

## WALLENIUS WILHELMSSEN LOGISTICS ZEEBRUGGE

### TERMINALS

#### GENERAL TERMS & CONDITIONS

#### 1 GENERAL CLAUSES

##### 1.1 Definitions and Interpretation

In these terms and conditions (the "Conditions") the following words and phrases shall have the meaning or meanings set out below:

1.1.1 "WWLZ" means: Wallenius Wilhelmsen Logistics Zeebrugge NV/SA, a limited liability company under Belgian law, registered with the Belgian Crossroads Bank for Enterprises under the number 0477.709.261, which is part of the Wallenius Wilhelmsen Logistics AS Group of Companies ("WWL").

1.1.2 "WWL Company" means: each company or legal entity that is affiliated (verbonden/liée) with WWLZ within the meaning of article 1:20 of the Belgian Code of Companies and Associations, as well as any (other) company or legal entity that is a member of WWL, including WWLZ itself. Each WWL Company is a third party beneficiary of the Conditions within the meaning of article 1121 of the Belgian Civil Code.

1.1.3 "Services" means: (i) all services of unloading, loading, storage and handling of Goods, and (ii) any (other) services provided or to be provided by WWLZ or any other WWL Company (including services through intermediaries, subcontractors, agents, assignees etc...).

1.1.4 "Customer" means: (i) the customer, principal, commissioner or other person who orders or commissions WWLZ to perform the Services, as well as (ii) the owner, forwarder, shipper, consignee, and their agents, of Goods in respect of which activities or Services are carried out or provided by WWLZ.

1.1.5 "Goods" includes all cargo, cars, vans, tractors, rolling equipment, high and heavy cargo (H&H), non-containerised cargo (NCC) and general cargo.

1.1.6 "Terminal" includes all docks, quays, wharfs, warehouses, hard-standings, land and buildings forming part of or used in connection with the WWL-Group Terminals, and used by WWLZ.

1.1.7 "Technical Services" includes all the buildings and adjacent parking's in which technical services such as but not limited to inspection, washing, repair, modification, accessory installation to vehicles are performed.

The headings set out in these Conditions are provided for convenience only, and they shall not limit, control or affect the meaning of the provisions to which they refer.

##### 1.2 Scope of Contract

1.2.1 These Conditions apply to the agreements and other contractual relations between WWLZ and the Customer,

unless explicitly agreed otherwise in writing.

1.2.2 The Conditions do not apply to freight forwarding services or to services of a general agency nature carried out by WWL or WWL Company, such services being carried out under separate terms and conditions applicable only to those services.

If (a part of ) the Services of the WWL are, nevertheless qualified, as freight forwarding services, then these Services will be governed in any case by the latest edition in force of the Belgian Freight Forwarders Standard Trading Conditions, which the Customer declares to know and accept these terms and conditions.

1.2.3 The Conditions prevail over the terms and conditions of the Customer. Deviations from these Conditions that are not accepted explicitly and in writing by WWLZ, shall not apply and shall not be enforceable against WWLZ. If WWLZ at any time decides not to invoke these Conditions or any part thereof, this departure will not constitute a precedent and will not apply to any other matter past or present other than the one for which these conditions were departed from.

1.2.4 WWLZ reserves the right to change these Conditions at its own convenience. The new Conditions take immediate

effect as from the notification to the Customer.

## **2 INVOICE AND PAYMENT TERMS - PAYMENT OF CHARGES**

2.1 All charges, expenses or other sums which fall due to be paid by the Customer to WWLZ shall be paid (unless otherwise agreed to in writing) within 15 days of invoice date.

2.2 Payment shall be made in Euro as stipulated on the invoice. All bank charges associated with the making of such payment shall be for the account of the Customer.

2.3 If no written protest from debtor is received within 7 days after invoice date, debtor uncontestedly accepts the invoice. The written protest is only valid if the creditor has confirmed receipt in writing. It is clearly understood that confirmation or receipt is not equal to accepting the protest.

