

## **GENERAL CONDITIONS COBELFRET CONTAINERS N.V.**

(The Dutch version of these conditions is the original version and will have priority over translated versions)

### **1. SCOPE**

The present conditions are applicable to all contractual relations that have been entered into directly or indirectly by or on behalf of Cobelfret Containers N.V. (hereafter: C.C.). These general conditions will come in force on the 1st August 2004 and will replace all earlier versions.

Each booking will constitute evidence of the unconditional acceptance by the customer of the general and particular conditions of C.C., thereby waiving his own terms if conflicting herewith.

If one or more stipulations of the general conditions would be in conflict with provisions of imperative law, then this will not affect the other stipulations which will remain valid.

### **2. STATUS**

C.C. binds itself, with regard to the transport of goods loaded in containers, exclusively as a shipping agent in the sense of art. 1 of the Law of June 26, 1967 relating to the legal status of intermediaries in the field of transport of goods (Belgian Bulletin of Acts, Orders and Decrees of September 27, 1967): it undertakes to carry out, in its own name and against payment, transport of containers, or to have this transport carried out entirely or partially by third parties.

With respect to the actual transport, a "CMR" consignment note will be issued, which will contain the "General Sales Conditions for Transport FEBETRA". In case of conflict with the FEBETRA conditions the C.C. general conditions will prevail. Even if subcontractors make use of their own CMR consignment notes, containing divergent terms and clauses, the C.C. general and particular conditions will prevail and be paramount.

### **3. LIABILITY**

#### **Transport**

Its liability in this respect is subject to the stipulations of the CMR Convention, even in case of national transport.

If the container is offloaded from the chassis then the liability of C.C. will be governed by the CMR convention unless it has been established that the damage, the loss or the incident took place during a transport of a different nature (transport by sea, by rail, by inland waterway, by air or on terminal), in which case the provisions will apply that legally or conventionally govern this type of transport, with the understanding that C.C. will never have to pay more than what it could recover from its subcontractor.

The customer and/or the shipper will before loading the goods, inspect the container and the carrier will not be liable for damage to the goods resulting from defects of the container that could have been noticed prior to loading.

The customer and/or the shipper will properly pack and secure the goods. It is known to them that the transport can go partly over sea so that the packing and stowage must be able to resist the normal risks attached to transport by both road and sea.

If the drivers of C.C. are requested by the shipper or by the consignee to proceed to loading or unloading operations, it must be understood that the drivers carry out these operations under the exclusive supervision and control of the shipper or the consignee. C.C. assumes no responsibility whatsoever for possible damage to the goods caused by or during the loading or unloading activities.

C.C. will not assume any liability for loss of or damage to goods for which it did not receive any instructions from the customer with regard to the delivery, within 72 hours after the unloading of the sea-going vessel.

### **3.2 Cargo handling**

If C.C. proceeds to the handling of the goods that it has been entrusted with (loading, unloading, receiving, delivering, sorting, measuring, weighing, counting, sampling, packing, surveillance, storage or keeping) then the General Conditions of the Association of cargo handling companies of Bruges and Zeebruges (BBGZ) will apply as deposited with the Chamber of Commerce at Bruges on February 10, 1989.

C.C. is only responsible for damage that is the direct consequence of a personal fault whereby the burden of proof rests upon the customer. As a handler of goods, C.C. is only bound by an obligation of means. In any case its liability will be limited to EUR 25 per package on the understanding that the total liability per container will not exceed EUR 620.

In case of a conflict between the general conditions of the BBGZ and the general conditions of C.C. the latter will prevail.

## **4. SECURITY AND RIGHT OF RETENTION**

C.C. has the securities referred to in section 20.7° of the Law on Mortgages, in section 60 of the Law of May 5, 1936 on river chartering and in section 125 of the Maritime Law. C.C. has the right to refuse to deliver the cargo before its customer, after having been summoned to do so, will have fulfilled all his obligations, regardless of whether these obligations relate to merchandise in the possession or in the care of C.C. or to merchandise in the possession or in the care of a third party agreed on by the two contracting parties.

It is explicitly agreed between C.C. and its customer that all services rendered, both those with regard to the transport and those with regard to the handling of the goods, will constitute one whole and that all goods entrusted to C.C. by the customer will serve as a security for payment of the debts towards C.C..

