

GENERAL PROVISIONS

1 APPLICABILITY

- 1.1 These general supply conditions (the “**Conditions**”) will apply to all provision of services and/or delivery of goods (by sale or otherwise) and all offers and/or agreements pertaining thereto by Nova & Hesse - Noord Natie Stevedoring nv (hereafter “**NHS**”). Only the company issuing the offer and/or entering into the agreement or, in the absence of an offer or agreement, providing the goods and/or the services, is liable therefore, without any joint liability of any of its affiliated companies. The Conditions also apply to any non-contractual obligation or liability that NHS may incur as a result of the provision of services and/or the delivery of goods by it. The Conditions apply to provision of services and/or delivery of goods against payment or free of charge. The Conditions apply to any provision of services and/or delivery of goods and to any disputes as from July 1st 2016.
- 1.2 The Conditions apply to the exclusion of all other general or specific conditions which have been or will be communicated at any time by the party which orders or receives one of the goods or services referred to in clause 1.1 (hereafter the “**Customer**”), unless NHS has expressly accepted such provisions in writing. Unless expressly agreed otherwise in writing, any provision deviating from these Conditions will only apply to the relevant offer, agreement, assignment or delivery for which such deviation was mutually agreed. If there is any discrepancy, inconsistency or ambiguity between the Conditions and any specific terms agreed with the Customer, the specific terms agreed with the Customer will prevail to extent of the discrepancy, inconsistency or ambiguity.
- 1.3 These Conditions do not detract from the regulations and customs of the Port of Antwerp and/or Zeebrugge to the extent that the latter are applicable and in conformity with all applicable legal provisions.
- 1.4 By placing an order, the Customer expressly confirms to effectively have taken notice of the Conditions and irrevocably agrees with the applicability of these Conditions.

2 PRICE AND PAYMENT

- 2.1 Unless agreed otherwise, the invoices of NHS are payable immediately upon receipt and at the registered office of NHS. Notwithstanding anything to the contrary, all tariffs and any other amounts due to NHS will be charged in the currency determined by NHS. NHS reserves the right to convert such tariffs and other amounts into a different currency, applying the exchange rate at the time of the conversion. NHS reserves the right to check the Customer's credit rating periodically and to modify the Customer's payment terms (as set out in these Conditions or in any agreement, offer or any other document to which these Conditions are applicable) in the event that there is a material change in the Customer's credit rating.
- 2.2 Unless otherwise specified, all tariffs, handling charges and other charges referred to in these Conditions or in all agreements, offers and any other document to which these Conditions are applicable, are net of taxes. If there is value-added tax or any tax of a similar nature levied on these tariffs or charges, the Customer will pay such tax in addition to the tariffs or charges. If a withholding tax is withheld from the payments made by the Customer (i.e. as opposed to being levied in addition to the Customer's payments), the Customer will gross up the payments to NHS so that, after deduction of the withholding tax, NHS will receive, on a net basis, the amounts mentioned in these Conditions or in all agreements, offers or other documents to which these Conditions are applicable.
- 2.3 Rebates given to the Customer and any other amounts owed by NHS to the Customer (or to any affiliated companies of the Customer) may, at NHS's discretion, be set off against any sums due from the Customer to NHS (or to any affiliated companies of NHS). All sums due from the Customer to NHS will be paid without deduction.
- 2.4 Any complaint in relation to invoices, in order to be valid, must be notified in detail by registered letter within five working days after receipt of the invoice. No cause, such as e.g. filing a complaint, exempts the Customer of its payment obligation.
- 2.5 If the Customer does not pay an invoice (or any other amount due under these Conditions or under or in connection with any agreement, offer or other document to which these Conditions are applicable) in whole or in part on its due date, or if the Customer owes NHS any damages on any basis whatsoever, the Customer will owe NHS monthly interest on the amount due, *ipso jure* and without notice, starting from the relevant due date or the date on which the damages occurred. The interest rate will be the interest rate provided in the Law of 2 August 2002 with respect to the suppression of late payments in commercial transactions. Each month commenced will be considered a whole month.
- 2.6 If the Customer does not pay an invoice (or any other amount due under these Conditions or under or in connection with any agreement, offer or other document to which these Conditions are applicable) in whole or in part on its due date, the Customer will owe NHS *ipso jure* and without notice, a lump sum equal to the higher of (i) 10% of the unpaid amount or (ii) 125 €, for administrative costs and notwithstanding the right of NHS to claim a higher amount upon proof of higher suffered costs.
- 2.7 If the Customer or any Affiliate of the Customer does not pay an invoice or any other amount due to NHS or any Affiliate of NHS, in whole or in part on its due date, all other claims of NHS or any Affiliate of NHS against the Customer that are not yet due will become due *ipso jure* and without prior notice. If NHS has multiple claims against the Customer and the Customer carries out a partial payment, NHS will have the right to decide, in its discretion, towards which claim the payment will be applied.
- 2.8 NHS reserves the right, in accordance with article 1948 of the Civil Code, to refuse to release the goods and/or containers in NHS's care, handled by NHS or transported by NHS, until full settlement of all sums due by the Customer to NHS, regardless of whether these amounts pertain directly to the goods and/or containers withheld. Should the Customer remain in default, NHS will be entitled to have the goods and/or containers sold in accordance with the procedure set out in the Law of 5 May 1872. NHS reserves the right to ask the Customer at all times to make an advance payment or provide a security that in NHS's opinion is adequate for any present or future amounts due by the Customer to NHS under these Conditions or under any agreement, offer or other document to which these Conditions apply.
- 2.9 If NHS's tariffs are subject to an automatic tariff adjustment clause, this formula will never lead to the tariffs being lower after the adjustment than before.

