

## COBELFRET RAIL NV: GENERAL TRADING CONDITIONS – VERSION JANUARY 2008

1. Unless overruled by more specific agreements or conditions, all orders (whether in writing or not) given to Cobelfret Rail NV, with registered office at Antwerp, Sneeuwbeslaan 14 – 2610 Wilrijk - Belgium, will be governed by these general conditions.
2. Validity of the sales conditions:  
These general conditions apply to all our transactions, unless there is an explicit and written stipulated variation.
3. Quotations, protest of invoices and payment conditions:  

Quotations  
The quotations given by Cobelfret Rail are excluding VAT and 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 the new quotation may differ from the original quotation.  
Cobelfret Rail reserves the right to adjust the quoted prices and tariffs with immediate effect if Cobelfret Rail is confronted with an unexpected increase in price itself such as, but not limited to, energy cost, rate of exchange, insurance premiums, costs for custom & excises imposed by the government regarding the goods, the storage, the transport or transport material.  
. 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 fore account of the client.

Protest of invoices  
In order to be valid any protest needs to be lodged within 20 days after invoice date, by means of a written and registered letter. Balancing debits by compensating invoices or claims is not allowed. The invoices are to be paid in the currency in which they have been issued. Specifically, no set off between freight-invoices and cargo-claims is allowed.

Payment conditions:  
Unless agreed otherwise between the parties, the invoices issued by the carrier are to be paid within 21 days as from invoice date.  
In case of non-payment of the invoice, on its due date, and without any notification (to put on notice) being necessary, the outstanding debt/amount will automatically generate interest. These interests are calculated by the interest -reference- tariffs as determined by the ECB increased by 7 percent points, and rounded upwards to the higher half percent-point. This was determined in the Government Gazette of August 2nd, 2002, which brings into force the European directive 2000/35/EG of June 29th, 2000.  
If within a term of 15 days, following the putting-on-notice, by means of a registered letter, the debtor still fails to pay, the claimed amount will be increased "de iure" with an additional 10%, with a minimum of 125 Euro and a maximum of 4000 Euro, as lumpsum – indemnification for additional administration, follow-up of debtor position (credit-control services) and disturbance of trade.  
All invoices will be issued in Euro and are payable in Euro. All payment-related costs, such as e.g. bank charges are for account of the customer who has to instruct his bankers to transfer the funds free of costs in favour of the beneficiary.
4. Security:  

Lien:  
It is expressly agreed between Cobelfret Rail NV and her contractor, that all performances in respect of the carriage, as well as the manipulation of the goods, are to be considered as a whole and that all goods, that are (or will be) entrusted by the contractor to Cobelfret Rail NV, will be considered as being under a lien, by way of security for payment of all claims by Cobelfret Rail NV.

Right of retention / suspension of execution of a contractual obligation:  
Cobelfret Rail NV is entitled to refuse delivery of merchandise, and to enforce a right of retention, for as long as the co-contractor (after having been notified in this respect) has not executed his share of the obligations, regardless whether his obligations are in respect of the merchandise in possession or under the custody of Cobelfret Rail NV, or of an agreed third party.
5. Advance payments:  
Cobelfret Rail NV is entitled to obtain advance payments for transports to be performed. In such a case, an advance-invoice will be issued. The services will only be executed after receipt of the total amount (VAT incl.) of the advance invoice
6. Liability
  - a) Force majeure Clause / Burden of Proof:  
Neglect or default are to be proven by the Customer. Cobelfret Rail shall be liable for : loss of or misdelivery of or damage to the goods or any deficiency therein if, but only if, any of this is proven by the Customer (otherwise than by the evidence only of such loss, misdelivery, damage or deficiency of or to the goods when in Cobelfret Rail's possession or power), for having been caused by either intentional act or willful misconduct, or misconduct, or gross negligence, gross fault or gross default of Cobelfret Rail, or of their directly employed servants.  
  