2.4 In case of non-payment, but only after due notice of neglect in writing (mail or e-mail ) has been sent, an interest charge equal to 1.5% per month will automatically be charged.

2.5 The Customer shall be liable for any duty, tax, impost or outlay of whatsoever nature levied by any authority for or in connection with the Goods and for any payment, fine, expense, loss or damage incurred or sustained by WWLZ in connection therewith.

## **3 UNCOLLECTED GOODS**

3.1 Without prejudice to the right of WWLZ to levy storage charges, the Customer will ensure that the Goods are not sojourning longer than necessary on the terminal before collection

or after delivery. If the Goods have remained at the Terminals for an unreasonable period, then WWLZ shall be entitled to give notice to the Customer requiring the removal of the Goods by the date stated in the notice ("The Removal Date").

3.2 If the Goods remain uncollected after The Removal Date, WWLZ may at their discretion, and without any responsibility or liability attaching to them, sell or otherwise dispose of the Goods at the sole risk and expense of the Customer. The income of the sale shall be used to pay all charges due to WWLZ. The balance, if any, will be held for the benefit of the Customer.

3.3 If the Goods remain uncollected after the Removal Date then the WWLZ shall be entitled to continue levy storage charges, and it may at its discretion, and without any responsibility or liability attaching to the WWLZ, sell or otherwise dispose of the Goods at the sole risk and expense of the Customer. The proceeds of any such sale shall be used: (a) to defray the expense of the sale including any commissions WWLZ is required to pay; (b) to pay any unpaid storage charges; (c) to pay any other overdue charges or freight incurred in connection with the Goods sold or any other Goods owned by the Customer and stored or carried by WWLZ.

3.4 The Customer will also be liable for the collection and handling of damaged Goods. He will pay all costs caused by the collection and handling of the Goods damaged by fire and or floods as well as all costs whatsoever resulting from this. This could be the costs of cleaning and sanitation of the land and of the facilities.

## **4 RIGHT OF PLEDGE**

4.1 The Customer pledges in favour of WWLZ as well as in favour of any other WWL Company, all Goods (as defined above) and other goods in respect to which Services have been, are or shall be supplied by WWLZ or any other WWL Company or to which aforesaid Services relate, as well as all (other) goods entrusted to WWLZ or any other WWL Company (the "Pledged Goods") as a security for the payment of any amounts that are due or shall in the future become due by the Customer or a third party with respect to the Pledged Goods or any Service relating to Pledged Goods to WWLZ or any other WWL Company (the "Secured Receivables"). The Secured Receivables shall however only be secured by this pledge for a maximum amount of two hundred fifty thousand euros (EUR 250.000,00). Any and all costs and expenses resulting from or relating to the pledge or the registration thereof shall be borne by the Customer and be reimbursed by the Customer at the first request of the beneficiary of the pledge. The pledge agreement resulting from these Conditions can only be terminated by giving written notice to WWLZ and every other beneficiary of the pledge with due observance of a notice period of at least six months.

4.2 If Pledged Goods would be sold, each WWL Company shall have a right of pledge on the claim for payment of the purchase price, it being understood that each WWL Company may refuse to release the Pledged Goods in accordance with article 5 regarding the right of retention until all monies owed to WWLZ

and any other company of WWL have been paid in full.

## **5 RIGHT OF RETENTION**

5.1 In addition and without prejudice to the rights laid down in clause 4, WWLZ and each other WWL Company may exercise on all Goods in its possession and other goods in respect to which Services are supplied or to which Services relate a right of retention for all moneys payable and due by the Customer to WWLZ or any other WWL Company (irrespective whether such moneys owed relate to the Goods on which such right of retention is exercised or not).