3 EXEMPTIONS

- 3.1 NHS is not liable for any delay in the performance of its obligations or failure to perform its obligations because of force majeure. For the purpose of these Conditions and any agreement, offer or any other document to which these Conditions are applicable, force majeure shall be defined as any event not caused by NHS's fault and which prevents, complicates or delays the performance of NHS's obligations, including but not limited to the following circumstances: any act of God, war, civil war, mobilization, invasion, occupation, revolution, rebellion, hostilities, terrorism, fire, explosion, storm, fierce gusts of wind, flood, lightning, fog, strike, lock out, shortage of personnel, epidemic, theft and breakage of material). If NHS relies on third parties for the execution of its obligations, the provisions mentioned in this clause 3 are also applicable if the force majeure event occurs to any of these third parties.
- 3.2 If NHS, as a consequence of the circumstances set out in clause 3.1, is prevented or delayed from performing or observing its obligations, NHS is entitled to suspend any agreement with the Customer to which these Conditions apply in whole or in part or, in the event that the suspension has lasted for 12 months, to terminate any such agreement by registered letter, both without prior court intervention. In that case, NHS will be exempt from its obligations without any liability to indemnify the Customer and without any entitlement of the Customer to demand specific performance. If, at the time of the suspension or termination, NHS has partially performed its obligations, the Customer will pay the pro rata amount of the total price.

4 HARDSHIP

- 4.1 In case of exceptional circumstances not within the control of NHS, which alter the relative rights and obligations of NHS and/or the Customer to the detriment of NHS by excessively increasing the contractual obligations of NHS (including but not limited to increases of the cost of labour, energy and/or materials), the parties, upon the request of NHS, will in mutual consultation seek to adjust the conditions that apply between them in order to re-establish the initial contractual equilibrium while protecting their respective interests.
- 4.2 In case parties do not reach an agreement with respect to the restoration of the balance of their respective interests within thirty (30) days following the date of NHS's request, NHS will have the right, at its sole discretion, to terminate the agreement to which these Conditions apply by registered letter without any liability. If, at the time of the termination, NHS has partially performed its obligations, the Customer will pay the pro rata amount of the total price.

5 TERMINATION

- 5.1 NHS has the right to terminate any agreement to which these Conditions apply without prior court intervention and without any prior notice, notice period or indemnity being due, in whole or in part, effective immediately, to the detriment of the Customer, by means of a registered letter to the Customer, in the following cases:
- 5.1.1 If the Customer fails to comply with any of its obligations (either its obligations under the agreement to which these Conditions apply or any other obligations towards NHS or NHS's affiliates);
- 5.1.2 if the Customer is declared bankrupt, is involved in a dissolution, applies for the cessation of payment or loses control over its assets or parts thereof (by seizure, by being put under legal restraint or otherwise) or applies for a judicial settlement ("*gerechtelijk akkoord* ") or if any other collective measure intended to protect the Customer from its creditors is applied for or taken; or
- 5.1.3 if there is a change in control over the Customer. For the purposes of these Conditions, control means, in relation to a party, where a person (or persons acting in concert) has, or has a right to acquire, by equity ownership, contract or otherwise, (i) control over the affairs of that party; (ii) 50% of more of the total issued shares and/or 50% of more of the voting rights of that party; and/or (iii) control of the appointment of 50% or more of the members of the board of directors or similar governing body of that party. A change in control occurs *inter alia* (i) when person(s) that held control previously, no longer hold control; (ii) when person(s) that did not hold control previously, acquire control; and (iii) when persons that previously held control acting in concert, no longer act in concert.
- In any of the aforementioned cases, all sums payable by the Customer that are not yet due will become due *ipso jure* and without prior demand or notice. In the aforementioned cases, NHS has also the right to suspend the performance of its obligations in whole or in part.
- 5.2 In case of termination or suspension in accordance with the previous clause, NHS will never be liable for any kind of damages. The Customer will indemnify NHS and hold NHS harmless for any damage resulting from or in connection with the termination or suspension.

