

**GENERAL TERMS AND CONDITIONS**

Version 2.0

Of: Q3 Heavy Lift B.V.  
Zeemanstraat 59  
2991 XR Barendrecht  
The Netherlands

Filed at the Registry of the District Court of Rotterdam

**1. General**

1. In these general terms and conditions, the following terms are defined as stated below:
  - a. "End-user": the client of the Client as well as every underlying client or series of clients;  
"General Terms and Conditions": this complete set of conditions, comprising the General Terms and Conditions as well as any Special Conditions.
  - b. "Contract Price": the price for providing the Services, as agreed in the Agreement.
  - c. "Services": one or more of the following:
    - 1) Receiving (unloading) goods, provided this is done by the Contractor;
    - 2) Storing goods;
    - 3) Processing or handling goods, or having goods processed or handled, which includes painting, lubricating, polishing, packaging and suchlike;
    - 4) Attaching goods to stored goods;
    - 5) Loading goods or having goods loaded;
    - 6) Moving goods or having goods moved within the grounds of the Contractor;
    - 7) Transporting goods or having goods transported;
    - 8) Sea-proof securing (lashing) of goods or having goods secured for sea-proof transport on or in a means of transport;
    - 9) All practical work carried out on or for the goods of the Client;
    - 10) All acts performed or to be performed by the Contractor on the implicit or explicit instruction of the Client;
    - 11) Engineering required for transport (horizontal and vertical) and storage of goods;
  - d. "Documentation": the drawings, (technical) specifications, designs, calculations, models, prototypes and other documents/information, which are or shall be made available by any party with regard to and/or in connection with the Project.
  - e. "Cargo":
    1. the load(s), the object or objects to be transported and/or hoisted and/or moved and/or stored and/or transshipped and/or salvaged, in whichever way;
    2. the goods in the possession of the Contractor by virtue of the agreement as defined under m.
  - f. "Location": the place where the Services are (shall be) provided.

- i. "Client":
  - the party who has entered into an agreement as defined under m;
  - the party who purchases services as defined under c from the Contractor, or who intends to do so;
  - the party who has acquired the rights of the aforesaid;
  - any other party acting or conducting as claimant to the Cargo;
  - intermediaries acting as such.
- j. "Client Group": Client, End-user, companies affiliated to the Client and/or End-user and their (sub) contractors, customers, directors and staff members;
- k. "Contractor": Q3 Heavy Lift B.V.
- l. "Contractor Group": the group of companies (including the Contractor), situated both within and outside the Netherlands, directly or indirectly affiliated to the Contractor;
- m. "Agreement": the agreement concluded verbally, in writing or tacitly, for the performance of services as defined under c. If and insofar as the agreement has been concluded in writing, all appendices and/or adjustments and/or additions to it form an integral part thereof.
- n. "Party": Contractor or Client;
- o. "Parties": Contractor and Client together;
- p. "Personnel": the employees, subordinates and auxiliary persons deployed by the Contractor for the provision of Services;
- q. "Project": the full extent of the Services with regard to which the Client and Contractor have entered into the Agreement;
- r. "Change Orders": an instruction of the Client to the Contractor for adjustments and/or additions to and/or extensions of the Services, the Project and/or the duration thereof.

## **2. Applicability/scope of these conditions**

1. By the sole act of handing over the Cargo for safekeeping, the Client undertakes to comply with these General Terms and Conditions.
2. Furthermore, these General Terms and Conditions form a part of every agreement between the Contractor and the Client, all further agreements ensuing from or in relation to this, and all quotations, offers, declarations of intent, instructions, confirmations of order and other documents and acts prepared or performed and/or prior to and/or in connection with an agreement.
3. These General Terms and Conditions also apply if the Contractor, or a company within the Contractor Group, is approached by the Client or a company within the Client Group.
4. None of the general terms and conditions, of whichever nature and by whichever name, used by the Client or the Client Group and/or which the Client or the Client Group refers to, shall be applicable and

any such general terms and conditions are herewith expressly rejected by the Contractor. Such general terms and conditions only apply if and insofar as their full or partial applicability has been expressly stipulated in the Agreement, in combination with an explicit written notification that the conditions, or parts thereof, take priority over these General Terms and Conditions.

5. In the event of a conflict between the General Terms and Conditions and the contents of the Agreement, the provisions of the Agreement prevail.
6. The most recent version of the General Terms and Conditions, as filed at the Registry of the District Court of Rotterdam, applies. The Contractor shall send the Client a copy of the most recent version, free of charge, subject to a request of the Client.

### **3. Offers**

1. The most recent version of the General Terms and Conditions, as filed at the Registry of the District Court of Rotterdam, applies. The Contractor shall send the Client a copy of the most recent version, free of charge, subject to a request of the Client.
2. All offers of Contractor shall not bind him, unless the offer specifically indicates a period of validity of the offer.
3. An offer accepted by a Client can nevertheless be rejected by Contractor during two days after acceptance by the Client, which means no agreement has come into being.
4. The prices given in offers and tenders are in Euros, unless specifically indicated otherwise. They are exclusive of VAT And exclusive of all taxes, costs, fines and/or incremental penalty payments imposed by the government and/or other authorities, unless Contractor has indicated otherwise. If the provision of the services is subject to a Withholding tax or similar tax that cannot be set off in the Netherlands, the agreed price is understood to be a net price. In such a case, Client will have to pay a price that is raised to such an extent, that for Contractor the effects of the said tax are compensated, unless CONTRACTOR has indicated otherwise.
5. If the acceptance deviates from Contractor's offer, Contractor shall not be bound by it unless Contractor explicitly indicates otherwise in writing. If Contractor agrees with the deviating acceptance, Contractor is entitled to change the price agreed upon with reasonableness and fairness.
6. In case of tacit renewal of an agreement regarding the provision of services, Contractor reserves itself the right to adapt the prices unilaterally.
- 7.. A compound quotation shall not oblige Contractor to execute part of the assignment against the corresponding part of the given quotation.
8. Offers, tenders or any offered price(s) shall not apply automatically to future assignments.
9. If the Agreement has not been entered into in writing, the Contract Price shall be subject to the rates indicated in the most recent offer sent by the Contractor to the Client. If no rates have been given for (certain) Services, the Contractor shall charge his usual rates or the commonly accepted market rates.