5.2 Furthermore, in case of overdue debt of the Customer towards any WWL Company as well as in the event of a reasonably justified concern that the Customer may not fulfil in due time all or part of its obligations towards any WWL Company, WWLZ and any other WWL Company may suspend its contractual obligations towards the Customer and invoke the "exceptio non adimpleti contractus" (or "exceptio timoris") without prejudice and in addition to its right of retention.

5.3 All companies/legal entities being a member of the WWL Group of Companies will on basis of reciprocity be entitled to make use and invoke the payment securities and liens stipulated in the conditions of other companies in the group, and will be entitled to enforce securities and liens upon Goods held within the group. Each company of the group that has been entrusted with Goods by the Customer, shall thus qualify and act as a third party pledge-holder of the Goods to the benefit of each

and any of the other companies of the group. The Customer agrees that the pledge shall guarantee all moneys owed to all companies of the Group.

## **6 OBLIGATIONS OF THE CUSTOMER**

6.1 Presence on the WWLZ Terminal, or loading and/or stowing and/or discharging manoeuvres performed by drivers, will be at their own risk, and they will be responsible for any loss or damage caused to WWLZ's property, or to other cargo, or units, or vessels, or themselves, their vehicles and Goods.

### **6.2 Condition of Goods**

The Customer warrants that any Goods which he delivers to or collects from the WWLZ premises:

6.2.1 Will not contaminate or cause danger, injury, pollution or damage to any person or any other Goods or WWLZ's premises or the water and air adjacent thereto;

6.2.2 Are properly and sufficiently marked, documented and labelled for all shipping, cargo handling, dispatch, customs and like purposes, in accordance with all of the relevant regulations applicable nationally and internationally (such as but not limited to IMCO, CMR, CIM, ISPS).

6.2.3 The Customer shall indemnify WWLZ for all the consequences, liabilities, costs and expenses including the cost of cleaning, removal or disposal and fines or penalties of whatsoever nature and howsoever arising from the failure to properly label the Goods.

### **6.3 Duty of the Customer to Assist Operations**

6.3.1 No responsibility shall attach to WWLZ for any accident howsoever arising out of or caused by or contributed to by any defect in the structure or equipment hereby supplied and the Customer shall indemnify WWLZ against any claims in relation to any such accidents.

6.3.2 No responsibility shall attach to WWLZ for any accident or damage howsoever arising out of or caused by the assistance provided by WWLZ to the representative of the Customer delivering or collecting the Goods.

6.3.3 The Customer ensure that the third parties which it would use, such as road carriers, are fully informed and receive all required documentation to execute their services timely and in accordance with the law, including any information requirement which could be imposed on WWS in any capacity under any law. If such an obligation were to be incumbent on WWLZ, the Customer warrants that it shall have instructed or informed this third party or facilitated its services, in the same way WWLZ would be obliged to do so under any law. The Customer agrees and accepts that WWLZ shall therefore have no obligation to instruct, or to inform these third parties or to facilitate its services required under any law.

6.3.4 In any event the Customer shall cause the instructed carrier to load, stow, secure and/or unload the Goods in accordance with the good practice and the Laws, (European) guidelines (including the European Best Practice Guidelines on Cargo Securing for Road Transport) and recommendations and if the occasion would

arise, in conformity with the additional instructions given by WWLZ. If the (un)loading, securing and/or stowage of the cargo were to be performed by or on the instructions of WWLZ, then these activities shall be deemed to be performed under the control, the responsibility and liability of the carrier.

6.3.5 The Customer shall properly package the Goods as required for the execution for the transport journey and taking into account the type of product and the mode of transport. Upon the Customers' written request, WWLZ will pack the Goods on the Customers behalf and taking into account the packaging requirements instructed by the Customer. In any case, WWLZ shall be exempted from any liability if the loss or damage is caused by the absence inadequacy, or faultiness of the packages for Goods.