6 CONFIDENTIALITY

- 6.1 The following information will be considered confidential: (i) the existence, subject matter and content of these Conditions and of any agreement, offer or other document to which these Conditions are applicable and (ii) any information (in whichever form; whether about NHS or about any other subject) that is obtained by the Customer as a result of these Conditions and of any agreement, offer or other document to which these Conditions are applicable.
- 6.2 The Customer will treat the information referred to in clause 6.1 as confidential and will not disclose this information or any part of it without the explicit prior written consent of NHS. The Customer will procure ("*maakt zich sterk*") that its affiliated companies and the directors, employees, officers and advisors of itself and of its affiliated companies will comply with this obligation.
- 6.3 The following actions will not constitute a breach of the obligation set out in clause 6.2: (i) the disclosure by the Customer in the event of a judicial and/or arbitral procedure initiated by one party against the other, to the extent that disclosure is strictly necessary for the procedure, and (ii) disclosure if and to the extent that it is strictly necessary for the Customer to comply with its legal or regulatory obligations. In the latter case, the Customer will consult with NHS, in so far as reasonably possible, prior to complying with this obligation.

7 LIABILITY

- 7.1 NHS is only liable for the proven damage and/or the loss that is the direct consequence of its proven fault. In no event (including gross negligence) can NHS be held liable for general or specific indirect damages or economic damage or consequential or punitive damages of any kind (including but not limited to lawyers' fees, experts' fees, demurrage, loss of income or profit, loss of contracts, harbour dues and fines and/or similar levies).
- 7.2 NHS is exempt from any liability in the following events: damage and/or loss occurring before or after the performance of the services by NHS, force majeure as set out in clause 3, defects of the goods and/or the packing and/or the containers, flooding, collapse, acts or omissions (including intentional misconduct or gross negligence) of third parties (including third parties upon whom NHS relies for the execution of its obligations) and/or the Customer, failure to communicate or the incorrect communication of data or instructions by the Customer and/or by third parties, shortage of berthing space, labour, fuel or power or insufficient depth of water at any berth or the approaches thereto.
- 7.3 Any liability of NHS (under these Conditions or under or in connection with any agreement pertaining to the provision of services and/or delivery of goods by NHS) is subject to the condition being met that the Customer notifies NHS in writing of the event giving rise to the liability as soon as possible after its discovery, and in any event not later than the following deadlines:
- 7.3.1 with respect to loss of or damage to the vessel and its equipment: before the vessel has left the terminal of NHS and in any event allowing NHS sufficient time to reasonably verify the damage;
- 7.3.2 with respect to loss of or damage to a container or to uncontainerised goods: one month after the container or the uncontainerised goods have left the terminal of NHS;
- 7.3.3 with respect to loss of or damage to containerised goods: the earlier of (i) one week after the Customer is notified of the loss or damage by its own customer and (ii) three months after the containerised goods have left the terminal of NHS;
- 7.3.4 with respect to death or personal injury: immediately after the incident.
- The notice must include at least the legal and factual basis of the claim in reasonable detail and an estimate of the amount of the damage.
- 7.4 Any liability of NHS (under these Conditions or under or in connection with any agreement pertaining to the provision of services and/or delivery of goods by NHS) is subject to the condition being met that the Customer has initiated and served formal legal proceedings (in accordance with clause 9.2 or in accordance with the relevant clauses of the applicable agreement or in accordance with applicable law) within 15 months after the earlier of (i) the delivery of the goods or providing of the services or (ii) occurrence of the event giving rise to the liability (including damage, death or injury), as the case may be.
- 7.5 All costs arising from government decisions will be borne by the Customer. If as a result of (i) the passing of, or any change in, any law or regulation, or (ii) a material change in the interpretation or application of any law or regulation, NHS has to carry out additional tasks that are not part of the tasks contractually agreed, then NHS will carry out such tasks against payment by the Customer of an appropriate compensation, which may be determined in accordance with Clause 4.
- 7.6 The Customer who is entitled to invoke exemptions or limitation of liability clauses towards the person holding an interest in the goods or towards any other third party will provide these to the benefit of NHS.
- 7.7 NHS will not be required to pay any indemnification if the amount which would otherwise be recoverable from NHS (taking into account *inter alia* these Conditions and any agreement, offer or other document to which these Conditions apply) is below 250 €. To the extent that a claim exceeds this amount, NHS will be liable only for the excess.