"Gross" meaning : damage or loss either willfully caused, or by an act with such a high degree of recklessness, that it was evident that the damage or loss had to occur as an obvious result thereof. Without prejudice to the foregoing, Cobelfret Rail shall not be liable for any damages, or losses, or any consequences of whatsoever nature arising from the breach of the agreed services, which is caused by force majeure, act of God, government or authorities regulations, fire, hail, snowfall, flood inundation, storm or unusual weather circumstances, atmospheric or industrial fall-out, airborne contamination, ordinary wear and tear and deterioration inherent to open-air storage, bird droppings, war, terrorism, vandalism, riot or civil commotion, strikes or labour disputes, breakdown in or interruption of communication means, or, in general terms, by any other reason, event or circumstances beyond the control of Cobelfret Rail or which Cobelfret Rail cannot prevent by the exercise of reasonable vigilance.
  - b) Railtransport:  
National: carriage performed in accordance with the law-system applicable in the country where the transport takes place.  
International: carriage performed under the stipulations of the CIM convention.
  - c) Road haulage:  
Transport takes place under the CMR convention.
  - d) Forwarding activities:  
For those activities of Cobelfret Rail NV, which can be qualified as freight forwarder activities, the contractual relations are governed by the "General Conditions of the Belgian Freight Forwarders", i.e. the edition applicable at the date of the transport.  
Unless explicitly stated / agreed elsewhere, and provided, this deviation is not in conflict with stipulations of public order, or compulsory law.

Delay:  
A period of 24 hrs following the day of arrival is allowed for loading and/or discharging of the wagons. Each and any excess of this deadline will give rise to a demurrage claim. The type of wagon will determine the amount of demurrage. Demurrage costs as a consequence of shortage of capacity on the loading- or discharge site are always for the account of the principle.
7. Delay of delivery:
  - a) Railway wagons: any given delivery period is indicative and based on information obtained from the various railway operators
  - b) Trucks: any given delivery period is indicative
9. Time bar:  
Any claim against Cobelfret Rail NV will be time bared as per the sub. a) + b) mentioned periods.
  - a) National transports: national law-system is applicable.
  - b) International: one year after the date of performance
10. Disputes.  
The Court of Antwerp has exclusive jurisdiction for all disputes resolving even in the case that there is more than one-defendant or in the event court cases abroad would be started. The Belgian law and case law is applicable. In case of dispute about the interpretation, the Dutch version of these "General Trading Conditions" is applicable.
11. 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
12. Cross default clause in favour of the Carrier and his Group.  
The contractual Carrier is a member of a Group: the Cobelfret Group of Companies (C.G.O.C.).  
A default or breach of any nature whatsoever by the Shipper of any of its obligations under the present Conditions towards the specific Carrier involved, will be considered to constitute a breach of its obligations (of any nature whatsoever) towards each entity of the C.G.O.C. and will entitle any entity of the C.G.O.C. to suspend or terminate any of its contractual obligations towards the Shipper, to trigger/accelerate its contractual rights vis-à-vis such Shipper and/or to enforce any security or surety granted to it by the Shipper.

If the Shipper is a part of a Group, a default or breach committed by any entity of that Shipper's Group towards any entity of the C.G.O.C. will be considered a breach by the Shipper under the present Conditions and will give rise to the right of any entity of the C.G.O.C. as described in the preceding paragraph.

In addition, in the case the Shipper is a part of a Group, the Shipper hereby guarantees for the benefit of any specific Carrier involved under the present Conditions or any other relevant entity of the C.G.O.C. (as the case may be) the due and punctual performance by each and every entity of the Shipper's Group of any and all of such entity's obligations towards the relevant entity of the C.G.O.C.

The Carrier can enforce bad debts against assets of any company in the Shipper's Group, which has received these Terms and Conditions and – based thereupon – has transacted business with the C.G.O.C.

Any breach by the Shipper/the Shipper's Group towards any entity of the C.G.O.C. will automatically render all credit lines, payment facilities and payment terms granted to any company of the Shipper's Group under the present conditions null and void vis-à-vis any entity of the Shipper's Group: the payment of all services rendered and invoiced by any entity in the C.G.O.C. will then become due with immediate effect.

13. Material / Loading

In the event that Cobelfret Rail NV is not responsible for the loading or the discharge of the wagons, the consignee shall at all times insure that the manipulation of the wagons is according to the legal and specific loading/discharge instructions of the goods and the wagons.

The delivered material is in good condition; remarks have to be made to Cobelfret Rail NV upon receipt of the wagons and before the manipulation of the wagons is commenced. Late notifications will not be accepted!