

1. APPLICABILITY

- 1.1 These General Conditions apply to all agreements concluded by Marcor Stevedoring B.V. (hereinafter called 'MARCOR') in the performance of its business, to quotes, offers, negotiations and correspondence aimed at procuring such agreements and to actions, services and activities carried out in connection with the company's business operations.
- 1.2 Any variations from these conditions are only valid if these have been expressly agreed in writing.
- 1.3 The applicability of any of the Client's purchasing or other conditions is specifically excluded.
- 1.4 If one or more provisions in these General Conditions are null and void or are voided, the other provisions of these General Conditions will remain in effect. MARCOR and the Client will be obliged to agree new provisions to replace the void or voided provisions; in doing so the purpose and meaning of the void or voided provisions will be taken into account as far as possible.

2. OFFERS AND QUOTES

- 2.1 All offers are free of obligation, unless the offer specifies a term for acceptance.
- 2.2 The quotes made by MARCOR are free of obligation and are valid for a period of 15 business days, unless otherwise indicated. MARCOR is only bound to the quotes if MARCOR confirms the Client's acceptance of the quotes in writing within 5 days, unless otherwise indicated.
- 2.3 Assignments and acceptance of offers by the Client will be considered irrevocable.
- 2.4 MARCOR will not be bound by a deviating acceptance by the Client of the offer included in the quote. The Agreement will not be concluded in accordance with the deviating acceptance unless MARCOR agrees to the deviating acceptance in writing.
- 2.5 A composite quotation will not oblige MARCOR to perform part of the assignment against a corresponding part of the given quotation.
- 2.6 Offers or quotes do not apply to future assignments.

3. PERFORMANCE OF THE AGREEMENT AND INDEMNIFICATION

- 3.1 MARCOR will perform the Agreement to the best of its knowledge and ability. The Client is aware of the fact that MARCOR uses floating storage and offloading facilities for its operations. Unless otherwise agreed, MARCOR may structure its operations and choose the storage location at its own discretion. MARCOR is entitled at all times to relocate (temporarily or otherwise) the floating facilities and to bring the goods to a different storage location.
- 3.2 The Client will leave it to MARCOR to engage third parties in the performance of the Agreement, as is the case when hiring push tugs and towboats, for instance, and to accept the (general) conditions of those third parties. The Client agrees to have such third-party conditions apply to it, including in its mutual relationship with MARCOR, and the Client will indemnify MARCOR against claims arising from such agreements with third parties.

- 3.3 The Client is obliged to provide MARCOR in a timely manner with all the data MARCOR needs to perform the Agreement. If the data required by MARCOR to perform the Agreement have not been provided in a timely manner, MARCOR is entitled to suspend performance of the Agreement and/or to charge the Client for the costs connected to the delay at the standard rates.
- 3.4 MARCOR is not liable for any damage whatsoever resulting from MARCOR applying incorrect and/or incomplete data supplied by the Client, unless MARCOR should have been aware of such inaccuracy or incompleteness.
- 3.5 The Client guarantees that every person who accesses the facilities, sites or operating equipment of MARCOR in connection with activities for or on behalf of the Client will strictly comply with the applicable safety and other regulations. MARCOR is entitled to deny access to or remove anybody who does not comply with or threatens not to comply with these regulations.
- 3.6 If it has been agreed that the Agreement will be performed in stages, MARCOR can postpone components that belong to a subsequent stage until the Client has approved the results of the preceding stage in writing at MARCOR's request.
- 3.7 If MARCOR or third parties engaged by MARCOR carry out activities at the Client's location or a location specified by the Client in connection with the assignment, the Client will provide such facilities as are reasonably required by those employees, at no cost.
- 3.8 The Client indemnifies MARCOR, its personnel and the third parties it engages against claims by third parties that incur damage through the performance of the Agreement and against whom MARCOR cannot invoke these General Conditions or the applicable Standard Conditions.

