CMNI) of June 22nd, 2001.

## **2. SCOPE**

- 2.1. The G.L.C are applicable unless explicitly agreed otherwise in writing, to the Logistic Service Agreement and the Additional Activities; in so far they are not in conflict with imperative law and public order.

The terms and conditions of Principal are explicitly excluded from the contractual relationship between the parties.

- 2.2. All transports carried out within the framework of this Logistic Service Agreement are subject to the provisions of the international treaties and imperative legislation applicable to the related transport (CMR, added with the General Conditions for Carriage by Road as drafted by TLV, Febetra and UPTR if it concerns Belgian Way Bill forms and they are not in conflict with the strictly binding statutory provisions, CIM, CMNI, FIATA, ...).
- 2.3. Unless otherwise agreed upon in writing, all forwarding, customs and VAT assignments are carried out within the framework of this Logistic Service Agreement governed by the provisions of the CEB/VEA-Conditions.
- 2.4. Unless otherwise agreed upon in writing, the provisions of the ABAS-KVBG-conditions will govern all stevedoring activities carried out within the framework of transport over water carried out within the framework of these G.L.C.
- 2.5. Each agreement is concluded on and valid from the moment the offer is accepted by the Principal, or in case of lack thereof, the moment the Logistic Service Provider has in fact started the execution of the agreement.

### **3. OBLIGATIONS OF THE LOGISTICS PROVIDER**

The Logistic Service Provider must:

- 3.1. Perform Logistic Services and if required Additional Activities agreed with the Principal.
- 3.2. Take reception of the agreed goods at the agreed place, time and in the agreed way, accompanied by a transport document and accept the other documents that may have been given by the Principal and to deliver them in the same condition as the one in which they have received them, or in the agreed condition.

If there is no agreed time of Delivery or Reception these agreed activities must take place within the time which a Logistic Service Provider reasonably needs, counting from the time the Delivery or Reception is requested. This time is then deemed to be the agreed time.

On Reception of the goods, note any necessary reservations on the transport document regarding externally visible damage and quantity, and inform the Principal about this so that he can take the necessary measures.

- 3.3. Designate one or more contacts and report this to the Principal.
- 3.4. If the Logistic Service Provider fails to designate one or more contacts as referred to under Article 3 paragraph 3, the person who has signed the Logistic Service Agreement on behalf of the Logistic Service Provider shall be deemed to be the contact.
- 3.5. See to it that the storage and handling of the goods is done in an appropriate environment, including the necessary licences, as the case may be. Any change in agreed Logistic Center shall have to be notified to the Principal.
- 3.6. Behave like a diligent administrator regarding the goods and should this be necessary for the preservation of the goods to take all reasonable measures at the expense of the Principal, including those that do not result directly from the provision of Logistic Services.
- 3.7. Insure its liability as it results from the G.L.C with an approved insurance company, according to the Supervisory Act of Insurances of 9 July 1975.
- 3.8. Only allow the presence of the Principal or of the persons designated by him to the areas and premises where the goods are located but exclusively at their own risk and exclusively during normal working hours, however, provided that this:
  - Takes place in the presence of the Logistic Service Provider;
  - Was communicated and approved in advance;
  - Takes place in accordance with the Logistic Service Provider's internal rules and regulations;
  - Takes place in accordance with the current safety instructions applicable at the Logistics Center and /or on the premises used for the performance of this agreement.
- 3.9. See to the proper functioning of the equipment he uses to perform the contract for the provision of Logistic Services.
- 3.10. The obligations of the Logistic Service Provider contained in present Logistic Service Agreement are obligations of means and cannot, safe explicit prior written agreement between the parties to the contrary, be interpreted as obligations of result.

#### **4. LIABILITY OF THE LOGISTIC SERVICE PROVIDER**

- 4.1. If goods handled by the Logistic Service Provider in their packaging, if any, are not delivered in the same condition or in the agreed condition to the Principal and/or consignee, the Logistic Service Provider, except in case of Force Majeure and any other provisions in the present conditions, shall be liable for the related damage and/or loss insofar this damage and/or loss is caused by a fault or negligence of the Logistics Provider, his representatives, personnel and/or subcontractors, if any. The Principal has the burden of proof that the damage and/or the loss occurred between the time of Reception and the time of Delivery as stipulated in these Conditions.
- 4.2. The Logistic Service Provider is not liable for damage to / loss of the goods, in so far that damage/loss is the result of the special risks related to storage in the open air, as per the instructions of the Principal.
- 4.3. Logistic Service Provider is exempt from liability in case of o.a. theft with burglary, violence or under threat or at gunpoint; fire, explosion, lightning, aeronautical vehicles, water damages, inherent vice of the goods and/or their packaging, hidden defects, demurrage and detention of containers, and Force Majeure.
- 4.4. Except when the damage or loss is caused by willful misconduct of Logistic Service Provider's management, the liability of the Logistic Service Provider under these G.L.C is limited to an amount per kilogram, per damage causing event and per contract year, to be agreed upon between parties at the conclusion of the Logistic Service Agreement. In case such amounts have not been agreed upon, the following amounts will be applicable: 8.33 special drawing rights (S.D.R.) per kilogram of lost or damaged goods with the absolute maximum of 25,000 € per damage causing event or series of events having the same cause of damage and 100,000 EUR year.

If the Logistic Service Provider does not perform the Logistic Services and/or Additional Activities at or within the agreed time, in the agreed way and at the agreed place, he shall be held, and without prejudice to the provisions of paragraph 1 of the present article, to perform these activities as soon as possible without additional costs for the Principal, in the agreed way.

- 4.5. If the Principal has furthermore incurred expenses in relation with the fact that the Logistic Service Provider did not perform the Logistic Services and/or the Additional Activities in the agreed manner, time and place, the Logistic Service Provider is liable to pay these costs up to an amount to be agreed at the time of the entering into the Logistic Service Agreement. If such an amount was not agreed, the liability of the logistics provider for these costs shall be 750 EUR maximum per occurrence.