- 7.8 If any person other than the Customer makes any claim against NHS in respect of loss or damage resulting directly or indirectly from services provided and/or goods delivered by NHS to the Customer pursuant to these Conditions (or any agreement to which these Conditions apply), the Customer will fully indemnify NHS in respect of any liability, loss or damage that NHS may incur even where such liability, loss or damage exceeds the limitations of liability imposed under these Conditions (or any agreement to which these Conditions apply). NHS will not be liable for, and the Customer will indemnify NHS for, any liability, claim, proceeding, loss, delay, detention, cost or expense in connection with or arising out of (i) NHS applying any provision of, or exercising any rights under, these Conditions (or any agreement to which these Conditions apply), or (ii) the Customer breaching any provision of these Conditions (or any agreement to which these Conditions apply).
- 7.9 Nothing in these Conditions will limit the right of NHS to recover any sum from the Customer on account of the Customer's contributory negligence or breach of these Conditions or any agreement to which these Conditions apply.
- 7.10 The Customer will take all reasonable steps to mitigate the effect of NHS's negligence or breach of obligations (if any) and to minimise the charges to be borne by NHS.
- 7.11 The Customer will ensure that any exemptions or defences of NHS against the Customer, and any limitations of or conditions to NHS's liability towards the Customer under these Conditions (or under any agreement to which these Conditions apply) will also be opposable by, and apply to the benefit of, NHS against any third parties contracting with the Customer (and in particular against the Customer's customer).
- 7.12 The agreed provisions with respect to the Terminal Operator's liability (either in these Conditions or, as the case may be, in any agreement to which these Conditions apply) will constitute the Customer's sole remedy in connection with the services and/or goods provided by the Terminal Operator and will apply to any claims by the Customer against the Terminal Operator under contract or at law.
- 7.13 NHS will make an effort to take the necessary measures in order to limit the risk that stowaways or other unwanted persons gain access to the Customer's vessel. If nevertheless stowaways or other unwanted persons are discovered in the Customer's vessel, NHS will not be liable for the resulting damage, expenses or fines (if any).
- 7.14 In the event of damage suffered by the Customer as a result of services and/or goods provided by NHS, NHS's liability for each incident (or each series of incidents arising from a common cause) is limited (including in the event of gross negligence) to the lower of:
- 7.14.1 (in the event of physical damage to goods) 1,050 € per package and 125 € per ton for bulk goods with a maximum liability of 2,500 € regardless of the number of packages and/or tonnes, and (in the event of damage other than physical damage to goods caused by errors or omissions pertaining to the goods and/or containers) 2,500 € per incident; or
- 7.14.2 the amount that the Customer is obliged to pay to its customer/principal (as limited pursuant to any law, contract or otherwise); or
- 7.14.3 the amount that the Customer has effectively paid to its customer/principal (as proven with supporting documents).
- The Customer will provide the Terminal Operator with all information and/or documents required to ascertain the amounts referred to under clauses 7.14.1, 7.14.2 and 7.14.3 above. The Customer confirms that the goods that are the object of NHS's assignment are either the Customer's property or that the Customer, acting as attorney-in-fact of the party holding the interest in the goods, is entitled to contract with respect to the goods, so that the Customer not only accepts these Conditions on behalf of itself but also on behalf of its own customer and/or any other party holding an interest in the goods.
- 7.15 In the event of damage caused to the vessel or vehicle, NHS's liability per incident is limited (including in the event of gross negligence) to the lower of (i) 27,500 €, (ii) the depreciated replacement value of the vessel or vehicle or (iii) the reasonable cost to repair the vessel or vehicle in accordance with the Customer's reasonable specifications.
- 7.16 In the event of convergence of several claims pertaining to damage caused to the vessel or vehicle, damage to or loss of goods or materials made available by the Customer or by third parties, the total liability per incident will not exceed 37,500 € regardless of the number of claimants.
- 7.17 The Customer will bear all freight, port charges, taxes, duties (including but not limited to customs duties, excise duties and VAT), contributions, fines and any other costs relating to the goods and/or containers transported by the Customer, provided that NHS has acted in accordance with the Customer's instructions. The Customer will indemnify NHS and hold NHS harmless from any claims against NHS or its servants or agents arising in respect of such costs.
- 8 MISCELLANEOUS**
- 8.1 If one or more of the provisions of these Conditions and/or of any agreement pertaining to the provision of services and/or delivery of goods by NHS is declared to be invalid, illegal or unenforceable under any applicable law, such invalidity, illegality or unenforceability will not in any way affect the remaining provisions. In this event, the Customer and NHS will use their best efforts to immediately and in good faith negotiate a provision that replaces the invalid, illegal or unenforceable provision and which is legally valid and is consistent with the purpose and intent of the Conditions and/or the agreement.
- 8.2 The Customer may not assign its rights or obligations under these Conditions and/or any agreement to which these Conditions apply (by merger, split-up, contribution of a universality or a branch of activities, transfer of a universality or a branch of activities or any similar corporate restructuring, either under Belgian law or under any other law, or otherwise) without NHS's prior written consent. NHS reserves the right to assign its rights or obligations under these Conditions and/or any agreement to which these Conditions apply to any affiliated company or third party, and to appoint sub-contractors to perform all or any part of its duties.
- 8.3 If:
- 8.3.1 the Customer or any party controlling the Customer is or has been involved in any mergers & acquisitions activity with a third party (i.e. (i) the Customer or any party controlling the Customer merges or enters into an amalgamation with a third party, (ii) the Customer, solely or jointly, directly or indirectly, acquires control over the management and/or operations of a third party, or (iii) control over the management and/or operations of the Customer is acquired by a third party, solely or jointly, directly or indirectly, or (iv) the Customer or any party controlling the Customer enters into any other transaction with a third party of which the purpose and/or the consequence is the combination of two or more formerly independent legal entities and/or groups); or
- 8.3.2 the Customer or any party controlling the Customer is or has been involved in any partnership, consortium, liner conference or strategic alliance with a third party, or any other transaction with a third party of which the purpose and/or the consequence is the pooling of resources and/or the integration of operations
- then:
- 8.3.3 the terms of these Conditions and/or of any agreement to which these Conditions apply will not in any way be invoked or applied to the benefit of such third party without the prior written consent of NHS; and
- 8.3.4 the terms of these Conditions and/or of any agreement to which these Conditions apply, will prevail over any conflicting terms and/or conditions agreed by such third party
- 8.4 The relationship between the parties will in no event be considered a partnership, a joint venture or any other association between the parties, nor will one party be considered the agent or employee of the other.
- 8.5 NHS's rights under these Conditions and/or of agreement to which these Conditions apply are cumulative with its rights under law except as agreed otherwise.
- 8.6 Failure by NHS to insist upon the strict performance by the Customer of any provisions of these Conditions and/or of agreement to which these Conditions apply will not be construed to be a waiver by NHS of any right to insist upon strict performance at all times.