## **7 PRINCIPLES OF LIABILITY**

7.1 WWLZ has insured its liability in conformity with these Conditions and will be liable for all damage and or losses caused by WWLZ's negligence or wilful neglect during handling and sojourn on Terminal or in the Technical Services. The burden of proof lies with the Customer. It is recommended that the Customer insures The Goods.

7.2 WWLZ shall perform its duties with a reasonable degree of care, diligence, skill and judgement during the sojourn on Terminal. At all times, the standard of duty of WWLZ is to use reasonable endeavours and not to guarantee a specific result.

7.3 Both parties agree that the marine survey shall prevail to

the technical services survey in order to determine the conditions of the cargo upon arrival.

Additional damages shall only be attributed to WWLZ in case of negligence by WWLZ terminal can proved by claimant.

7.4 WWLZ's liability is limited to direct damages and losses only.

## **8 FORCE MAJEURE**

8.1 Notwithstanding any other provision hereof, either Party shall be excused from delays in performance of, or failure to perform any of its obligations under these Conditions due to and for the duration of any event beyond its control and without its fault including, without limitation, flood, earthquake, storm, other act of God, fire, explosion, war, insurrection, civil disorders, embargo, act of government or governmental agency, electronic viruses, interruption in transportation facilities or other similar cause beyond the reasonable control of such Party ("Force Majeure"); provided, however, that the Party so excused shall timely advise the other Party of the circumstances of such event, and shall consult therewith about suitable interim arrangements, which may include mutually acceptable amendments to these Conditions, and provided that the Party so excused shall recommence performance with the utmost dispatch. The obligations of the Parties hereto shall be suspended for the duration of the Force Majeure. Suspension shall not result in an extension of the term of these Conditions. Whenever such cause for failure or delay shall last for more than (60) consecutive days, the other party may, after the expiration of

such period and if such failure or delay still exists, give notice in writing as provided herein to the Party so excused either accepting continued suspension of the Party's performance for a period reasonable under the circumstances of terminating these Conditions without further obligations to the other Party.

8.2 WWLZ shall not be responsible for damages due to acts of God, such as earthquakes or other severe weather conditions, including hail, hurricanes or floods, or due to war, terrorism, riot or insurrection, or due to explosion (unless caused by Company, its employees and/or agents), or due to airborne contamination (including pollution from ships), industrial fallout or radioactive contamination of any kind, or due to acts of government, provided that reasonable precautions have been taken by Company. Neither party shall be liable for delay in performance due to infectious diseases, communicable diseases and/or viruses.

## **9 MONETARY LIMITATION OF LIABILITY**

9.1 If WWLZ is liable to pay compensation for damage to or loss of the Goods, the value of the Goods shall be calculated according to the market value or the current value of such Goods of the same kind and condition at the time when the damage or loss occurred (unless another measure of indemnity was stipulated in particular clauses), with a maximum limitation in accordance with 9.2

9.2 Compensation for damage to or loss of the Goods is limited to 2 Special Drawing Rights as defined by the International

Monetary Fund (SDR) per kilo of the part of the Goods lost, or partially lost or damaged. In any event, the liability of WWLZ is, unless otherwise expressly agreed, limited so that no compensation shall be paid for loss or damage exceeding 50.000 SDR per incident (damage or loss occurring on one and the same occasion).

9.3 WWLZ shall not be liable for loss of or damage to the Customer's property (other than Goods) howsoever arising (whether caused by negligence or otherwise).

**9.4 WWLZ SHALL NOT HAVE ANY LIABILITY FOR ANY LOSS OF PROFIT, LOSS OF SALE, LOSS OF BUSINESS, LOSS OF GOODWILL OR REPUTATION, OR FOR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL LOSS.**

9.5 By delivering the Goods to the Customer pursuant to these Conditions, the Customer shall be deemed to confer severally upon the WWLZ, the employees and agents of WWLZ, and upon its or their independent contractors, and upon all other persons who may be required to render services in relation to the Goods in connection herewith, the benefit of all the warranties, representations, limitations and exclusions of or exemptions from liability, indemnities, defences and rights herein provided for the benefit of WWLZ.