- 4.6. The Logistic Service Provider is not liable for damages as a result of information and instructions provided by or to other persons than those referred to under Article 3.3.
- 4.7. If the Logistic Service Provider repeatedly fails to comply with the substantial obligations, the Principal can, without prejudice to the right to compensation for damages as described in paragraphs 1, 2, 3 and 4 of this article, terminate the Logistic Service Agreement if 30 days after having given formal notice hereof to the Logistic Service Provider, the failure to comply is still not remedied.

Towards the compensation of the damage resulting from this termination the Logistic Service Provider shall at the most owe a sum to be fixed at the beginning of the Logistics Service Agreement.

- 4.8. The Logistic Service Provider is not liable for any damage except to the goods themselves. All indirect and/or intangible damage, such as but not limited to loss of income, loss of profit, consequential damages, etc., is excluded from Logistic Service Provider's liability.
- 4.9. Any damage/loss and/or difference in stock shall be evaluated once per year. If there is a positive difference no compensation for damages will be claimed. In case of negative and positive differences, the differences will be set off against each other.

In case of a negative difference no compensation for damages will be paid if the difference is less than a between parties to be agreed upon percentage of the total Annual Volume that was handled; failure whereof a percentage of 0.1 % of the total Annual Volume subject to the Logistic Service Agreement will apply. The Annual Volume means the sum of the inbound, outbound and handled quantities of Goods.

If the agreed upon percentage, is nevertheless exceeded the Logistic Service Provider shall pay a compensation for damages to the Principal equal to the reception-value of the respective product subject to Stock Difference beyond the agreed upon percentage. Logistic Service Provider's liability for Stock Difference will be subject to the limitations set out in section 4 paragraph 4. Reception-value will mean the purchasing/manufacturing, as the case may be, cost plus the costs for transportation up till the Reception of the goods by Logistic Service Provider.

- 4.10. The Logistic Service Provider may proceed to sell the goods without awaiting the instructions of the cargo interest if the perishable nature or condition of the goods justifies this or if the costs of preservation are out of proportion compared to the value of the goods. The value of the goods is the cost of production or failing this, the current market price or failing that, the usual value of goods of the same nature and quality.

He can also proceed to sell if the Principal surrenders the goods.

In the other cases he can also order to sell if he has received no other instructions from the cargo interest within a reasonable period, of which the service can reasonably be demanded.

If the goods are sold in compliance with the present article, the proceeds of the sale shall be made available to the cargo interest deducting the costs burdening the goods. If these costs are higher than the proceeds of the sale Logistic Service Provider will be entitled to the difference.

The law and the current practice of the place where the goods are located shall fix the procedure in case of sale.

In any case, in the event of perishable goods or goods of which the cost of preservation are out of proportion with the value of the goods a simple communication will be addressed to the cargo interests.

If the latter fail to respond to this within two (2) Working Days , the sale may proceed.

In case of non-perishable goods, a simple communication of sale will be addressed to the cargo interests. If the latter fail to respond to this within a period of 15 days the sale may take place.

## **5. OBLIGATIONS OF THE PRINCIPAL**

The Principal must:

- 5.1. Designate one or more contacts and communicate these to the Logistic Service Provider.
- 5.2. If the Principal fails to designate one or more contacts as referred to in this article 5.1 of the present conditions, the party that has signed the Logistic Service Agreement on behalf of the Principal shall be deemed to be the contact.
- 5.3. Principal will provide to the Logistic Service Provider in due time all information concerning the goods and their handling, of which he knows or is deemed to know the significance to the Logistic Service Provider.

Furthermore, the Principal provides in due time all data and information the Logistic Service Provider requests for an accurate execution of the Logistic Service Agreement, in the by the Logistic Service Provider preferred form and manner.

Regarding the dangerous goods, the Principal is held to provide or communicate all documents and instructions as indicated in the conventions and prescriptions in this respect such as ADR, ADNR, IDMG, MSDS –files ... to the Logistic Service Provider.

The Principal is responsible for the accuracy, correctness, completeness and reliability of the information, data and documents provided to Logistic Service Provider by himself or by third parties on his behalf.

The Logistic Service Provider can suspend execution of this agreement till the moment Principal has complied with all of its abovementioned obligations.

Insofar late, inaccurate, incomplete and/or incorrect information, data and/or documents, delays the execution of the Logistic Services or prevents the Logistic Services to be performed as they should, all the costs and/or consequences resulting therefrom will be for the account of Principal.

The Principal is also liable for any damage to the environment and for any damage or any harm the Logistic Service Provider, his representatives, personnel or subcontractors, if any, would sustain, as a result of late, inaccurate, incomplete and/or faulty information concerning the nature of the goods.

- 5.4. Inform the Logistic Service Provider about the necessary licences and/or permits to perform his activities.
- 5.5. The Principal warrants to place the agreed goods at the agreed place, time, and manner, at least adequately and sufficiently packed in packaging apt for transport, at the disposal of the Logistic Service Provider accompanied with the relevant transport documents and other documents required by law; unless otherwise agreed upon in writing.
- 5.6. Besides the agreed price of the provision of Logistic Services, Principal will pay the expenses incurred by the Logistic Service Provider with respect to the Additional Activities, including the costs, as referred to under Article 3 par. 6, within the fixed period of payment.
- 5.7. Principal will hold the Logistic Service Provider harmless against any claims of third parties regarding damages caused direct or indirect by the goods, inadequate or insufficient packaging, by an act or negligence of the Principal, his subordinates, as well as all other persons whose services the Principal uses.
- 5.8. Guarantee for the equipment made available by him to the Logistic Service Provider.
- 5.9. At the end of the Logistic Service Agreement, collect the goods that are still at the premises of the

Logistic Service Provider on the last Working day of that agreement after payment of all amounts due or that will become due. For whatever may be due after the completion of the Logistics Service Agreement it will suffice for the Principal to provide sufficient security.

- 5.10. Accept every adjustment of rates regarding the incurrence of expenses and/or the payment of costs (including new taxes) that are unknown at the time this agreement was concluded and which the Principal would also have to pay if the Principal were to perform the activities mentioned in this agreement for his own account.