- 8.7 NHS reserves the right to change the Conditions unilaterally at all times in accordance with any changes in its commercial policy and the economic and legal necessities. The new Conditions will enter into force immediately upon being notified to the Customer. Changes will apply to offers already made and agreements already concluded.
- 8.8 The Customer will at all times be responsible to comply with all relevant legal and regulatory obligations, including the obligations related to the movements of the goods resulting from carrying out instructions as given by the Customers.
- 8.9 All offers made by NHS are noncommittal, unless explicitly indicated otherwise. NHS is only bound by an order after such order has been confirmed in writing by NHS.
- 8.10 The Customer represents and warrants that (i) it is a corporation duly incorporated and validly existing under the laws of its country of incorporation and has full power, authority and legal right to carry on its business and to enter into any agreement, offer or other document to which these Conditions are applicable and (ii) any provision of services and/or delivery of goods to which these Conditions are applicable does not and will not conflict with any law, regulation, judgement, order, authorisation, agreement or obligation applicable to it or with any agreement to which it is a party (such as exclusivity commitments).
- 8.11 The Customer acknowledges that in entering into its agreement with NHS, it has not relied on any express or implied representation, warranty or other assurance (except those specifically set out in writing in the agreement) made by or on behalf of NHS before the entering into of the agreement.
- 8.12 Save as otherwise agreed, NHS is entitled to make reference to the Customer in its marketing materials and disclose reasonable details about the nature of NHS's cooperation with the Customer.