### **4. Contract price**

1. The Contract Price shall be based on execution during normal working hours per day and/or week, under normal (working) conditions applicable in the country where the Services are provided and/or where the Personnel performs its duties, unless expressly stated otherwise in the Agreement.
2. The Contract Price solely comprises the consideration for the Services specifically stated in the Agreement.
3. The Contract Price is exclusive of VAT and exclusive of all taxes, costs, fines and/or incremental penalty payments imposed by the government and/or other authorities with regard to and/or in connection with the Agreement (with the exception of corporate tax of the Contractor and/or other tax on income).

4. If the cost price of one or more elements of the Contract Price, beyond the control of the Contractor, is considerably increased in price after the date of formation of the Agreement, the Contractor shall be entitled to increase the Contract Price accordingly. In order for the increase of the cost price to be deemed considerable, the increase must be at least 5% (five percent).
5. The provisions of this article are also applicable to (additional) costs for adjustments, additions and/or extensions, regardless of the fact whether they have been included in the Change Orders or not.

#### **5. Change Order**

1. The Client is entitled to submit written Change Orders to the Contractor.
2. The Contractor shall be obliged to carry out Change Orders, unless the work of the Change Order does not fall within the scope of the normal business operations of the Contractor and/or if other projects of the Contractor, his subcontractor or the Contractor Group could suffer delays because of it and/or as stipulated in article 5.4.
3. The contractor shall charge the Client additionally for the costs of all changes and/or additions to and/or extensions of the Agreement as a result of a Change Order. Unless in the event of changes as stipulated in article 5.4 the costs shall be calculated in accordance with the applicable unit prices. In the absence of such unit prices or if the specific unit prices do not apply to the Change Order, the consideration shall be set in accordance with the principles of fairness and reasonableness.
4. Change Orders and/or changes that reduce the scope of the total number of Services are permitted, unless these removed Services are provided by the Client himself, or third parties, in whichever stage. The removed Services must be considered as a (partial) termination of the Agreement which must be settled as stipulated in article 26.3.
5. In the case the English translation differs from the Dutch text, the latter will prevail. In case of dispute, only the Dutch text will be legally binding.

#### **6. Payment**

1. The Client must pay within the payment term stated in the Agreement or, if no payment term is stated in the Agreement, within 30 (thirty) days of the invoice date.
2. Payment must be effectuated by transfer into the bank account of the Contractor without any discount, set-off or deduction of any kind, unless otherwise agreed between the Parties.
3. Payments of the Client to the Contractor shall never depend on the receipt of payments by the Client from third parties, including the End-user.
4. If the Client has failed to pay before the due date, the Client shall be in default without any notice of default being required and the Client shall pay the Contractor default interest to the extent of 2% (one and a half percent) per month on the amounts owed, as from the relevant due date.
5. The Contractor shall at all times be entitled to demand from the Client an advance, interim payment or proper security, this at the discretion of the Contractor, with regard to all current or future claims of the Contractor against the Client. If the Client does not immediately comply with such a request, the Contractor shall be entitled to refuse, suspend, interrupt or terminate the Services, without further demand, notice of default or judicial intervention. The same applies as stipulated in articles 24 and 26, if the Client fails in the fulfilment of any other obligation towards the Contractor. The Contractor shall never be responsible for any damage arising from this, by whatever name.
6. In the event of failure to pay by the Client, all costs and expenses (including all costs for legal assistance, both in and out of court) incurred by the Contractor with regard to the collection of the amount owed, shall be at the expense of the Client, subject to a minimum of EUR 500 (five hundred Euros).

7. The Contractor is entitled to keep possession of Cargo handed over for safekeeping by the Client as a security for settlement of all claims the Contractor has against the Client (by virtue of the Agreement), until the Client has paid the claim or has provided security. The Contractor may also exercise this right with regard to anything still owed to him by the Client in connection with previous legal relationships or instructions.
8. All claims of the Contractor become immediately due and payable if and once applying for a moratorium on payments or filing for bankruptcy of the Client, the Client partially or fully discontinuing his operations or transferring these to third parties, or if he partially or fully loses the control of his assets as a result of attachment or similar measures. In those instances, the Contractor is also entitled to terminate the legal relationship with the Client with immediate effect, without prejudice to the right of the Contractor to compensation.

#### **7. Entry of the Cargo**

1. The Client shall ensure that the Cargo is supplied by him, or on his behalf, to the Location, free of costs.
2. If so requested, the Contractor shall issue the Client with a receipt upon entry of the Cargo at the Location. Except for other convincing documentary evidence, this receipt shall serve as evidence that the Cargo described on it has been received by the Contractor for storage and/or handling, at the expense of the Client.
3. If it has been agreed that the Cargo shall be received by the Contractor in a place other than stated in the first paragraph and is subsequently transported to the Location, the Client shall be charged the customary rates/prices for this.
4. If the Cargo, before it can be received by the Contractor, by government regulations must be provided with accompanying documents, safety instructions and/or any other relevant documents or is subject to any other regulations (e.g. method of packaging/coding/labelling), the Client must arrange for this himself. The Contractor can never be held liable for the damage suffered by the Client as a result of the Client failing to comply within any (government) regulations. The Client indemnifies the Contractor against all (financial) consequences as a result of failing to fulfil the obligations referred to in this article.