The prices of this agreement will be subject to automatic indexation of which the modalities will be set out and be agreed upon by the parties at the conclusion of this agreement; failure whereof, the prices will be adjusted according to the consumption price index as published on the website of the FOD Economie.

- 5.11. Pay the costs of removal and recycling of packaging and waste that result from the provision of services at cost price.

## **6. LIABILITY OF THE PRINCIPAL**

- 6.1. The Principal is liable for any damage and costs caused by him and all persons for who he is responsible such as employees, affiliates, agents, representatives and/or subcontractors, and/or goods subject to the Logistic Service Agreement.

- 6.2. If the Principal fails to communicate the information, data and documents as referred to under Article 5 par. 3 of these conditions in due time, or fails to make available the agreed goods at the agreed time or within the agreed period of time, manner and place, in an adequate and sufficient packaging apt for transport, accompanied by the required documents as intended under Article 5 par. 5 of these conditions, he must perform these activities as soon as possible, free of charge and in the agreed manner for the Logistic Service Provider.

If the Logistic Service Provider has in addition incurred costs in relation with the fact that the Principal has failed to meet his obligations as referred to under Article 5 par. 3 and 5 of these conditions, the Principal is liable for these costs up to a maximum of 30,000 EUR per occurrence.

- 6.3. If the Principal repeatedly fails to meet his obligations the Logistic Service Provider can, without prejudice to compensation of damages, terminate the Logistic Service Agreement, after he has allowed the Logistic Service Provider in writing a reasonable last deadline and the Principal still has not met his



obligations at the expiry thereof. In which case Principal is liable for all consequences, costs and damages resulting therefrom.

- 6.4. The Principal shall adequately insure the goods at least against fire, lightning, explosion, aeronautical vehicles, storm damage, water damage, floods and theft. In case of damage due to abovementioned circumstances, Principal and its insurer(s) will waive recourse against the Logistic Service Provider and all other third parties.

In any case he will also be liable for the collection and handling of the damaged goods. The access to the areas is described in Article 3 par.8. Moreover he will pay all costs caused by the collection and handling of the damaged goods as well as all costs whatsoever resulting from this, such as the costs of cleaning and sanitation of the land and of the facilities and all the above without prejudice to what is mentioned under Article 6 par. 1.

## **7. PRESCRIPTION**

All claims to which the Logistic Service Agreement gives rise including those that are the result of a Cash On Delivery-clause, shall expire after a period of one year as of the day following the one on which the Principal is informed of the fact or the occurrence that gives rise to the claim or should have been informed. Logistic Service Provider will be informed in writing of each claim relating to externally visible damage immediately upon Delivery and of each claim regarding invisible damage within seven (7) days after Delivery, Sunday and public holidays not included; failure whereof, the claim will be non-admissible.

## **8. TERM AND TERMINATION OF THE AGREEMENT**

- 8.1. Unless otherwise agreed upon in writing, the Logistic Service Agreement is concluded for an indefinite term but can be terminated by either party upon six (6) months notification.
- 8.2. If a party has repeatedly not complied with a substantial obligation under this agreement, and if the breach remained unremedied thirty (30) days after formal notification thereof to the general management of the breaching party (manager, managing Director, ...), the other party can terminate the Logistic Service Agreement at all times provided a thirty (30) days' notice is given.
- 8.3. Either Party can terminate the Agreement by formal notice in case the other party is subject to

liquidation or dissolution proceedings, insolvency, bankruptcy and/or any other collective settlement on debt.

- 8.4. If, upon termination of the Agreement, the agreement and/or Logistic Service has been partially executed, the termination will only regard the future and all costs and expenses made will be invoiced in accordance with the Agreement and paid by Principal.
- 8.5. If a situation of Force Majeure continues for more than thirty (30) days, the Logistic Service Agreement can be terminated by the Principal, without possibility to claim compensation for any damages resulting therefrom.

## **9. CONDITIONS OF PAYMENT**

- 9.1. All amounts due by the Logistic Service Provider and the Principal, shall be paid taking into account the agreed due date or in absence of this within two weeks after the date of invoice.
- 9.2. If the invoice is not paid on the due date the outstanding amount shall produce an interest by law and without formal notice at a rate fixed by the European Central Bank, fixed by the Act of 2 August 2002 implementing the European Directive 2011/7/CE, plus seven percent and rounded upwards to half a percent.
- 9.3. If the debtor fails to comply within a period of fifteen days after having sent a registered letter by mail, the amount outstanding shall moreover be increased with 10% with a minimum of 125 EUR and a maximum of 4.000 EUR as a lump sum compensation for additional administrative costs, supervision of accounts outstanding and disturbance of commercial activities.
- 9.4. In so far as permitted by applicable law, compensation or set-off of any amount will never be allowed.
- 9.5. No complaint or discussion regarding an invoice, will interfere with the payment of the unchallenged part of the invoice under consideration in accordance with the payment terms of this Clause.
- 9.6. In the event the Logistic Service Agreement is terminated for whatever reason, all sums as referred to under this clause 9 will become immediately due and payable.

## **10. GUARANTEES**

- 10.1. The Logistic Service Provider holds a right of retention in respect of the goods and documents he holds

in regard with the Logistic Service Agreement.

- 10.2. The Logistic Service Provider can only exercise the right of retention for what is or will be due to him relating to the Logistic Service. He can also exercise this right on the Cash On Delivery-fee burdening the goods.
- 10.3. The Logistic Service Provider can also exercise the right of retention for what is due to him by the Principal in relation with any previous Logistic Service Agreements.
- 10.4. The Logistic Service Provider can also exercise the right of retention for a commission fee he is entitled to in relation with a Cash On Delivery shipment, for which he does not need to accept a guarantee.
- 10.5. All goods, documents and monies the Logistic Service Provider holds for the Logistic Service Agreement, shall constitute a pledge for all claims he has with respect to the Principal.
- 10.6. If the Principal fails to pay the sums he owes to the Logistic Service Provider and for which the Logistic Service Provider holds a right of retention and/or a right of pledge on the basis of this Agreement, the Logistic Service Provider shall have the right, after having obtained the approval of the judge, to sell the goods stored at his premises at the expense of the Principal for his own benefit in compliance with the Act of 5 May 1872.
- 10.7. When requested, the Logistic Service Provider can also replace the pledge by an equivalent guarantee to be assessed exclusively by him.

