

## **Rail consignment note conditions**

1. **Carriage:** means the whole or any part of the operations and services of whatsoever nature undertaken by the Company in relation to the goods, including but not limited to the loading, unloading, storage, warehousing and handling of the goods for the international carriage of goods between Asia and Europe by rail, including rail-sea and road traffic.

**Company:** means H. Essers & Zonen Internationaal Transport N.V. or any of its affiliated companies.

**Affiliated companies** means:

(i) the companies H.essers & Zonen Internationaal Transport N.V. has power of control over;

(ii) the companies that have power of control over H. Essers & Zonen Internationaal Transport N.V.;

(iii) the companies with which H. Essers & Zonen Internationaal Transport N.V. forms a consortium;

(iv) the other companies who are under control of the companies as in (i), (ii) and (iii).

**Merchant:** means any person, whether themselves an agent or a principal, at whose request or on whose behalf the Company provides a service. Merchant includes the shipper, the consignee and any person owning, entitled to or claiming the possession of the goods.

**Goods** includes the whole or any part cargo and any container including any packing or packing materials not supplied by or on behalf of the Company, in respect of which the Company provides a service.

**CIM (COTIF):** means the Convention and Uniform Rules concerning International Carriage by Rail as modified by the Vilnius Protocol 1999.

**CMR:** means the Convention on the contract for the international carriage of goods by road, signed at Geneva on 19 May 1956.

**SMGS:** means Agreement on International Goods Transport by Rail in force from 1 November 1951 and subsequent amendments.

**Hague Rules:** means the provisions of the International Convention for the Unification of Certain Rules relating to Bills of Lading signed at Brussels on 25 August 1924 with the express exclusion of Article 9.

**Hague-Visby Rules:** means the provisions of the Hague Rules 1924 as Amended by the Protocol adopted at Brussels on 23 February 1968, and 21<sup>st</sup> December 1979 (SDR Protocol) where applicable. Notwithstanding anything to the contrary herein it is expressly agreed that nothing herein shall contractually apply the Hague-Visby Rules and they shall apply only when compulsorily applicable.

**Montreal Convention:** means the Convention for the Unification of Certain Rules for International Carriage by Air, done at Montreal on 28 May 1999.

**Warsaw Convention:** means the Unification of certain rules relating to the international carriage by air, as amended. 2 Where a document bearing a title of or including "Consignment note", "Bill of lading" (whether or not negotiable) or "Waybill" is issued by or on behalf of the

Company and provides that the Company contracts as carrier, the provisions set out in the document will be paramount insofar as they are inconsistent with these Conditions.

### **Obligations of Merchant**

3 The Merchant warrants that it has reasonable knowledge of its business, including (without limitation) the terms of sale and purchase of the Goods and their carriage by rail.

4 The Merchant warrants that it is either the owner or the authorized agent of the owner of the Goods and that it is authorized to accept for itself and as agent for the owner of the goods.

5 The "consignment note", "Bill of Lading" or "Waybill" shall be prima facie evidence of the receipt by the Carrier in apparent good order and condition, except as otherwise noted, of the total number of Goods or Containers or other packages or units indicated.

6 No representation is made by the Company as to the weight, contents, measure, quantity, quality, description, condition, temperature, marks, numbers or value of the Goods and the Company shall be under no responsibility whatsoever in respect of such description or particulars.

7. The Merchant warrants to the Company that the particulars relating to the goods as set out in the Consignment Note have been checked by or on behalf of the Merchant on receipt and that such particulars, and any other particulars furnished by or on behalf of the Merchant, are adequate and correct. The Merchant warrants that the Goods are safely and securely packed in the Container.

8 The Merchant also warrants that the Goods are lawful Goods, contain no contraband, drugs, other illegal substances or stowaways, and that any hazardous or potentially dangerous characteristics of the Goods have been fully disclosed by or on behalf of the Merchant and that they will not cause loss, damage or expense to the Company, or to any other cargo, containers, transportation vehicles or person during the carriage.

9. If any particulars of any letter of credit and/or import license and/or sales contract and/or invoice or order number and/or details of any contract to which the Company is not a party are shown on the front hereof, such particulars are shown at the sole risk of the Merchant and for his convenience. The Merchant agrees that such particulars shall not be regarded as a declaration of value, it shall in no circumstances whatsoever increase the Company's liability and the Merchant agrees to indemnify and to keep harmless the Company for any increased liability so caused, including reasonable legal expenses and costs.