9 APPLICABLE LAW - JURISDICTION

- 9.1 These Conditions and any agreement to which these Conditions apply will be governed by and construed in accordance with Belgian law.
- 9.2 Any litigation between the parties will be submitted to the exclusive jurisdiction of the courts of Antwerp, Belgium. As a sole exception to the exclusive jurisdiction of the courts of Antwerp, NHS has the option to elect another court at its discretion.

PROVIDING OF SERVICES

10 GENERAL

- 10.1 Clauses 10 up to 14 apply to the extent that the agreement between NHS and the Customer pertains to the provision of services by NHS to the Customer, including but not limited to all activities that are manual or intellectual in nature pertaining inter alia to loading, unloading, handling, controlling, tallying, delivery of goods and warehousing, including all related and supplemental assignments.

11 EXECUTION

- 11.1 When communicating instructions and at the latest at the time of commencement of the task, the Customer will communicate in writing to NHS: (i) a correct and accurate description of the goods, including type, number, weight, condition and risk category, and (ii) all instructions and all limitations connected with the protection, handling and storage of the goods and the performance of the services in general. NHS may rely on any information or documents pertaining to the goods as provided by the Customer. NHS has no obligation to verify the correctness, authenticity and/or validity of any such documents and/or information. NHS may enter into agreements with the Customer's agent in order to agree on the practical modalities with respect to the release and delivery of cargo from NHS's terminal
- 11.2 The goods will carry all necessary markings indicating their characteristics. The Customer will pack the goods as required for the performance of the services, unless it is customary not to pack the goods.
- 11.3 The means of transport made available will be supplied so that the services to be performed can be started immediately in accordance with the usual way of working. The means of transport made available must comply with the legal provisions for the transport of the goods to be loaded and the drivers must hold all legally required permits.
- 11.4 The installations, warehouses and equipment may be checked as to their suitability by the Customer before being put to use. If the Customer has not made such a check or has not made any objections (such objections having to include the reasons for them), they will be deemed to have been found suitable.
- 11.5 The services provided by NHS will never include the satisfaction of any VAT and/or customs requirements on behalf of the Customer, nor services of inventory management, unless explicitly agreed otherwise.
- 11.6 If the goods and/or containers transported by the Customer are under temporary storage (as defined by applicable customs legislation) on the premises of NHS, the Customer will ensure that such temporary storage has lawfully ended before such goods and/or containers are removed from the premises of NHS. Any liability with respect to or any claim from the authorities or third party as a result of a breach of this obligation is a cost as defined in article 7.17.

12 DANGEROUS GOODS - SAFETY

- 12.1 By the fact of entering any terminal of NHS, the Customer expressly accepts and agrees to - in its own name and on behalf of its employees, agents, suppliers and subcontractors - the regulations, guidelines and notices applicable at the terminal.
- 12.2 The Customer warrants that any goods, equipment, container or vessel which it delivers, directs to or causes to be upon NHS's terminals:
- 12.2.1 are not dangerous (including hazardous, flammable, toxic, verminous, rotten, subject to fungal attack, over-heated, under-heated or liable to give off any emission such as dust, gas, fumes, liquid or radiation) or liable to become dangerous while on NHS's terminals;
- 12.2.2 will not contaminate NHS's terminals or the water or air adjacent thereto or any person any goods, equipment or ship at the terminals or cause danger, injury, pollution or damage thereto;
- 12.2.3 contain no unauthorised controlled drugs, contraband, other illegal matter;
- 12.2.4 are properly and sufficiently packed and labelled in accordance with all applicable laws, regulations and codes of practice.
- NHS reserves the right to refuse to accept any goods, equipment, container or vessel which is not (or which NHS reasonably believes is not) in compliance with the above.
- 12.3 The Customer must notify NHS not less than 48 hours prior to the arrival of any dangerous goods, equipment, container or vessel. The Customer will be fully responsible (including for all expenses and penalties) for the proper and lawful transportation thereof.
- 12.4 The Customer will immediately inform NHS of any emergency (including any injurious emission, danger, injury, pollution, adverse environmental impact or any other event which might affect the safe and efficient operation at NHS's terminal)) and will take, at its own cost, any actions as may be required by NHS to remedy or mitigate the emergency. NHS will also be entitled to take any such actions at the Customer's expense.