#### **8. Inspection of the Location prior to the Cargo arriving**

1. The Client has the right to inspect the suitability and condition of the Location prior to supplying the Cargo, subject to an appointment to that end with the Contractor. The Client shall comply with the safety procedures of the Contractor.
2. If the Client does not carry out such an inspection or has not expressed any written comments in respect of the suitability or condition of the Location, the Contractor shall have fulfilled the obligation of making available a space or place suitable for storage of the relevant Cargo or the provision of Services to it. The Contractor cannot be held liable for damage and/or losses in that respect.

#### **9. Documentation and Information**

1. When entering into the Agreement, the Client must provide the Contractor with a proper and sufficiently detailed written description of the Cargo (or arrange for this to be provided), stating the different types, qualities, weights, values and quantities, as well as all other particulars and/or specific properties, which information can be of importance to the Contractor for the proper execution of the Agreement.
2. All Documentation is and remains the property of the Party who issued it and all intellectual property rights to it are vested in and shall continue to be vested in the Party who issues it to the other Party.

3. The Client and the Contractor have a mutual responsibility and liability towards each other for the accuracy, correctness and completeness of the Documentation and information that has been made available by or on behalf of that respective Party. Either Party must be able to rely on the accuracy, correctness and completeness of the Documentation and information that has been made available by or on behalf of the other Party. The Client and the Contractor indemnify each other against all consequences arising from the inaccuracy, incorrectness and incompleteness of the Documentation and information made available by or on behalf of that respective Party.
4. The Contractor shall be obliged to check the Documentation supplied by or on behalf of the Client for errors, commissions and/or obscurities, subject to this having been expressly stipulated in the Agreement and insofar as this falls within the normal business operations and expertise of the Contractor. However, the Client shall at all times be and remain fully responsible and liable for the consequences as a result of errors, omissions and/or obscurities in this Documentation.
5. The Client guarantees the clear and readable labelling of the Cargo is in accordance with the applicable (safety and environmental) legislation and, in the absence thereof, in accordance with the standards applicable to it according to common opinion.
6. If the Contractor receives Cargo with regard to which not all particulars in terms of type, quality, nature or properties have been disclosed to or by the Client, the Contractor shall not be aware of these particulars by the mere act of taking delivery of the Cargo. The same applies if the Client, when supplying the Cargo, fails to provide the Contractor with the information that is reasonably required to enable the correct storage thereof.

#### **10. Execution**

1. The Contractor shall at all times be permitted to have the Services partly or fully carried out by third parties.
2. If the aforesaid third parties are approached in respect of the activities for which they were deployed by the Contractor, it has been stipulated on their behalf that they can invoke all stipulations included in the General Terms and Conditions in question with regard to exclusion or limitation of liability, applicable law and jurisdiction.
3. Unless expressly agreed otherwise in the Agreement, all times, time schedules and/or periods with regard to the provision of Services by the Contractor as stipulated in the agreement, a Change Order or otherwise agreed between the Parties, are for indicative purposes only and do not bind the Contractor.
4. If a time or period has nonetheless been expressly agreed as binding in the Agreement, then:
  - a) such a time or period shall only commence once the Client has fulfilled all of his own obligations, including payment of all amounts owed, further subject to all other requirements and conditions having been met; and
  - b) such a time or period shall be suspended during every period in which the Client fails to fulfil his obligation and during every period in which any requirement or condition is not met.
5. In no case shall the Contractor be obliged to carry out orders, instructions and/or directions of whomever, if in the exclusive and reasonable opinion of the Contractor this is deemed unsafe and/or potentially hazardous to life or property.
6. Unless expressly stipulated otherwise in the Agreement, the working hours of the Contractor are Mondays to Fridays, from 8am to 5pm, with the exception of public holidays.
7. The Client shall guarantee the structural integrity of the Cargo, including the suitability of the Cargo for the applied method during the work. Unless explicitly agreed otherwise, the Contractor shall not be responsible for the structural integrity of the Cargo, including the suitability of the Cargo for the applied method of transport, loading/unloading, storage and suchlike.

8. The Client must make available ships and other means of transport and the Cargo to be loaded and/or unloaded on or in it, at his own expense and risk, in a way that the Contractor can provide the Services safely, responsibly and without delay.
9. In the event of refusal, suspension, interruption or termination of the Services, the Client, on demand of the Contractor, must remove from the Location the ships and other means of transport, as well as any goods in relation to that, failing which the Contractor shall be entitled to take the appropriate measures at the expense and risk of the Client.
10. The Client guarantees that any person accessing the Location within the framework of the Services for or on behalf of the Client shall strictly observe the safety procedures and other regulations applicable at the Location. The Contractor is entitled to refuse any person not complying with these rules or any person who is likely to be non-compliant or any other person who, in the opinion of the Contractor, is not desired, access to the Location or to have these persons removed from it. The Contractor shall never be liable for damage or injury of persons who are at the Location without prior notification to and approval from the Contractor or who fail to strictly observe the applicable safety procedures and other regulations.