## **11. GOVERNING LAW / JURISDICTION**

- 11.1. Belgian Law shall govern all agreements to which the G.L.C are applicable.
- 11.2. All disputes related to the validity, interpretation or service of the agreement on which the G.L.C are applicable, shall fall within the jurisdiction of the Courts that are territorially competent for the Registered Office of the Logistic Service Provider except if there is an explicit agreement between the Principal and the Logistic Service Provider which stipulates that the disputes will be referred to arbitration.

## **12. MISCELLANEOUS PROVISIONS**

- 12.1. The non-applicability of one or several provisions of these conditions shall not affect the applicability of the other provisions. Both parties will immediately take the action necessary to replace the provision concerned by a valid provision which approximates the original intention of both parties as closely as possible.
- 12.2. The fact that one of the parties would fail to react against the non-compliance of the contractual stipulations by the other party can never be considered by the other party to be a permanent waiver of the stipulation(s) under consideration.
- 12.3. Each party warrants the strict confidentiality of the contents of the Logistic Service Agreement and all information exchanged between the Principal and the Logistic Service Provider relating thereto. Parties are allowed to disclose information subject to confidentiality to a governmental agency to comply with any legal obligation and to disclose this information to third parties in accordance with customary business practices.
- 12.4. All notifications will be sent by registered letter, addressed to the general management of the other party (manager, managing Director, ...).
- 12.5. This G.L.C are a mere translation of the authentic “Logistieke Dienstverleningsvoorwaarden” in Dutch, in case of contradiction the latter shall prevail.

## **13. REGISTRATION**

The present conditions are the revised version of the conditions drawn up by BELOTRA/Logistics Cell of FEBETRA and the Royal Federation of Managers of Flows of Goods, registered with the Clerk of the Court’s Office of the Chamber of Commerce and Industry of the 27th of November 2003, and registered with the same Clerk’s Office on 9th of October 2015.



**ECS EUROPEAN CONTAINERS NV**

**BARON DE MAERELAAN 155 – 8380 ZEEBRUGGE/BELGIE – BTW : BE 0435.131.508**

**2XL NV**

**BARON DE MAERELAAN 155 – 8380 ZEEBRUGGE /BELGIE – BTW: BE 0449.424.358**

# **ADDENDUM TO THE GENERAL TERMS AND CONDITIONS CUSTOMER**

Applicable to Orders to be executed after 31st of December 2020

## **SECTION I: GENERAL**

### **1. Purpose**

- 1.1 The purpose of this document is to complement and/or amend the General Conditions Customer of ECS NV / 2XL NV in view of the withdrawal of the United Kingdom from the European Union and the consequences thereof for the services of ECS NV / 2XL NV as freight forwarder, haulage company and/or customs agency.
- 1.2 The terms and conditions governing the relationship between ECS NV / 2XL NV and its Customer shall comprise the following: (i) the General Conditions Customer (which you have received and are available on <https://www.ecs.be/en/about-ecs/general-conditions>) and (ii) this addendum to these General Conditions Customer (“Addendum to the General Conditions Customer”).

- 1.3 The General Conditions Customer and this Addendum to the General Conditions Customer are to be taken as correlative and mutually explanatory, but in case of conflict between these conditions, the Addendum to the General Conditions Customer shall prevail over the General Conditions Customer.
- 1.4 The Customer has availed themselves of all information related to the General Conditions Customer and the Addendum to the General Conditions Customer and its specific conditions of execution and further to such acknowledgment declares entering into this agreement in full consent and good faith and fully aware of all obligations pertaining thereto.
- 1.5 The terms and conditions shall apply to each Order and all agreements or contracts made by or entered into by or on behalf of ECS NV / 2XL NV. The Customer accepts these terms and conditions on its own account, as well as on account of the Consignee, Consignor and the Cargo Interest. The terms and conditions will be deemed to have been accepted by the Customer by submitting the Order.

## 2. Definitions and interpretation

- 2.1 In addition to the terms defined elsewhere in the General Conditions Customer and the Addendum to these General Conditions Customer, capitalized words and expressions shall have the meaning set out below:

**“Authority”** or **“Authorities”** means any governmental authority, quasi-governmental authority, multinational organization or body, court, government or self-regulatory organization, commission, tribunal or any regulatory, administrative or other agency, or any political or other subdivision, department or branch of any of the foregoing, including customs authorities and their officers.

**“Cargo Interest”** means anyone who would suffer a loss if the Goods were damaged, lost, delayed, or destroyed or who would benefit from the safe arrival of the Goods or, in general, showing an economic interest in the Goods.

**“Consignee”** the person listed as such on the Transport Documents and/or to whom the Goods are deemed to be delivered.

**“Consignor”** means the legal or natural person who is listed on the Transport Documents as the shipper and/or sender and/or in whose name and/or on whose account the Order is accepted and/or executed.

**“Customer(s)”** means the customers of ECS NV / 2XL NV for whom ECS NV / 2XL NV is performing freight

forwarding services or/and transporting services and/or customs representation and/or to whom these services are invoiced.

**“Customs Documents”** means any and all documents in paper and/or electronic format relevant for customs and excise purposes and/or required by the Law and/or Authorities for the import, export, or transit of the Goods and/or change in the customs regime thereof, including commercial invoice, Transport Documents, customs value declaration, freight insurance, packing list, LRN, MRN, Entry Summary Declarations, Exit Summary Declaration, and any other documents associated with customs and/or excise import formalities such as, among others, proof of (preferential) origin, inspection certificates, import and export licenses, documents required for VAT purposes.

**“Customs Formalities”** means any and all formalities required by the Law and/or Authorities for customs and excise purposes such as import, export, transit of the Goods and/or storage in bonded warehouses, including the processing of Customs Documents, completing of declarations and clearances, payments of Taxes duties, excise and/or tariffs and any other Taxes, as well as any order, action or instruction given by an Authority in this respect.