13 CONTAINER MASS

- 13.1 The Customer will ensure that NHS is informed satisfactorily of the gross mass of any container that the Customer wants NHS to load onto any vessel, or, if such information is not available from the shipper, the lack thereof. The Customer will ensure that the gross mass has been verified, and that the relevant information provided to NHS, is in full compliance with all appropriate regulations, including in particular the International Convention for the Safety of Life at Sea, as amended, and its implementing provisions (collectively, "SOLAS"). The Customer will provide this information promptly and sufficiently in advance at all times, but in any case no later than the arrival of the container at the terminal of NHS.

- 13.2 Notwithstanding anything else in these Conditions, NHS is entitled in its absolute discretion to rely on and accept:
- 13.2.1 for the loading of any container on a ship, any shipping document received by the Customer and communicated to NHS through Electronic Data Interchange ("EDI") or any other means which provides a *prima facie* indication of the verified gross mass of the container; and
- 13.2.2 for the unloading of any transshipment container from a ship, any shipping document received by the prior carrier and communicated to NHS through EDI or any other means which provides a *prima facie* indication of the verified gross mass of such container,
- as fully complying with the SOLAS requirements regarding verified gross mass and as having been signed by a duly authorised person.
- 13.3 NHS is entitled to:
- 13.3.1 not load onto a ship any container which does not satisfy the SOLAS requirements, including any container (i) in respect of which no declared verified gross mass has been provided in accordance with clause 13.1; or (ii) of which the verified gross mass exceeds the maximum permitted gross mass indicated on the container's Safety Approval Plate under the International Convention for Safe Containers 1972, as amended ("CSC"); and
- 13.3.2 not discharge or allow the discharge from a ship any transshipment container which does not already have a verified gross mass, If a container is not loaded in accordance with clause 13.3.1, NHS may in its sole discretion choose to (i) determine the manner and place of storage of the container; and/or (ii) instruct the Customer to provide for the return of the container to the tendering shipper; and/or (iii) provide for such return itself, at the expense of the Customer. Any additional expenses associated with the container not being loaded (including but not limited to storage, demurrage, handling or the return of the container to the tendering shipper, as the case may be) will never be borne by NHS and the Customer will pay an appropriate compensation to NHS in this respect. Any additional expenses resulting from the Customer not providing the required information timely (in accordance with clause 13.1), including but not limited to the cost of additional shifting, will never be borne by NHS and the Customer will pay an appropriate compensation to NHS in this respect.
- 13.4 If (i) a container has been delivered to NHS in respect of which no declared verified gross mass has been provided in accordance with clause 13.1, or (ii) NHS has reason to believe that such verified gross mass is incorrect, or (iii) the Customer so requests, NHS has the right (but for the avoidance of doubt not the obligation), in its discretion, to determine the verified gross mass itself by weighing the container in accordance with the SOLAS requirements. Also, if NHS carries out stuffing and/or stripping of a container for the Customer, NHS has the right (but for the avoidance of doubt not the obligation), in its discretion to determine the verified gross mass itself, either by (i) weighing the container itself or by (ii) weighing every package which is not individual, original sealed and having the accurate mass clearly and permanently marked on its surface, both in accordance with the SOLAS requirements. If there is any discrepancy between the verified gross mass of the container obtained prior to delivery to the terminal and the verified gross mass determined by NHS itself, the latter will be taken as prevailing and definitive. Further, if the verified gross mass of the container declared by the shipper or determined by NHS itself exceeds the maximum permitted gross mass indicated on the container's Safety Approval Plate under the CSC, NHS may in its discretion strip and restuff the container so that it complies with the SOLAS requirements. The Customer will pay an appropriate compensation to NHS for any such stripping/restuffing of a container and/or determining its verified gross mass (which compensation may be in line with NHS's list prices if any).
- 13.5 If NHS loads a container onto a truck, NHS can never be held liable for additional expenses and/or fines associated with the (excess) weight of the container/truck combination. Any such additional expenses and/or fines will never be borne by NHS and the Customer will pay an appropriate compensation to NHS for any such additional expenses and/or fines incurred by it and/or for determining the weight of the container/truck combination.