#### **11. Cargo of a deviating nature and/or weight**

1. The Contractor shall not be obliged to take delivery of a Cargo whose nature, type, quality, weight, quantity, packaging and/or value deviates from the original description or which fails to meet the requirements that can be attached to it. The assessment shall always be made by the Contractor in accordance with the principles of reasonableness and fairness.
2. If the Contractor nevertheless agrees to store or handle the Cargo, all necessary additional work for the preparation or adjustment of the spaces made available to that end shall be carried out under the supervision of the Client, all this at the expense and risk of the Client. The same applies to any additional, heavier or alternative equipment deployed. The Client shall be notified thereof within the shortest possible term.

#### **12. Method of storage or handling of the Cargo**

1. If no written instructions have been issued by the Client to the Contractor when supplying the Cargo, the Contractor shall store and/or handle this Cargo according to personal insight and in a way that is commonly accepted within the industry, without accepting any liability for the correctness thereof.
2. If the Client demands a certain method of loading, unloading, storage, transfer or handling of the Cargo, the Client shall always timely notify the Contractor thereof in writing, so as to enable the Contractor to take the necessary measures, in the absence of which notification the Contractor shall never be liable for any loss and/or damage, caused in whichever way, during storage or handling of the relevant Cargo.
3. If the Client demands a certain method of storage or handling of the Cargo by the contractor, or if the nature of the Cargo necessitates this, all additional costs in connection with this shall be at the expense of the Client.

#### **13. Start and end of the storage or handling of the Cargo**

1. The storage and/or handling of the Cargo by the Contractor starts:
  - a. if the Cargo, when supplied, is unloaded by the Contractor:

once the Contractor has made a start with the Cargo;
  - b. if the Cargo, when supplied, is not unloaded by the Contractor:

once the person carrying out the unloading has placed the Cargo in the allocated place of the Location.

2. The storage and/or handling of the Cargo by the Contractor ends:
  - a. if the Cargo, when removed, is loaded by the Contractor:

once the Contractor has placed the Cargo in the allocated place, i.e. in the vehicle or vessel or in any other agreed place.
  - b. if the Cargo, when removed, is not loaded by the Contractor:

as soon as a start has been made with the Cargo by the person carrying out the transfer.

#### **14. Order in which vehicles, carriages and ships are handled and other work is carried out**

1. Under normal circumstances, vehicles, wagons and ships are handled by the Contractor in the order in which they arrived at the Location or the quay at the Location.
2. The Contractor reserves the right to change this order, if he deems it reasonably necessary to deviate from this in order to meet the regulations and/or directions of customs, inspection services or other authorities, if special measures must be taken in order to facilitate an efficient handling of the Cargo, or if there are other good reasons for this, which reasons are to be assessed in accordance with the principles of reasonableness and fairness.
3. The Contractor is not obliged to pay or repay demurrage or costs or compensation for time lost or any other compensation due to delays when loading or unloading or on account of interruptions in Services provided by the Contractor, unless in the event of intent or gross negligence on the part of the Contractor.
4. If and insofar as the Client and Contractor have agreed on a date and time at which a certain Cargo is loaded or unloaded, the Contractor, except in the event of force majeure, shall be obliged to perform this work at the agreed date and time, without interruption, provided the Client has provided all necessary information and instructions and the means of transport that needs to be loaded or unloaded is present at the Location in good time. In the event the Contractor has entered into agreements as referred to in this paragraph with a Client, he shall be entitled to handle means of transport used by, on behalf or for this client before means of transport of other clients with whom no such agreement have been made, even if the means of transport of these clients arrived at the Location earlier.
5. If the means of transport used by or for a Client is not present at the date and time as referred to in paragraph 4, the order of paragraph 1 shall be applied, unless this is contrary to the principles of reasonableness and fairness.

#### **15. Delays in delivery or collection of the Cargo to or from the Contractor**

If the Client notifies the Contractor that the Cargo shall be supplied to or collected from the Contractor at a certain time and special action or effort is required from the Contractor to that end, the Client, if he fails to properly supply or collect the Cargo or do so in good time, shall be liable for all damage and costs arising from this and he shall indemnify the Contractor against all claims that may be brought by third parties in connection with it.

#### **16. Inspection upon entry of the Cargo**

1. Upon entry of the Cargo, the Contractor shall establish the number of packages, unless the nature, packaging or composition of the Cargo renders this impossible for reasons of practicality or if this cannot be reasonably expected from the Contractor. If the Contractor nonetheless reports a quantity to the Client, he can never be held liable for the correctness thereof.
2. The Contractor is not obliged to inspect, weigh or measure Cargo he is entrusted with, nor shall he be obliged to investigate the Cargo in order to establish the nature thereof, unless he has received a written instruction to that end which has been expressly accepted by him, subject to the provision of paragraph 1 of this article.



3. If an instruction as referred to in paragraph 2 of this article has been issued and if specific expertise is required for such an investigation, that expertise shall be hired in by the Contractor at the expense of the Client. The Contractor is not liable for the reputation or the findings of the expert that has been engaged.
4. The Contractor is nonetheless at all times entitled to inspect, weigh or measure the nature of the Cargo or to establish the nature thereof in order to verify the particulars received from the Client.
5. If the Contractor has serious doubt as to whether the contents and/or nature of the Cargo is correct or stated correctly, the Contractor shall at all times be entitled, yet not obliged, to open packages or containers and/or take samples from it.
6. If in the cases referred to in the aforesaid paragraphs of this article the Contractor finds that the quantity, weight, dimensions or nature of the Cargo have been stated incorrectly, the Contractor shall be entitled to terminate the Agreement with immediate effect. All costs of the investigation, as well as damage suffered or to be suffered by the Contractor as a result thereof, including loss of income, shall be at the expense of the Client.
7. The Contractor shall never be responsible towards the client for the description and/or labelling of Cargo handed over for safekeeping.
8. The information regarding the gross weight of the Cargo obtained through weighing can be used by the Contractor as a basis for the calculation of the consideration he is owed by virtue of the Agreement. The Client cannot derive any rights from the information obtained through weighing. The information solely serves for the calculation of the Contract Price owed by the Client.
9. Other than as stipulated in paragraphs 1 and 2, the Contractor does not carry out any inbound checks in relation to Cargo offered to him for storage and/or handling. He in particular does not check the nature or type of the Cargo or for any decay or damage in or to the goods.