**“Customs Representative”** has the meaning as set out in Article 18 of the Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (“UCC”) and any other applicable customs legislation such as post-Brexit UK customs Law.

**“Damage”** means any direct, indirect, and consequential loss and/or damage in the widest possible sense, including loss of earnings and other losses.

**“ECS2XL Customs Brokers”** shall mean a customs agency appointed by ECS NV / 2XL NV ECS2XL from its network to perform customs formalities relating to the import, export, or transit of goods both in the customs territory of the EU and in non-EU countries.

**“Exporter of Record”** means the entity officially involved in the export of a specific shipment of products out of a country or customs union. The exporter of record status makes a company responsible for obtaining export clearance and for complying with export regulations.

**“General Conditions Customer”** means the terms and conditions governing all business relationships between ECS NV / 2XL NV and their contractual parties. These terms and conditions are also available on <https://www.ecs.be/en/about-ecs/general-conditions>.

**“Goods”** means the goods described or deemed to be described in the Order, the relevant Transport

Documents, and/or Customs Documents.

**“Importer of Record”** means the entity accountable for (i) ensuring the imported goods Goods comply with Laws in the country of importation, (ii) filing a completed import entry and associated Customs Documents, and (iii) paying the assessed Taxes on those goods Goods, when applicable.

**“Law”** means any national or international law, statute, regulation, directive, rule, ordinance, subordinate legislation, the principle of common law, judgment, order, instruction, guideline, award, or decree of any Authority (including any judicial or administrative interpretation thereof) in force, fully implemented and enforceable.

**“Movement Reference Number”** (MRN) is the unique identification number that is assigned to a customs declaration for a specific customs procedure.

**“Service Level Agreement for Customs Services”** means a separate agreement wherein the Customer appoints and authorizes ECS NV / 2XL NV and/or the ECS2XL Customs Brokers, as customs representative in accordance with the Law for carrying out Customs Formalities, including customs declarations, required under the applicable Law.

**“Tax”** or **“Taxes”** means any and all forms of taxation, duties, levies, imposts, whether direct or indirect including, customs and excise duties and other import duties, value-added tax, including import VAT, packaging levy, monitoring charges, environmental taxes, and duties and any other type of taxes or duties in any relevant jurisdiction; together with any interest, penalties, surcharges or fines relating thereto, due, payable, levied, imposed upon or claimed to be owed in any relevant jurisdiction.

**“Third Party”** means any other (legal) person or entity than ECS NV / 2XL NV and the Customer. For the avoidance of doubt: Cargo Interests, Authorities, ferry operators and customs agents qualify as Third Parties.

**“Transport Documents”** means any and all relevant documents for the execution of the carriage of the Goods, including the waybill (consignment note) and/or any similar document, proof of delivery, temperature printout, packing list, and Customs Documents.

**“Order”** means the assignment by the Customer to ECS NV / 2XL NV where ECS NV / 2XL NV, when applicable, will act as haulage company and/or, freight forwarder, and/or customs representative with respect to the carriage and/or forwarding of Goods and/or subcontract such services on behalf of the customer.



- 2.2 The words “include”, “includes”, “including” and all forms and derivations thereof shall mean “including but not limited to”.
- 2.3 Any reference in this Addendum to the General Conditions Customer to obligations, undertakings or liabilities that would be incumbent on a Third Party, including on the Consignee, the Consignor and/or the Cargo Interest, whenever applicable, shall also be considered as liabilities, obligations, and undertakings of the Customer with joint and several liabilities.

Whenever applicable, the Customer shall cause these Third Parties, including the Consignee, the Consignor and/or the Cargo Interest, to comply with these obligations and undertakings towards ECS NV / 2XL NV and/or Third Parties under this Addendum to the General Conditions Customer so that ECS NV / 2XL NV is able to perform its services by ECS NV / 2XL NV on-time and to comply with the Law. The Customer shall be fully responsible and liable for any action or failings of these Third Parties in this context.

- 2.4 This Addendum to the General Terms and Conditions for Customer is available in Dutch, French and English. In case of discussion, inconsistency or ambiguity between these version, the English text will prevail.

### **3. Warranty**

- 3.1 The Customer warrants that it is fully familiar with all Laws, Customs Formalities, required Transport Documents as well as with customs related procedures both in the EU and the UK, whether internationally or nationally in force, which are relevant for the import, export, or transit of the Goods and the services by ECS NV / 2XL NV concerning the Goods.
- 3.2 The Customer warrants that it is fully familiar with the new or adapted operational measures, preparations, and logistics requirements of ECS NV / 2XL NV and Third Parties in place, including, the minimum/maximum cut-off times, the new information flows regarding the Customs Documents, including the requirement to lodge declarations, which are relevant for the on-time performance of services by ECS NV / 2XL NV and to comply with the Law. The Customer has availed itself of all relevant information and does not require additional description or communication. ECS NV / 2XL NV shall have no liability in relation to any statement or communication made in this respect.

#### **4. Taxes - Customs & Excise duties & Tariffs**

- 4.1 The Customer shall be responsible and liable for any Tax and the payment thereof for, or in connection with, the Goods, and shall be liable for any payment, settlement, Damage or loss incurred or suffered by ECS NV / 2XL NV in connection with such Taxes.
- 4.2 The Customer undertakes to indemnify and hold ECS NV / 2XL NV harmless in the widest possible sense against any and all claims from Authorities and/or any other Third Party related to Taxes for, or in connection with, the Goods, even if these claims arise or are in connection with, the actions or failings by Consignee, the Consignor and/or the Cargo Interest.
- 4.3 If necessary, the Customer shall, upon ECS NV / 2XL NV first request and at its choice, (i) provide in satisfactory guarantees or securities in its interest, among others, to prevent or release seizure of the Goods, or, (ii) pay ECS NV / 2XL NV all amounts, principal sum and interests, costs which these Authorities and/or any other Third Parties in this respect claim from ECS NV / 2XL NV and compensate ECS NV / 2XL NV for any and all resulting Damage, costs, and expenses (including legal fees), or delay incurred.
- 4.4 If the Customer were to fail to comply with this Article 4 of this Section, ECS NV / 2XL NV shall be entitled, without any prior notice and at the sole risk and costs of the Customer, to sell or otherwise dispose of the Goods to recover any Damage, costs (including legal fees), or delay incurred.