10. The Merchant shall comply with all regulations or requirements of customs, port and other authorities, and shall bear and pay all duties, taxes, fines, imposts, expenses or losses (including, without prejudice to the generality of the intended shipment and for any additional carriage undertaken), incurred or suffered by reason thereof, or by reason of any illegal, incorrect or insufficient

declaration, marking, numbering or addressing of the Goods, and shall indemnify the Company in respect thereof, including reasonable legal expenses and costs.

11. If by order of the authorities at any place, Goods are detained and/or seized and/or a Container has to be opened for the Goods to be inspected for any reason whatsoever, including but not limited to a breach or infringement of a trademark, patent or other intellectual property right, the Company will not be liable for any loss or damage whatsoever incurred as a result of any opening, unpacking, inspection, re-packing, detention, destruction or delay. The Company shall be entitled to recover from the Merchant all charges, fines, costs, losses and expenses, including reasonable legal expenses and costs resulting from such action, including but not limited to any detention, demurrage and storage charges for the Goods and/or the Container.

12. The Merchant will ensure that wagons and Load Units are returned at the specified time and place, fit for re-use, including (without limitation) that the wagons and Load Units are empty, disinfected or cleaned and with all unattached components.

The Merchant shall redeliver, to a place nominated by the Company, the Containers and other equipment in like good order and condition, undamaged, empty, odour free, cleaned and with all fittings installed by the Merchant removed and without any rubbish, dunnage or other debris inside. The Merchant shall be liable to indemnify the Company for any and all costs incurred reinstating or replacing Containers and other equipment not returned in the condition as specified above, including the reasonable legal expenses and costs of recovering the costs incurred and interest thereon.

13.(a) The Merchant will defend, indemnify and hold harmless the Company against all liability, loss, damage, costs and expenses arising from:

- (i) the nature of the goods unless caused by the Company's negligence,
- (ii) the Company's acting in accordance with the Merchant's or owner's instructions,
- (iii) any breach by the Merchant of these conditions,
- (iv) the Merchant's negligence.

(b) Except to the extent caused by the Company's negligence, the Merchant will be liable for and will defend, indemnify and hold harmless the Company in respect of all duties, taxes, deposits and outlays of whatever nature levied by an authority in respect of the goods for all liabilities, payments, fines, costs, expenses, loss and damage incurred by the Company in connection with this.

(c) Advice and information in whatever form is provided by the Company for the Merchant only. The Merchant will not pass such advice or information to any third party without the Company's written agreement and the Merchant will indemnify the Company against any loss suffered as a result of a breach of this condition.

14. The Merchant will be liable for damage to wagons and Load Units caused by the Merchant or by any third party with whom the Merchant contracts, including consequential losses, including (without limitation) losses arising from time out of use. The Merchant will report to the Company immediately any damage or accident.

#### **Dangerous or hazardous goods**

15.(a) The Company will not accept any Goods of a dangerous or hazardous nature without prior written notice of their full and true particulars and the Company's written approval to carry them. When the Merchant delivers Goods of a dangerous or hazardous nature to the Company, the Merchant shall fully inform the carrier in writing of the precise and accurate details of the goods, and special precautions or handling required for the Goods. Such Goods shall be distinctly marked on the outside of the container or packaging as well as on the outside of the packaging inside the container so as to indicate the nature thereof and the marking must comply with the requirements of any applicable regulations, including regulations contained in any relevant international treaty or convention.

(b) The Merchant shall be fully liable for and shall indemnify, hold harmless and defend the Company, its servants, agents and subcontractors and any third party for all loss, damage, delay, personal injury, death or expenses including fines and penalties, and all reasonable legal expenses and costs caused to the Merchant, the transportation vehicles, any cargo, and other property, whether on board or ashore, arising from such goods and/or from the breach of clause 15(a), whether or not the Merchant was aware of the nature of such Goods.

(c) Nothing contained in this clause shall deprive the Company of any of its rights provided for elsewhere.

#### **Temperature controlled goods**

16.(a) The Merchant warrants that it will not tender for carriage, storage or handling any Goods that require temperature control without previously giving written notice of their nature and particular temperature range to be maintained.

(b) In the case of a temperature controlled container or alternative stuffed by or on behalf of the Merchant by a third party, the Merchant further warrants that:

(i) the container or alternative has been properly pre-cooled or preheated as appropriate,

(ii) the goods have been properly stuffed in the container or alternative,

(iii) the thermostatic controls have been properly set.

(iv) the container's fuel tank shall be fully filled upon delivery to the Company.

(c) The Company will not be liable for any loss of or damage to the Goods, or for any delay in delivery arising from or in connection with non-compliance with clause 16 (b).