#### **17. Loading and unloading**

1. If the Parties have agreed that the loading or unloading of vehicles, carriages or ships shall be carried out by the Contractor, the Client must ensure that the Contractor receives clear and timely directions regarding the method of loading and unloading and, if upon delivery a Cargo consists of multiple batches, which Cargo goes with each separate batch.
2. If the Client has failed in the timely provision of sufficient directions as referred to in the previous paragraph and, as a result thereof, batches have been mixed up or loaded or unloaded incorrectly, the Client owes the Contractor a separate consideration for the possible sorting or alternative loading or unloading of the batches; the Contractor can never be held liable for damage of whichever nature arising from said batch becoming mixed up or having been loaded or unloaded incorrectly.

If the Cargo supplied consists of multiple batches, the Client must ensure that the individual packages have been labelled in such a way that sorting by the Client is a straightforward and efficient process. If the Parties have not made any agreements in respect of the manner in which the packages shall be labelled, the Contractor shall be free to assess whether the Cargo received has been labelled in a manner that makes it possible to sort and/or store the packages individually or in batches.

3. If loading is carried out by the Contractor, he shall always be acting on the instruction of the Client or the carrier engaged by him. The Contractor can therefore never be held liable for overloading and the Client expressly indemnifies the Contractor against this.
4. If loading takes place by or on account of the Client, the moment of loading and/or unloading shall be determined at the risk of the Client.

5. The Contractor can never be held liable for damage that is the result of:
  - a) an incorrect moment of loading and/or unloading;
  - b) too long a stay at the loading or unloading platforms or quays;
  - c) the local outdoor temperature at the moment of loading and/or unloading.
6. The Contractor shall carry out the sea-proof securing or lashing of the Cargo on board of the means of transport, subject to a specific agreement with the Client to that end. If no specific rates have been agreed for this service, the Contractor shall charge the usual rates. If the Client has not issued specific instructions in respect of the sea-proof securing or lashing of the Cargo, the Contractor shall carry this out in accordance with generally accepted principles.

#### **18. Visual condition of the Cargo upon arrival**

1. The Cargo shall be supplied to the Contractor in a proper condition and, if packaged, in a properly packed condition and clearly labelled, unless otherwise agreed. The Contractor cannot be held liable for damage as a result of poor or unsuitable packaging.
2. If the Cargo arrives in a visually damaged or poor condition or without clear labelling, the Contractor shall be entitled to refuse to take delivery of the Cargo. This refusal shall always be supported by reasons by the Contractor.
3. If upon arrival the Cargo is visibly damaged or in poor condition, the Contractor shall be entitled, yet not obliged, at the expense of the Client, to look after his interests towards the carrier or other parties and produce evidence in respect of its condition, yet without the Client being able to derive any rights from the manner in which the Contractor discharged his duties.
4. The Contractor shall notify the Client of the measures taken as soon as possible, without him being able to exercise any claim against the Contractor if such notification is not forthcoming.
5. All costs in relation to the actions referred to in this article on the part of the Contractor shall be at the expense of the Client.

#### **19. General obligations of the Parties**

1. The Client shall be responsible for arranging proper hoisting, stropping, jacking and/or lashing points which must be sufficiently strong for the provision of the Services, unless expressly agreed otherwise.
2. The Parties shall act in accordance with all acts, regulations, decrees and/or requirements and instructions of the government and/or other authorities.
3. The Parties shall provide each other with all information that is reasonably required in connection with the execution of the Agreement, such as, but not limited to, relevant technical documentation, and do so free of charge.

#### **20. Liability of the Contractor**

1. Insofar as the Contractor is or can be held liable in accordance with these General Terms and Conditions and/or the Agreement, the Contractor (without prejudice to the provisions of the following paragraphs in this article) shall only and exclusively be liable for any event, loss, costs or damage if this is the direct result of any objectionable acts or omissions on the part of the Contractor or his subcontractors.
2. The Contractor is never liable for any event, loss, costs or damage that is/are covered or should be covered under the insurances of the Client and/or the Client Group as stipulated in articles 22.1 and 22.2, with the exception of the provisions in respect of the policy excess in paragraph 5. The Client indemnifies the Contractor against all recourse claims of all insurers of the Client and the Client Group.