4. UNKNOWN QUALITY AND/OR COMPOSITION

- 4.1 The quality and/or composition (including water content, contamination with components that are foreign or belong to a separate class, carbon or other chemical content, etc.) of the goods that are placed in MARCOR's care in connection with agreements concluded with MARCOR or a Client's activities to be conducted by MARCOR are unknown on delivery. MARCOR is not obliged to control or carry out an inspection of the quality and/or composition. The burden of proof that the quality and/or composition of the goods has changed in the period that the goods were in MARCOR's care lies at all times with the Client, even if MARCOR carries out a (general) inspection or control of those goods on delivery by the Client.
- 4.2 The Client guarantees that the goods are suitable for handling by the equipment at MARCOR's disposal. The Client must notify MARCOR in a timely manner before commencement of the activities of any extraordinary or dangerous properties, size and treatment of the goods, and in general to provide MARCOR in a timely manner with all instructions and information it knows or should know that MARCOR will need to carry out the activities safely, reliably and without delay. Additional work in connection with extra measures required in this regard or with non-observance of the provisions in this paragraph will be at the Client's expense.

5. STANDARD CONDITIONS

- 5.1 Depending on the nature of the assignment, activities or other performance, or any part thereof that can be reasonably considered an independent component, in addition to the

General Conditions the following Standard Conditions will also apply, on the understanding that these General Conditions will prevail:

- 5.1.1 For operations connected in the broadest sense with the loading and unloading as well as with the acceptance, temporary storage, shifting, weighing, repackaging, checking or ordering the checking and/or delivery of containers, general cargo and/or other conventional cargo: the General terms and Conditions of the Rotterdam Terminal Operators' Association (VRTO terms), filed at the Office of the District Court of Rotterdam on 2 September 2009.
 - 5.1.2 For stevedoring operations relating to bulk cargo: The Conditions of Bulk Cargo Stevedores Rotterdam 1991 (*Voorwaarden Massagoed-stuwadoors Rotterdam 1991*) of the Association of Rotterdam Mechanised Transhipment Companies (*Vereniging van Rotterdamse Machinale Opslagbedrijven*) filed at the Office of the District Court of Rotterdam on 8 May 1991;
 - 5.1.3 For warehousing operations: the Amsterdam-Rotterdam Warehouse Conditions (*Veemcondities Amsterdam-Rotterdam*) as laid down by the General Stevedoring Department of the Shipping Association North (*Vakgroep veem-opslag- en controlebedrijven van de Scheepvaart Vereniging Noord*) in Amsterdam as well as the Association of Accredited Warehousing Companies (*Vereniging van Geaccrediteerde Vemen*) in Amsterdam, as filed with the Offices of the District Courts of Amsterdam and Rotterdam on 1 March 1994.
 - 5.1.4 All other operations, including organising transport from the dock to the warehouse or from the warehouse to the next destination ('transporting'), loading lorries from the warehouse, packaging goods e.g. in crates, big bags or barrels or performing customs duties in the broadest sense: the Dutch Forwarders' Conditions (*Nederlandse Expeditievoorwaarden*) filed by the FENEX with the Offices of the District Courts of Amsterdam, Rotterdam, Breda and Arnhem, most recent version at the time of concluding the Agreement.
- 5.2 In the event of doubt or uncertainty as to which of the Standard Conditions mentioned above apply, MARCOR will decide.
- 6. AMENDING THE AGREEMENT**
- 6.1 The parties will amend the Agreement if it appears during the performance of the Agreement that the substance or meaning of the Agreement must be amended or supplemented in order to warrant proper performance of the Agreement.
 - 6.2 If the parties agree that the Agreement will be amended or supplemented and this will influence the completion date of its performance, MARCOR will notify the Client as soon as possible about the date of completion, which will be an indicative date unless the parties expressly agree on a firm date.
 - 6.3 The parties are obliged to make agreements regarding the financial and/or qualitative consequences of the supplements and/or amendments referred to in this article.
 - 6.4 The Client is in any case obliged to pay the additional costs connected to the supplements and/or amendments referred to in this article.