#### **5. Brexit clause**

- 5.1 The Customer expressly understands and agrees that any and all unavoidable events which may follow or arise from the withdrawal of the United Kingdom from the European Union and make it partially or wholly impossible for ECS NV / 2XL NV to meet its obligations towards the Customer or Third Parties, including on-time delivery of the Goods, shall qualify as force majeure under the General Conditions Customer which shall release ECS NV / 2XL NV from performance of its services without any liability on its part.

In this context, the Customer expressly agrees that any event beyond ECS NV / 2XL NV's control and which results in disruptive border crossing procedures, including a shortage of human resources, failing equipment or procedures from the side of Third Parties, congestion and/or blockades as well as acts of government, restriction, suspension or withdrawal of any licenses, changes in the Law or changes to regulations shall qualify as force majeure.

- 5.2 ECS NV / 2XL NV shall use its reasonable best efforts to execute the Orders and shall perform its services with such care as reasonably prudent professional provider of similar services use under similar circumstances. Each execution of an Order by ECS NV / 2XL NV shall qualify as an obligation of means and not as an obligation of result.

## **6. Suspension & cancellation**

- 6.1 ECS NV / 2XL NV shall be entitled to suspend the execution of an Order or to cancel it, without prior notice and without any compensation being due, if in the reasonable opinion ECS NV / 2XL NV (i) the Customer, Consignee, the Consignor and/or the Cargo Interest, whenever applicable, is not compliant or not on time with the obligations and duties under this Addendum to the General Conditions Customer or (ii) if it inadequately executes these requirements, or (iii) the performance thereof entails an increased risk of liability or, for one reason or another, is reasonably or economically unjustified.
- 6.2 In any event, the execution of an Order can never be considered as a discharge of the Customer from its duties its obligations under this Addendum to the General Conditions Customer.

## **7. Costs and expenses**

The Customer agrees and accepts that costs, expenses and Damages incurred or suffered by ECS NV /2XL NV in connection with a suspension or cancellation under Article 6.1 of this Section, or arising out, or in connection with, events under Article 5, including costs and expenses related to the returning the Goods and waiting hours, shall be borne by the Customer.

## **8. Period of limitation**

Any liability action against ECS NV / 2XL NV shall be time-barred as a result of prescription if it is not brought before the competent Authority, in accordance with the Law, within six months. Prescription shall run from the day following the day on which the Goods were delivered or should have been delivered or, in the absence of delivery, from the day following the day the event giving rise to the action took place.

## **9. Jurisdiction & governing law**

This Agreement and any extra-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with Belgian law. The Courts of Bruges shall have exclusive jurisdiction to settle any dispute arising out of or in connection with ECS NV / 2XL NV's services.

## **SECTION II: FREIGHT FORWARDING ACTIVITIES**

### **1. Scope**

- 1.1 The terms and conditions set out in this Section II Freight Forward Activities shall apply to any form of services provided for by ECS NV / 2XL NV in its capacity as a freight forwarder, other than its forwarding services related to the organization of customs representation for carrying out Customs Formalities as set out in Section IV Customs Agency – representation.
- 1.2 If ECS NV / 2XL NV is requested to facilitate the organization of Customs Formalities in either or both the EU and UK in the framework of its forwarding activities, these services shall also be governed by Section IV Customs Agency – representation.

### **2. Obligations for Import, Export, and Transit**

- 2.1 Well in advance of the execution of each Order, the Customer undertakes to document each Order, including the fulfilment of the Customs Documents, entirely and accurately in writing, and to fulfil and complete all Customs Formalities required by Law and/or Authorities, to enable ECS NV / 2XL NV to execute its services timely and in accordance with the Law.
- 2.2 The Customer shall upon availability immediately provide ECS NV / 2XL NV via ECS NV / 2XL web portal, EDI set-up, or any other agreed means, with the MRN (or MRN's) confirming the release of goods customs status of the Goods as well as all other Customs Documents to enable ECS NV / 2XL NV to execute its services timely. If the pre-lodgement model is used, the Customer shall provide ECS NV / 2XL NV with the import documents or MRN before the execution of the Order.
- 2.3 The Customer ensures that ECS NV / 2XL NV is, prior to the loading of the Goods, in the possession of (i) information on the Consignor, (ii) information on the Consignee, (iii) a description of the Goods, and (iv) any other information and documents needed, so ECS NV / 2XL NV can lodge a safety and security declaration if required.
- 2.4 If the Customer is not the Exporter of Record or/and the Importer of Record, the Customer shall cause

the Exporter of Record and/or Importer of Record to comply with all requirements to ensure ECS NV / 2XL NV is able to perform its services timely and in accordance with the Law.

- 2.5 The Customer represents and warrants that all the information, statements, and documents, including Customs Documents, provided, are complete, accurate, adequate, correct, and sufficient to perform ECS NV / 2XL NV's services.
- 2.6 ECS NV / 2XL NV shall have no obligation to examine the completeness, accuracy, and correctness of the information and documents, including Customs Documents, provided. The Customer shall, in any event, notify ECS NV / 2XL NV promptly upon becoming aware of any information and/or document, including Customs Documents, provided is incorrect, inaccurate, erroneous, or fraudulent.
- 2.7 The Customer shall cause the Exporter of Record and/or the Importer of Record to undertake the necessary Intrastat reporting if required. The Customer acknowledges that ECS NV / 2XL NV can in no way be held responsible and/or liable for failing to complete the Intrastat reporting.