3. Unless expressly stated otherwise in the Agreement in writing, the Parties shall not be liable towards each other for any loss of profits, missed use, loss of contracts and/or economic loss and/or for any indirect damage and/or multiple damage and/or punitive damage. Damage or loss suffered by the Client Group as referred to in this paragraph must be deemed as damage or loss suffered by the Client. Damage or loss suffered by the Contractor Group as referred to in this paragraph must be deemed as damage or loss suffered by the Contractor. The Parties indemnify each other to this effect.
4. The operating assets used by the Contractor (fixed, floating and vehicular) are deployed at the risk of the Client. The Contractor only accepts liability if the Client demonstrates that, at the time the damage was suffered, these operating assets were not in a proper condition, that they failed to meet any (government) requirements and that the damage can be attributed to these circumstances.
5. The Parties are liable towards each other for the policy excess under the insurances of the other Party, insofar as the actions or omissions of that Party were reason to claim under the insurance of the other Party. The liability under this paragraph shall never exceed the Contract Price with a maximum of EUR 25,000 (twenty-five thousand Euros) per event. The Parties indemnify each other against all claims, costs, liabilities and damage of the other Party, his Group and insurers, which exceed the aforesaid liability limit.
6. With the exception of intent or willful recklessness of the Contractor and notwithstanding any other provision in the General Terms and Conditions, the total liability of the Contractor Group shall be limited to the Contract Price with a maximum of EUR 25,000 (twenty-five thousand Euros) per event. The Client shall indemnify the Contractor, the Contractor Group and his subcontractors against all claims, costs, liabilities and suchlike of the Client Group, which exceed the aforesaid liability limit.
7. The Contractor can never be held liable for any loss, costs or damage as a result of delays in the provision of the Services by the Contractor, unless as stipulated in article 14.3 or article 24.3.
8. The Client shall indemnify, defend and compensate the Contractor, the Contractor Group, Personnel and his subcontractors against and with regard to all claims, demands, legal actions and proceedings alleged and/or brought against the Contractor and/or Contractor Group and/or Personnel and/or subcontractors with regard to any event, loss, costs, fines or damage for which the Contractor cannot be held liable in accordance with the General Terms and Conditions and/or the Agreement.
9. The Contractor shall indemnify, defend and compensate the Client against and with regard to all claims, demands, legal actions and proceedings alleged and/or brought against the Client with regard to any event, loss, costs, fines or damage for which the Client cannot be held liable in accordance with these General Terms and Conditions and/or the Agreement.
10. The Contractor shall never be liable for damage if the Contractor has not been notified by the Client in writing of that damage immediately after detection thereof and has not been given the opportunity to be present, or to be represented, when the damage was assessed.
11. Furthermore, the Contractor can never be held liable for:
  - a) Damage to the Cargo which can be partly or fully attributed to the nature and/or condition of that Cargo;
  - b) Damage caused by the Cargo, either as a result of the nature of the Cargo or as a result of any act or omission of the Client or a third party, which damage may be (partly) recoverable from the Contractor according to current or subsequent legislation, including the pollution of soil, water and air, product liability, dust and odour nuisance;
  - c) Damage caused during the provision of the Services to means of transport (floating or vehicular) or injury to persons deployed or working for, on the instruction of or on account of the Client and who are not employees or employed by the Contractor, unless caused by intention or gross negligence on the part of the Contractor.

12. If the Client is liable for damage towards third parties, including companies within the Client Group, with regard to which the Client wishes to have recourse against the Contractor, the Client, without prejudice to provisions elsewhere in these General Terms and Conditions or the Agreement, must demonstrate that he has advanced every defence he is entitled to in his legal relationship against this third party in order to reject or limit liability, unless the Contractor has expressly agreed in writing to accept liability by the Client or to effect a settlement in that respect with that third party. If the Client fails to fulfil these obligations, the Contractor shall be relieved of any liability.
13. Payment for compensation of damage made by the Contractor to the Client only implies guilt and liability on the part of the Contractor, if and insofar as the Contractor has expressly recognized this in writing.

## **21. Liability of the Client**

1. The client is obliged to notify the Contractor of all properties of the Cargo and those of the means of transport which may constitute a risk, either spontaneously or under certain influence or conditions, to other goods or property, the operating assets and the Location, or to persons or the environment, i.e. soil, water and air.
2. The Client is obliged to compensate the Contractor for all damage that arises or shall arise as a direct or indirect result of the aforesaid properties, regardless of whether he notified the Contractor thereof, or which arises or shall arise as a direct or indirect result of any defect in the Cargo or the means of transport, known or unknown, including the presence in the Cargo of a foreign object, organisms or goods or a hidden defect in the Cargo or the means of transport.
3. The Client indemnifies the Contractor against all claims of third parties (including personnel of the Contractor) in respect of damage referred to above.
4. The Client is obliged to compensate the Contractor for all damage, both direct and indirect, suffered by the Contractor due to means of transport, which must be or have been loaded or unloaded in accordance with the instruction, breaking down, sinking or requiring assistance at or near the Location and/or which prevent, impede or complicate the operations of the Contractor or the continuation of the provision of the Services or which constitute a hazard therein. The damage stated in this paragraph includes all costs incurred by the Contractor in order to prevent or limit imminent damage, as well as the costs that are needed in order to eliminate a situation that causes damage.
5. The Client owes the Contractor additional payment if during the provision of the Services it appears that the Cargo or the means of transport show such properties or characteristics that the Services comprise more in terms of time, manpower or deployment of equipment than could have reasonably be foreseen when the Agreement was concluded. Such additional payment shall always be due if loading and unloading by the Contractor using his cranes is deemed impossible and/or when no or insufficient manpower is present on board the means of transport in order to carry out the instruction in the usual manner.
6. The Client is liable for all damage that is the direct or indirect result of directions or (safety) instructions given by personnel of the Contractor not being complied with, or not being complied with in full and/or as a result of failure to comply with government regulations.

## **22. Insurances**

1. Unless expressly agreed otherwise in writing, the Client shall be obliged to take out adequate insurance for the Cargo and the means of transport to be loaded and unloaded during the execution of the Project. The insurance shall in all cases be primarily compared to the insurances of the Contractor and his subcontractors. The insurance referred to in this article shall stipulate that the insurers waive any right of subrogation towards the Contractor, the Contractor Group, his subcontractors and his employees. The Contractor shall be included in the policy as a co-insured.