7. DELIVERY DATES AND TERMS

7.1 Delivery dates and terms relating to the performance of the Agreement are always indicative, unless a firm date has been agreed. Except in the case of firm dates, the Client is obliged to give MARCOR notice of default in writing if any delivery date or term is exceeded and to grant MARCOR a reasonable term within which to fulfil its obligations under the Agreement.

8. PRICE

8.1 Prices are net, exclusive of VAT and based on the rates, taxes, etc. that apply on the date of the quote, the conclusion of the Agreement or the performance of the agreed service. If the parties have agreed a fixed price, MARCOR will nevertheless be entitled to increase the price in the cases mentioned below.

8.2 MARCOR may pass on price increases if there have been price changes relating e.g. to fuel, exchange rates and wages between the time of concluding the Agreement and the time of performing it.

8.3 Price increases resulting from any measure under or pursuant to the law do not entitle the Client to dissolve the Agreement.

8.4 Where possible, MARCOR will notify the Client of price increases in writing, stating the amount of the price increase and the effective date of the price increase.

9. PAYMENT, INTEREST, COSTS, SETTLEMENT AND SECURITY

9.1 Payment must be effected within 14 days of the invoice date unless otherwise agreed, without any deduction or offsetting, in the manner specified by MARCOR and in the currency of the invoice. An objection against the amount of the invoices does not suspend the obligation to pay.

9.2 In case of failure to pay within the due term the Client will be in default by operation of law without requiring notice of default. The Client will in that case owe interest of 1.5% per month, unless the statutory interest is higher, in which case the statutory interest pursuant to Section 119a of the Dutch Civil Code will apply. The interest over the amount due and payable will be calculated from the time the Client is in default until the time of payment of the full amount. MARCOR reserves the right, in case of late payment, to charge 10% of the invoice amount, with a minimum of €250.00 to cover its administration costs.

9.3 MARCOR is entitled at all times to request an advance payment, interim payment or form of security from the Client for all existing or future amounts payable to MARCOR by the Client. If the Client does not immediately honour such request MARCOR will be entitled to refuse, suspend, interrupt or end the activities without any warning, notice of default or judicial intervention being required. The same applies if the Client defaults in any other obligation to MARCOR. MARCOR will never be liable for any loss arising from this, no matter how it is called.

9.4 All of MARCOR's claims will be immediately due and payable if and as soon as the Client or its representative applies for a suspension of payments or files for bankruptcy, is declared bankrupt, ceases all or part of its operations or transfers these to third parties, or loses the free disposal of its assets, in whole or in part, through seizure or similar measures. In those cases MARCOR is also entitled to terminate its legal relationship

with the Client with immediate effect, without prejudice to MARCOR's right to claim compensation.

- 9.5 MARCOR has a right of pledge and/or retention on all goods, documents and monies which MARCOR has or will have in possession from the Client for any reason or destination whatsoever, for all claims which it has or may have on the Client. MARCOR may also exercise these rights in respect of amounts the Client still owes MARCOR in connection with previous legal relationships or previous assignments.

10. **COLLECTION COSTS**

- 10.1 If the Client defaults in the (temporary) performance of its obligations, all reasonable costs incurred for out of court collection of payment will be at the Client's expense. The Client will in any event owe collection costs in the event of a monetary claim. The out of court collection costs amount to a minimum of 5% of the claim. If MARCOR has incurred higher costs, these will also qualify for repayment. Legal and execution costs will also be at the Client's expense.