### **3. Indemnification**

- 3.1 The Customer acknowledges and agrees that ECS NV / 2XL NV can in no way be held liable for any Damage, loss, delay, or costs as a result of the Customer's failure to comply with its obligations under this Addendum to the General Conditions Customer or required by Law or Authorities, or the failure to do so completely or on time and/or the consequences thereof vis-à-vis the Authorities, the Customer and/or Third Parties.
- 3.2 Without prejudice to Article 4.2 of Section I, the Customer shall fully indemnify and hold ECS NV / 2XL NV harmless against any and all claims of Authorities and/or any other Third Parties, in connection to, or arising out of ECS NV / 2XL NV services.
- 3.3 The Customer acknowledges and agrees that ECS NV / 2XL NV shall only be liable towards the Customer for direct damages which are solely due to a proven incorrect execution of the instructions given by the Customer in the framework of an Order.
- 3.4 To the extent that such fault, negligence, or omission by ECS NV / 2XL NV, has caused any damages to the Customer, ECS NV / 2XL NV shall be entitled to limit its liability to EUR 5,00 per kilogram gross weight of the Goods which are the subject of the services, with a maximum of EUR 10.000 per Order.

## **SECTION III: TRANSPORT**

### **1. Scope**

- 1.1 The terms and conditions set out in this Section III Transport shall apply to any form of services provided by ECS NV / 2XL NV in its capacity as a haulage company.

### **2. Obligations for Import, Export, and Transit**

- 2.1 Well in advance of the execution of each Order, the Customer undertakes to document each Order, including the fulfillment of the Customs Documents, entirely and accurately in writing, and to fulfill and complete all Customs Formalities required by Law and/or Authorities, to enable ECS NV / 2XL NV to execute its services timely and in accordance with the Law.
- 2.2 The Customer agrees that ECS NV / 2XL NV shall not undertake any Customs Formalities or other customs related activities relating to the Goods other than the obligations where to ECS NV / 2XL NV is legally Responsible in its capacity as haulage company.
- 2.3 The Customer warrants that for the Goods carried by ECS NV / 2XL NV all Customs Formalities are in place and completed and/or are pre-lodged, including all safety and security declarations for the Goods in transit, and unaccompanied cargo, with the Authorities so that ECS NV / 2XL NV and/or Third Parties, including ferry operators, are able to perform the Order in time and accordance with the Law.
- 2.4 The Customer shall further provide ECS NV / 2XL NV with all Customs Documents necessary to perform the Order without any delay, costs, or liability, in particular, regarding the transit of the Goods.
- 2.5 Abnormal waiting hours resulting from, or arising out, Customs Formalities and/or Customs Documents or any other event, including events qualifying as force majeure in Article 5.1 in Section I, which results in disruptive border crossing procedures or transit of Goods, shall give the right to ECS NV / 2XL NV to claim additional costs and expenses.

### **3. Inspection of the Goods**

- 3.1 The Customer understands and agrees that ECS NV / 2XL NV or Third Parties may be instructed by Authorities to allow access to the Goods, including to unpack, open, break seals for inspection, control or check as well as to move the Goods to another location, such as bonded warehouses or inspection areas.

- 3.2 The Customer agrees that ECS NV / 2XL NV shall not be liable for any Damage, loss, delay, or costs resulting from any action taken by Authorities following or during such inspection, control, or check, nor for any decision taken by these Authorities concerning the Goods.
- 3.3 ECS NV / 2XL NV shall, in any event, be entitled to recover all costs and expenses, including waiting hours, resulting from any action taken or instruction given by the Authorities and/or claimed by Third Parties, including the costs for the transport of the Goods to another location for inspection or for other measures to comply with such instructions of the Authorities as well as any reasonable expense to avoid or mitigate Damage, loss or delay. Any measure or action taken by ECS NV / 2XL NV and/or Third Parties in this respect shall be at the sole risk of the Customer.

#### **4. Indemnification**

- 4.1 Without prejudice to Article 4.2 of Section I, the Customer shall fully indemnify and hold ECS NV / 2XL NV harmless against any and all claims of Authorities and any other Third Party, that could be filed against ECS NV / 2XL arising out, or in connection with, an Order.
- 4.2 The Customer acknowledges and agrees that ECS NV / 2XL NV shall only be liable towards the Customer for direct damages which are solely due to a proven incorrect execution of the Order.
- 4.3 To the extent that such fault, negligence, or omission by ECS NV / 2XL NV, has caused any damages to the Customer, ECS NV / 2XL NV shall be entitled to limit its liability to EUR 5,00 per kilogram gross weight of the Goods which are the subject of the services, with a maximum of EUR 10.000 per Order.

### **SECTION IV: CUSTOMS AGENCY - REPRESENTATION**

#### **1. Scope**

- 1.1 The terms and conditions set out in Section IV Customs Agency - Representation shall apply to any form of services provided by ECS NV / 2XL NV in its as capacity freight forwarder whereby Customer instructs ECS NV / 2XL NV via/and/or ECS2XL Customs Broker for carrying out the Customs Formalities and in so far no separate Service Level Agreement for Customs Services has been entered into by the Customer.
- 1.2 The terms and conditions set out in Section IV Customs Agency – Representation shall also apply in the event the Customer has executed part of the required Customs Formalities and explicitly instructs ECS

NV / 2XL NV in writing to organize the remaining Customs Formalities either in the UK or in the EU.

- 1.3 If requested by ECS NV / 2XL NV, the Customer shall provide a signed power of attorney (“PoA”), in the format provided by ECS NV / 2XL NV and/or ECS2XL Customs Brokers, authorizing ECS NV / 2XL NV and/or the ECS2XL Customs Brokers for customs representation vis-à-vis the Authorities. The PoA shall determine the capacity of ECS NV / 2XL NV and/or the ECS2XL Customs Brokers as direct or indirect Customs Representative of the Customer. Unless otherwise agreed in the PoA, the services under this Section IV shall always be executed as direct customs representation under the applicable Law.
- 1.4 ECS NV / 2XL NV and/or the ECS2XL Customs Broker shall not handle Dual-Use or Military cargo subject to export licensing unless prior written approval by ECS NV / 2XL NV and a copy of the license is provided.