2. The Client must ensure that he, or a member of the Client Group, takes out and maintains an (all-risk) insurance contract during the term of the Agreement, the Project and the Services, which insurance shall provide adequate cover against property damage, injury, environmental damage and/or any other form of damage or loss caused by or to the Cargo and/or the means of transport and/or caused by the Client or a company within the Client Group. The insurance must provide cover at the Location as well as during transport. The Contractor shall be included in the policy as a co-insured.
  
3. If in the event of damage to or loss of the Cargo, regardless of the cause thereof, the cooperation of the Contractor is desired or required to assess the damage, the Contractor shall oblige. The Contractor may render his assistance subject to payment of or the provision of security for all the Contractor has to claim against the Client, for whatever reason.
  
4. The Contractor, at the request of the Client, shall take out and maintain public liability insurance during the term of the Agreement, which insurance shall provide a maximum cover of € 2.500,000 (two and half million Euros) per event against property damage and injury caused by any acts or omissions of the Contractor. Claims under this insurance can only be submitted if the Contractor is liable under these General Terms and Conditions and/or the Agreement.
  
5. The Parties shall further take out all obligatory legal insurance prescribed by the applicable legislation.
  
6. If so requested, every Party shall provide the other Party with a certificate and/or other proper documentary evidence demonstrating the existence of the insurance (policies), in accordance with the provisions of this article.

### **23. Force majeure**

1. Force majeure is understood to mean circumstances, conditions and/or events beyond the control of any Party, which occurrence cannot be attributed to the fault or negligence of any Party, which cannot be avoided or prevented by taking reasonable measures and which temporarily or permanently prevent the fulfilment of any obligation under the Agreement (with the exception of the obligation to pay).

Situations of force majeure include:

- industrial strikes or cessation of work, lockouts, go-slow/selective strikes and all other forms of labour unrest;
  - extreme weather or water conditions and natural disasters;
  - burglary, fire, explosion and nuclear reaction;
  - government measures;
  - war, riot, uprising, terrorism, hostage-taking, sabotage, vandalism and similar unrest;
  - computer breakdowns and power outages;
  - hidden defects in the equipment used by the Contractor;
  - All other circumstances that cannot be attributed to the Contractor and which are not payable by him by virtue of the law, legal act or according to generally accepted standards.
2. In the event that the provision of Services under the Agreement is temporarily prevented due to a situation of force majeure, this situation shall solely cause the fulfilment of the obligations (with the exception of the obligation to pay) to be postponed, and the situation cannot be used as a valid reason not to perform the Agreement or to terminate it.

### **24. Delay and Suspension**

1. The contractor is entitled to temporarily suspend the fulfilment of the obligation, or part thereof, if the Client fails to fulfil one or more of *his* obligations, or has ceased to fulfil one or more of his obligations, including payment of any amounts owed, without the need for any prior notification or notice of default.

2. If the kick-off and/or progress of the Project and/or the Services is delayed and/or suspended as a result of a circumstance or circumstances which has or have not been caused by the Contractor (including adverse weather conditions, yet excluding the force majeure situations referred to in article 23), the Client shall be obliged to pay the internal and external costs of the Contractor charged in addition on account of this delay. The costs for equipment and Personnel shall be calculated in accordance with the applicable unit prices. In the event of absence of such unit prices, the consideration shall be calculated in accordance with the principles of reasonableness and fairness.

3. If the kick-off and/or progress of the Services is delayed and/or suspended as a result of a circumstance or circumstances which has or have not been caused by the Contractor, the Contractor cannot be held liable for any loss, costs or damage, unless a fixed amount in compensation has been agreed in the Agreement. The fixed amount in damages shall be the only (financial) remedy for the Client.
4. Unless another percentage has been expressly agreed in the Agreement, the total fixed amount in compensation shall never exceed 10% (ten percent) of the Contract Price.

#### **25. Interim reversal of the Cargo for urgent cause**

1. The Contractor shall at all times be entitled to demand that the Client takes back Cargo received for storage prior to the end of the storage or Project term and without having to observe any cancellation notice, provided there is urgent cause to do so, and without being obliged to pay any compensation towards the Client.
2. Urgent cause is understood to mean circumstances of such nature that the Contractor, in accordance with the principles of reasonableness and fairness, cannot be expected to continue to store the Cargo.
3. Such reason is deemed to be present if the Client fails to fulfil one or more provisions of these General Terms and Conditions, if it appears that the presence of the Cargo constitutes a risk of loss and/or damage to other Cargo, the Location or to equipment or a risk of causing injury to persons and furthermore if the Cargo is subject to decay or subject to changes which, in the opinion of the Contractor, justify the suspicions of a decrease in value and the Client fails to issue instructions to prevent or counteract this.
4. The Client remains obliged to pay the consideration to the Contractor up to the day the Cargo is taken back. The Client is furthermore obliged to reimburse the Contractor all costs incurred by the Contractor with regard to the Cargo reversal.
5. If despite a written request to that end by the Contractor, the Client does not take back the Cargo, the Contractor shall be permitted to sell, destroy or remove the Cargo. The Client shall reimburse the Contractor all costs incurred by the Contractor.

#### **26. Dissolution and termination**

1. Either Party shall be entitled to dissolve and/or terminate the Agreement with immediate effect, without judicial intervention, without prejudice to the provisions of article 6, paragraph 8 and without being obliged to pay the other Party any compensation, in each of the following circumstances:
  - a) if the other Party fails to fulfil one or more of his obligations, or has ceased to fulfil one or more of his obligations, after the other Party has been summoned to remedy the situation or fulfil his obligations and 10 (ten) working days have lapsed without any remedy having been made (and therefore the requirements of a demand/notice of default have been met);
  - b) if the other Party is declared bankrupt, applies for or is granted a (provisional) moratorium or otherwise loses the free disposal of his business or assets, without the need for any prior notification;
  - c) if the other Party partly or fully discontinues his operations or transfers these to third parties, or partly or fully loses the free disposal of his assets due to attachment or similar measures.