14 INDEMNITY

- 14.1 The Customer will indemnify NHS and hold NHS harmless against all claims that could arise from (i) a breach of the obligations set out in Clauses 10 up to 14, even if such breach is attributable to a third party; and (ii) the negligence of the Customer.
- 14.2 The Customer will hold NHS harmless and indemnify NHS against any delay, claims, damages, losses, expenses and costs suffered by NHS as a result of (i) any act, omission, negligence or breach of the terms of these Conditions (or any agreement to which these Conditions apply) by the Customer, its agent, or its or their servants or agents, (ii) submission by the Customer to NHS of incorrect or incomplete information relating to the containers or goods; (iii) the inability to commence or complete operations promptly and efficiently due to delay in the customer vessel's arrival or due to reasons related to customer vessel's operations; (iv) any other damage caused by the Customer or its agent (or its or their servants or agents); and (v) any damage caused by the vessel owned, chartered, managed, operated or otherwise used by or on behalf of the Customer (or an affiliated company of the Customer) and in general any vessel carrying the goods handled by NHS. For the purpose of quantifying such damage, the following will apply:
- 14.2.1 In the event of physical damage (other than total loss) to NHS's equipment or other assets, the Customer will indemnify NHS for the cost of repairing such equipment or asset in accordance with NHS's specifications.
- 14.2.2 In the event of total loss of NHS's equipment or other assets, the Customer will indemnify NHS for the higher of (i) the insured value of the equipment or asset, (ii) the acquisition cost of the equipment or asset (if the equipment or asset is four years old or less at the time of the incident), or (iii) the depreciated book value of the equipment or asset at the time of the incident (if the equipment or asset is more than four years old at the time of the incident). The depreciated book value will be calculated on the basis of the acquisition cost with a straight line depreciation over 25 years as from the date when NHS starts operating the equipment or asset. This clause 14.2.2 is without prejudice to the right of NHS to claim that the actual depreciated book value is higher, e.g. if the actual depreciation period is more than 25 years.
- 14.2.3 In the event of economic damage, the Customer will indemnify NHS for (among others) NHS's estimated loss of profit. NHS can establish such loss of profit on a lump sum basis, using reasonable benchmark estimates for (i) lost volumes, (ii) revenue per unit of volume and (iii) contribution margin per unit of volume.
- NHS can apply the aforementioned lump sum quantifying rules (and any other lump sum quantifying rules set out in these Conditions or in any agreement, offer or any other document to which these Conditions are applicable, and in general any rules governing any liability of the Customer towards NHS) both during the lifetime of the agreement and after its termination. Any such rules are without prejudice to the right of NHS to claim a higher amount if it can prove that its actual damages are higher than the lump sum amount. The aforementioned provisions apply regardless of any legal or contractual provision to the contrary, including article 47 of the Belgian Maritime Law.
- 14.3 The Customer will obtain all required permissions, approvals and consents from the competent authorities that may be required in connection with its operations at the terminal, and will compensate NHS on demand against any fines, penalties, losses, costs and/or expenses incurred by NHS in respect of any non-compliance.

SUPPLY OF GOODS

15 GENERAL

- 15.1 Clauses 15 up to 17 apply to the extent that the agreement between NHS and the Customer pertains to the supply (pursuant to a sale or otherwise) of goods by NHS to the Customer.

16 SUPPLY

- 16.1 Unless agreed otherwise, the goods will be supplied Ex Works (Incoterms 2000).
- 16.2 The terms for delivery are indicative only and are not binding. No delay in the delivery can give rise to the termination of the agreement for the benefit of the Customer, except in the event of deliberate delay. NHS is entitled to make partial deliveries. In the event of non-delivery of the goods, the advance payments made by the Customer (if any) will be reimbursed by NHS without interest or without any other compensation.

16.3 The goods supplied by NHS will remain its property until the Customer will have paid the entire price, including late payment interest, expenses or late payment compensation. Without NHS's prior written consent, the Customer may not transfer the goods to third parties. In the event of non-payment of the entire price on the due date, NHS is entitled to take back the goods, as of law and at the expense of the Customer. In that event, NHS will also be entitled (by sending a registered letter and without any other formality or judicial review) to terminate the agreement as of law, at the expense of the Customer, without prejudice to NHS's right to claim damages.

17 WARRANTY

17.1 NHS's warranty will be limited to the replacement of the goods and, if this would not be possible, reimbursement of the price paid. NHS will not be liable for any visible and/or hidden defects of the supplied goods. If NHS supplies goods provided by a third party, NHS's warranty and liability will not exceed the warranty provided for by such third party.