In addition all companies/legal entities being a member of the Cobelfret Group of Companies (the link with the Cobelfret Group will be established on basis of the relevant company chart) will on basis of reciprocity be entitled to make use and invoke the payment securities and liens stipulated in the conditions of other group-companies, and will be entitled to enforce securities and liens upon goods held within the group, i.e. under the custody of other group-companies, regardless whether these goods are on the group's vessels and crafts, trucks, trailers, containers, premises or terminals.

## **5. QUOTATIONS AND TARIFFS**

The quotations given by C.C. are limited in time. If they are not explicitly accepted within 15 calendar days, they will automatically become invalid and a new quotation will have to be asked for. The terms of this new quotation may differ from the original quotation.

C.C. reserves the right to adjust the quoted prices and tariffs with immediate effect if C.C. is confronted with an unexpected increase in price itself.

In addition any proposal or quotation is formulated on the express condition that our calculated labour cost component will not be adversely affected by subsequent labour cost increases as they might result from changes in legislation and regulations by a competent government body or the safeguarding of employees' rights of employment such as but not limited to effects resulting from the Council Directive 2001/23/EC of March 12, 2001. Such effects and costs, resulting in higher labour cost levels being thus incurred and affecting our initial cost calculation, will be for account of the client.

## **6. WAITING PERIODS**

The waiting periods per cargo exceeding 2 hours during loading or unloading and exceeding 1 hour during the coupling will be charged by C.C. to the customer, who accepts to pay them at the hourly rate of EUR 40 per commenced hour, unless otherwise agreed in writing. Proof of the waiting periods will be provided by means of the consignment note signed by the shipper or by the consignee.

For containers, waiting periods at the shipper's or the consignee's premises, on quay or at the premises of a third party agreed on by the client and C.C. will be charged, from the seventh day onwards, at a rate of EUR 40 per day, unless explicitly agreed otherwise between the parties.

## **7. COLLECTION AND DELIVERY TIMES**

The times indicated by C.C. for arriving at the loading or delivery address are only estimates and are never guaranteed. C.C. must only try to respect these times as good as possible. Penalties or indemnities for delay will not be paid unless imposed by the CMR-convention or unless this was explicitly agreed in writing at the time of booking.

## **8. GENERAL AVERAGE, SACRIFICES & EXPENDITURES**

Given the fact that part of the transport can be over sea, it is not excluded that a situation of General Average (hereafter: G.A.) can occur whereby the costs for saving the vessel and the cargo will have to be shared between all parties concerned. Such a G.A. will normally be adjusted in accordance with the most recent version of the York Antwerp Rules and C.C. will be entitled to make the continuation of the voyage or the delivery of the goods dependent of the cargo interests providing the G.A.-securities that will be demanded by the shipowner or its appointed G.A.-adjuster.

## **9. PAYMENTS**

The invoices are payable at Bruges at the latest on the due date mentioned on the invoice without discount and without possibility of setoff. If no date is mentioned on the invoice the term will be 10 days from the date of the invoice.

In case of non-payment of the invoice, on her due date, and without any notification being necessary, the amount remaining due will automatically generate interest. These interests are to be calculated at the interest-reference-tariffs as determined by the ECB. This was determined in the Belgian Statute of August 2, 2002 bringing into force the European Directive 2000/35/EG of June 29, 2000, increased by 7 percent-points and rounded upwards up till the higher half percent-point.

If within a term of 15 days after having been put on notice by registered letter, the debtor still fails to pay, the amount claimed will be increased "de iure" with 10% extra, with a minimum of EUR 125 and a maximum of 4000 EUR, by way of a forfait-indemnification for additional administration, follow-up of debtor position (credit control) and disturbance of trade. C.C. is entitled to impose the method of payment for instance by refusing payment by cheque. The party that orders the transport is due to pay the freight, even if that party has asked to collect the freight from the consignee.

## **10. LAW, JURISDICTION AND TIMEBAR**

The contract will unless explicitly otherwise agreed, be subject to Belgian Law and all claims and actions against C.C. will have to be brought in the exclusive jurisdiction of the Courts of Antwerp whereas C.C. may also bring any claim or action against the principal, shipper or consignee before the Courts of the place where these parties have their registered office or their commercial office and C.C. will also have the right to go to any other Court of its choice if this is necessary or beneficial with respect to securities or rights of retention.

Unless the law would provide for a shorter period, any claim or action against C.C. will become timebarred after 1 year.

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