11. **MARCOR'S LIABILITY**

- 11.1 MARCOR is always entitled to limit its liability based on the Standard Conditions referred to in Article 5. MARCOR's liability is in any event limited to €250.00 per thousand kg or remaining part thereof if there has been damage to or loss of unpackaged bulk goods, or to €1.00 per kg of damaged or lost gross weight in the event of packaged goods, and in all cases up to a maximum amount of €500,000.00 per assignment.
- 11.2 If MARCOR is liable on account of defaulting on the performance of this Agreement, MARCOR will not be obliged to pay more than the lowest costs of replacing or repairing the lost goods, with due observance of the limitation of liability as set out in article 11.1.
- 11.3 MARCOR will never be liable for consequential loss.
- 11.4 Any liability of MARCOR will lapse if MARCOR has not been notified in writing of the alleged damage or loss as soon as it has become known, or – if earlier notification is not possible – not later than on termination of the Agreement or its performance.
- 11.5 All limitation of MARCOR's liability applies in a corresponding manner to MARCOR's personnel and auxiliary persons, third-parties engaged by MARCOR and their personnel insofar as the limitation of such liability is not set aside by mandatory provisions.

12. **CLIENT'S LIABILITY**

- 12.1 The Client is liable for all damage caused by the Client, its subordinates, auxiliary persons and third parties it engages, including their personnel. The Client is also liable for damage caused by its goods (such as hazardous substances, whether or not under IMO classification, and consequences of gassing) and/or equipment used by it, as well as damage caused by goods and/or the equipment used by third parties engaged by it, including their personnel or auxiliary persons.
- 12.2 The Client is liable for all damage, both direct and indirect damage, caused by non-performance, late performance or improper performance of any obligation under the Agreement.

12.3 The Client is liable for all damage resulting from the use of unsafe and/or unsuitable loading and/or unloading locations, or locations at which MARCOR carries out activities on instructions from the Client.

13. **INSURANCE**

13.1 MARCOR will never provide any insurance of any kind for the goods in connection with which agreements have been concluded, assignments issued or activities carried out. Any insurance desired should be taken out by the Client.

13.2 The Client should, at its discretion and its own expense and risk, take out one or more insurance policies with reliable insurers against loss, destruction or damage of all goods (including goods of third parties) which the Client places in MARCOR's care. Recourse on MARCOR is excluded with regard to insured events, as well as in the event no insurance has been taken out but the loss in question would have been covered if such insurance had been taken out.

14. **FORCE MAJEURE**

14.1 The parties will not be obliged to perform any of their obligations if they are hindered in this due to a circumstance through no fault of their own and which cannot be attributed to them pursuant to the law, a legal action or generally accepted practice.

14.2 For the purposes of this Agreement force majeure is understood to include but is not limited to any shortcoming in the performance of this Agreement on the part of MARCOR due to (the consequences of): earthquake, landslide, subsidence, flooding, fire, (over)heating (including smouldering and singing), explosion, government measures, civil disobedience, riot, looting, theft, acts of war, disorderly conduct, terrorism, sabotage, trade conflicts, strikes, selective strikes, staff illness, occupation, radioactive emission, power failure and fuel shortage.

14.3 MARCOR is also entitled to invoke force majeure if the circumstance that hinders (further) performance of the Agreement begins after MARCOR should have performed its obligations.

14.4 The parties may suspend the obligations under the Agreement for the period during which the force majeure persists. If this period is longer than two months, either party is entitled to dissolve the Agreement without being obliged to compensate the other party for damages.

14.5 If and insofar as MARCOR has performed or will be able to perform part of its obligations under the Agreement at the time the force majeure begins, and if the part performed or to be performed has an independent value, MARCOR will be entitled to invoice separately the part already performed or to be performed. The Client is obliged to settle this invoice as if it were a separate agreement.

15. **DISPUTES, APPLICABLE LAW AND PRESCRIPTION**

15.1 All legal relationships between MARCOR and the Client are subject to Dutch law. All disputes between the parties will in the first instance be settled by the District Court of Rotterdam to the exclusion of other courts and/or arbitrators, in derogation from the provisions that may be contained in the Standard Conditions referred to in Article 5 of these General Conditions.

15.2 All claims against MARCOR will in any event prescribe through the mere expiry of 12 months after the claim arises.

16. **DEPOSIT**

16.1 These General Conditions have been filed with the Office of the District Court of Rotterdam in the Dutch language. In the event of a variance between the Dutch text of the General Conditions and a translation into a foreign language, the Dutch text will prevail.