2. Both the Contractor and the Client are entitled to (partly) terminate the Agreement with due observance of a notice period of 10 (ten) working days in the event of a circumstance or condition that causes force majeure as stipulated in article 23, and if the execution of the Agreement is permanently prevented or, if temporarily, prevented for a period that is expected to last a minimum of 60 (sixty) days. Such notification to terminate may only be given after the relevant circumstance that creates the force majeure has lasted a minimum of 30 (thirty) consecutive days.
3. Except for the provisions of article 27, the Client shall also be entitled to (partly) terminate the Agreement for reasons other than referred to in paragraphs 1 and 2, in which case the Client shall be obliged to pay the Contractor the following:
  - a) the Services and work performed up to the date of termination (including, but not limited to, engineering and other costs incurred before the date of termination); and
  - b) all costs which the Contractor has to incur as a result of the termination (including, but not limited to, demobilisation cost and costs and/or fines which the Contractor needs to pay to third parties); and
  - c) an amount of 50% (fifty percent) of the contract value of the Services and work not performed.

#### **27. Transfer of the agreement between the Client and the End-user**

1. Contrary to the previous article, the Client cannot dissolve or terminate the Agreement if the agreement between the Client and the End-user is dissolved or terminated or transferred to one or more third parties, not even if these third parties do not form (or will not form) part of the Client Group as defined in article 1.
2. The Client shall agree a perpetual clause with the End-user, in accordance with which the End-user, in the event of dissolution, termination or transfer of the agreement with the Client, shall be obliged to take over the contractual rights and obligations the Client has under the Agreement with the Contractor. The client remains jointly and severally liable towards the Contractor for fulfilment of the (payment and other) obligations in respect of the Services provided prior to the takeover by the End-user. If the End-user confirms in writing to take over all contractual rights and obligations of the Client, the Client does not owe the consideration referred to in paragraph 3, under c, of the previous article.

#### **28. Warranty and Complaints**

1. The Contractor undertakes to deliver a performance and completion that fully corresponds with and meets the requirements of the Agreement and these General Terms and Conditions.
2. The Contractor shall act in accordance with all rules, regulations, instructions and measures with regard to safety, the environmental, health and working conditions.
3. Complaints with regard to the Services provided by the Contractor must be submitted to him by the Client in writing, immediately, or in any case within 5 working days, after the relevant Service has been provided. A complaint must give as detailed a description of the shortcoming as possible, so that Contractor is in a position to respond adequately. Failure to do so shall be interpreted as if no complaint has been made and the Client shall be deemed to have approved the full and proper execution by the Contractor.
4. If a complaint proves to be well-founded, Contractor shall yet do the work as agreed upon, unless in the meantime such has become demonstrably useless to Client. Client must notify Contractor in writing if the latter is the case.
5. If it is no longer possible or useful to still do the work, Contractor shall only be liable within the limits of these Terms.

### **29. Period of limitation and forfeiture**

1. All claims by virtue of the Agreement expire by the mere lapse of 12 (twelve) months.
2. Every claim against the Contractor expires by the mere lapse of 18 (eighteen) months, unless the claim is formally made in Court against him within that period.
3. Notwithstanding anything else in this Agreement or any legal requirement of the Court or any jurisdiction, every claim expires by the mere of 60 months after the end of the Services.

### **30. Applicable law and Jurisdiction**

1. All agreements that are subject to these conditions and all further agreements ensuing from it, including any disputes with regard to the existence, validity and/or the termination thereof are exclusively governed by and interpreted in accordance with Dutch law.
2. All disputes arising in connection with the Agreement, or further agreements ensuing from it, including any disputes with regard to the existence, validity and/or the termination thereof shall be brought before the District Court of Rotterdam, with the exclusion of other courts.

### **31. Miscellaneous**

1. Unless expressly agreed otherwise or stipulated in these General Terms and Conditions, the Parties are not entitled to transfer one or more of their rights and/or obligations under the Agreement to a third party.
2. The titles of the articles of these General Terms and Conditions serve the sole purpose of classification and do not affect the interpretation of the relevant provisions.
3. Provisions with terms in singular apply mutatis mutandis to their plural counterparts and vice versa, unless the wording or purport of an article or paragraph clearly serves a different meaning.
4. If any provision or part of the Agreement or these General Terms and Conditions appears to be void or unenforceable, for whatever reason, the nullity and unenforceability remains limited to that provision and does not serve any purpose. All such void or unenforceable parts of the Agreement or these General Terms and Conditions shall be replaced (or deemed to have been replaced) by provisions that are neither void or unenforceable and which shall reflect the void and/or unenforceable provisions as closely as possible, taking into account the intention and purport of the Agreement, the General Terms and Conditions and the relevant provisions.

### **32. Non-employment of the Contractor personnel**

1. Throughout the duration of the agreement and for one year following termination thereof, Client shall not in any way, hire or employ in any other way, be it directly or indirectly, staff of User or of third parties whom Contractor has engaged to execute the present agreement and who are (were) involved in the execution of the Agreement.
2. During the currency of the Agreement and for one year after termination thereof, Client shall not, in any way, move staff of Contractor or of third parties whom Contractor has engaged to execute the present Agreement to execute activities for a competitor of Contractor or start an enterprise by which Contractor suffers damage.

### **33. Filing**

These General Terms and Conditions were filed at the Chamber of Commerce.