## **2. Information Duties**

- 2.1 The Customer shall determine whether any of its Goods require any specific authorization or license to enable import or export and to inform ECS NV / 2XL NV thereof accordingly. ECS NV / 2XL NV or ECS2XL Customs Broker shall not give any advice, support or provide consultancy regarding Customs Formalities and requirements. Any communication in this respect is indicative. ECS NV / 2XL NV or the ECS2XL Customs Broker shall have no liability in relation to any statement or communication made in this respect.
- 2.2 The Customer shall provide ECS NV / 2XL NV with all supporting documents and information, including commercial and shipping information, to timely, entirely, and accurately process and complete Customs Formalities required by the Law and/or Authorities. If applicable, this information shall be forwarded by ECS NV / 2XL NV to the ECS2XL Customs Broker on a one-to-one basis.
- 2.3 The Customer shall provide ECS NV / 2XL NV and/or the ECS2XL Customs Broker, upon the first request, with required additional details, data, and/or information to perform its services and/or to comply with Authorities’ requests within the imposed time limits.
- 2.4 All requests, challenges, and questions posed by the Authorities to ECS NV / 2XL NV and/or the ECS2XL Customs Broker, shall be forwarded to the Customer on a one-to-one basis, including any communication regarding inspections, demands to redeliver merchandise to the customs’ custody, notices of intent to change any element of a customs entry, informal queries such as rejections of entries or calls/requests for additional information to substantiate any claim made on an entry.



- 2.5 The Customer shall notify ECS NV / 2XL NV and/or the ECS2XL Customs Broker immediately of any event, fact, or matter which could affect the correct and timely completion of the services.
- 2.6 If the required information or documents are not provided in time, or when incomplete or erroneous information is provided, the Customer accepts that the subsequent execution of the services and related transport services by ECS NV / 2XL NV and/or the ECS2XL Customs Broker may be delayed and/or canceled, without any compensation being due by ECS NV / 2XL NV and/or the ECS2XL Customs Broker.

### **3. Verification of information**

- 3.1 The Customer represents and warrants that all the provided information and documents are complete, adequate, correct, and sufficient to perform the Customs Formalities required by the Law.
- 3.2 ECS NV / 2XL NV and the ECS2XL Customs Broker shall have no obligation to examine the completeness, authenticity, precision, accuracy, and correctness of the provided information and documents. The Customer shall, in any event, inform ECS2XL promptly if he becomes aware of any information and/or documents that are incorrect, inaccurate, erroneous, or fraudulent.

### **4. Securities**

- 4.1 If necessary, the Customer shall provide, upon ECS NV / 2XL NV or the ECS2XL Customs Broker's first request and at its choice, sufficient provision and/or guarantees, to cover all forms of Taxes.
- 4.2 In case the Customer wishes to use its deferment account or customs guarantee, the Customer represents and warrants that sufficient provision, guarantees, and securities are with the Authority in accordance with the Law, to allow smooth execution of the Customs Formalities. The Customer shall, before the commencement of any services, provide ECS NV / 2XL NV and/or the ECS2XL Customs Broker with evidence of and access to its deferment accounts and/or customs guarantee.
- 4.3 In case the Customer fails to provide for the necessary guarantees as set out in this Article 11, the Customer shall, upon ECS NV / 2XL NV and/or ECS2XL Customs Broker's first request, pay ECS NV / 2XL NV and/or the ECS2XL Customs Broker all amounts, principal sum, and interests, that Authorities and/or any Third Parties claim from ECS NV / 2XL NV and/or the ECS2XL Customs Broker. The Customer shall further compensate ECS NV / 2XL NV and/or the ECS2XL Customs Broker for any resulting damage,

costs, and expenses (including legal fees), or delay incurred.

## **5. Charges**

- 5.1 ECS NV / 2XL NV and/or its ECS2XL Customs Broker shall be entitled to recover all reasonable costs and expenses entailed in carrying out specific instructions of the Customer, including all direct and indirect fees and costs, related to the inspection of entry documentation and/or the inspection of Goods concerning the applicable entry or exit point practices.
- 5.2 Where applicable and wherever possible, all Taxes will be charged directly by the Authorities to the Customer, including:
- I. customs duties, anti-dumping duties, levies, premiums, additional contributions or refunds, supplementary amounts or components, complementary rights, rights under the applicable customs tariff, and other present or future rights related to trading with third party countries, contributions, and other levies;
  - II. excise duties, special energy levies, oil fuel inspection fees, environmental levies, and green taxes, packaging taxes;
  - III. value-added taxes;
  - IV. any levies, fees, and default interests payable for Goods subject to declaration, rights arising from health inspections, local taxes, storage rights, and any other contributions the administration grants respite for under Law.
- 5.3 ECS NV / 2XL NV and/or the ECS2XL Broker Contract shall have the right to set-off all payments, amounts, and/or refunds which it might receive from any Authority, for the account of the Customer, against any sum due by the Customer towards ECS NV / 2XL NV and/or the ECS2XL Customs Broker under this Addendum to the General Conditions Customer.

## **6. Subcontracting**

ECS NV / 2XL NV is entitled to subcontract its services, under this Addendum to the General Conditions Customer, in whole or in part, to any duly authorized customs agency or other Third Party.

## **7. Liabilities**

- 7.1 ECS NV / 2XL NV and/or the ECS2XL Customs Broker shall only be liable towards the Customer for direct damages or loss which are solely due to a proven incorrect execution of the instructions given by the Customer.
- 7.2 The Customer acknowledges and agrees that ECS NV / 2XL NV and/or the ECS2XL Customs Broker can in no way be held liable for any Damage, loss, delay, or costs resulting from the Customer's failure to comply with its obligations as set out in this Section, or the failure to do so completely or on time and/or the consequences thereof vis-à-vis the Authorities and/or Third Parties.
- 7.3 To the extent that such fault, negligence, or omission has caused any damages to the Customer, ECS NV / 2XL NV and/or the ECS2XL Customs Broker shall be entitled to limit his liability to EUR 5,00 per kilogram gross weight of the Goods which are the subject of the services, with a maximum of EUR 10.000 per Order.

## **8. Indemnification**

The Customer undertakes to indemnify and hold ECS NV / 2XL NV and/or the ECS2XL Customs Broker harmless against any claims from the Authorities and/or any other Third Party related to Taxes in connection to the Goods and/or arising out of ECS NV / 2XL NV services.