The Customer shall defend, indemnify, and hold harmless WWLZ from and against any claim, cost, or demand whatsoever and by whomsoever made in connection with the Services and /or the Goods to the extent that such claim, cost, or demand is in excess of the liability of WWLZ under these

Conditions. Without prejudice to the generality of this Clause, this indemnify shall cover any claim, costs, or demands in connection with the Services and/or the Goods whether arising from or in connection with the negligence of WWLZ, its servants, subcontractors, or agents or otherwise.

**10 EXCLUSIONS FROM LIABILITY**

10.1 Except as otherwise provided by these Conditions, WWLZ shall not be liable for any delay or non-performance of its obligations, or any loss or damage whatsoever arising from:

- (a) the act or omission of the Customer or any person (other than the WWL Company) acting on its behalf, including, but not limited to the provision of incorrect Information;
- (b) compliance with any Instructions given to the Company;
- (c) insufficient packing or labelling of the Goods, except where such packing or labelling has been performed by the Company;
- (d) handling, loading, stowage or unloading of the Goods by the Customer or any person on its behalf (other than the WWLZ);
- (e) inherent vice of the Goods;
- (f) riots, civil commotion, strikes, lockouts, stoppage, or restraint of labour from whatsoever cause;
- (g) act of war, terrorism or piracy;
- (h) any governmental or administrative regulatory acts;
- (i) fire, flood, hail, storm, industrial fall-out, bird droppings;
- (j) infectious diseases, communicable diseases and/or viruses;
- (k) the breakdown of, accident to, failure or interruption of or reduction in the main

electrical, power, water, or communication system supply to the Company and/or subcontractor; or

- (l) any cause, which the Company could not avoid, and the consequences whereof it could not prevent by the exercise of reasonable diligence

**11 TIME BAR FOR NOTIFYING CLAIMS AND FILING SUIT**

11.1 Without prejudice to any exclusion of liability in these Conditions, all visible damages shall be notified by the Customer to WWLZ at the latest the moment of departure from the terminal.

11.2 Any action, albeit contractual or in tort, against WWLZ is time-barred one (1) year after the event giving rise to the claim or whenever damage is noted on CMR, one (1) year from the actual date of departure from the terminal, unless suit is brought for the competent court in the meaning of art. 12 of this contract and provided that suit is served upon WWLZ within that same period of time or a formal claim is received by WWLZ within that period of time. 11.3 Time bar extension can be granted at the own convenience of WWLZ after receipt of a time bar extension request at the latest three (3) weeks before the claim would have been time-barred.

**12 MISCELLANEOUS PROVISIONS**

12.1 If any term or provision of the Conditions is invalid or unenforceable or (otherwise) contrary to any applicable provision of compulsory law or law pertaining to public order, in whole or in part, the affected term or

provision shall only be invalid and unenforceable to the extent that this term or provision is in conflict with compulsory law or public order (and fully retain its validity and enforceability to the extent that the provision is not in conflict with compulsory law or public order) and shall furthermore not affect the validity and enforceability of the other terms and provisions of the Conditions and the Conditions as such. Further, any term or provision of the Conditions that would be invalid

or unenforceable shall be substituted ipso iure, to the extent that the affected provision is invalid or unenforceable, by a valid and enforceable provision that comes as close as legally possible to the intent of the original provision.

12.2 The non-applicability of one or several provisions of these conditions shall not affect the applicability of the other provisions.

### **13 APPLICABLE LAW AND JURISDICTION**

13.1 Any legal or factual relationship between WWLZ and the Customer, both in contract or in tort, shall be governed by and interpreted in accordance with Belgian law.

13.2 All disputes will be subject to the exclusive jurisdiction of the courts of the place where WWLZ has its registered office.