(d) In case container's fuel tank shall not be fully filled upon delivery to the

Company, the Company shall fuel the unit at the sole risk and expense of the Merchant.

#### **Loading requirements**

17. The Merchant shall be responsible for a balanced loading of any containers including equal weight distribution on the corners, with the centre of gravity in the middle of the container.

The maximum weight of any loaded container shall not exceed 23 mt for a 40' container and 21 mt for a 20' container.

All cargo shall be properly lashed and secured in the container to prevent any shifting during carriage.

Every container shall be locked with a seal.

The Merchant shall provide 4 pictures per container, as follows: (1) loading; (2) right door closed; (3) whole door seal installed; (4) doors closed with seal and container number visible.

2 hours loading/unloading per container is included in the standard transportation tariff.

Any container that does not comply with any of these requirements, may at the discretion of the Company be either refused for transportation or be transported as such, all at the sole risk and expense of the Merchant.

#### **Insurance**

18. The Company will not effect insurance of the goods except upon express instructions in writing by the Merchant.

(a) In the event that the Merchant provides such express instructions the Company is considered to act as the agent of the Merchant in respect of effecting insurance.

(b) Unless otherwise agreed, the Company will not be under any obligation to effect a separate insurance on each consignment but may declare it on any open or general policy.

(c) If the insurers dispute their liability for any reason the Merchant will have recourse against the insurers only and agrees to waive any action against the Company.

#### **Declaration of value**

19. The Company is not obliged to make any declaration for the purposes of any statute, convention or contract as to the nature or value of any goods, or as to any special interest in delivery, unless the Company has received express written instructions to that effect and the Company has agreed on it in a separate written confirmation. If such instructions are accepted, the Company is entitled to ask for extra freight or cost to be paid. In such case, if the actual value of the goods shall exceed such declared value, the value shall nevertheless be deemed to be the declared value and the Company's liability, if any, shall not exceed the declared value and any partial loss or damage shall be adjusted pro rata on the basis of such declared value.

#### **Delivery**

20. Unless previously agreed otherwise, or otherwise provided for under the provisions of a document signed by the

Company, instructions relating to the delivery or release of goods against payment or against surrender of a particular document will be in writing. The Company's liability resulting from these will not exceed the liability applying in respect of misdelivery of goods.

21. Unless otherwise expressly agreed that the goods will depart or arrive by a particular date, the Company accepts no responsibility for departure or arrival dates of goods, whether or not a delay is caused by the negligence of the Company or its servants or agents.

#### **Charges**

22. Quotations are given on the basis of immediate acceptance and are subject to the right of withdrawal or revision if any changes occur in the rates of freight, insurance premiums or other charges applicable to the goods.

(a) The Merchant will pay to the Company all sums immediately when due without reduction for any claim, counterclaim or set off.

(b) When the Company is instructed to collect freight, duties, charges or other expenses from any person other than the Merchant, the Merchant will be responsible for the same on receipt of evidence of demand and non-payment by such other person when due.

(c) On all amounts overdue to the Company, the Company will be entitled to interest, calculated on a daily basis from the date the amount is overdue at 0,07% per day.

#### **Liberties and Rights of Company**

23. The Company may, unless otherwise agreed, enter into contracts on behalf of itself or the Merchant and without notice to the Merchant for carriage, storage, packing, transshipment, loading, unloading or handling of goods and act as, in the opinion of the Company, may be necessary for the performance of its obligations.

24. The Company may park Load Units and other transportation vehicles in the open.

25. The Company may, but is not obliged to, depart from the Merchant's instructions if in the opinion of the Company there is good reason to do so in the Merchant's interest.

The Company may at any time comply with the orders or recommendations given by any authority. The responsibility of the Company in respect of the goods will cease on the delivery or other disposition of the goods in accordance with such order or recommendations.

26. If at any time, in the opinion of the Company, the performance of the Company's obligations is likely to be affected by any hindrance, risk or delay, which cannot be avoided by reasonable endeavours, the Company may, on giving notice in writing to the Merchant or owner if reasonably practicable, treat the performance of its obligations as terminated and place the goods at the Merchant's disposal at any place which the Company deems safe and convenient. The Merchant will be responsible for any additional costs for carriage, delivery and storage and for all

other expenses incurred by the Company.

27. If the Merchant does not take delivery of the goods at the time and place when and where the Company is entitled to call upon the Merchant or owner to do, the Company may, without further notice, store the goods in the open or under cover at the sole risk and expense of the Merchant. Such storage will constitute delivery of the goods and the liability of the Company will cease.

28. Notwithstanding clauses 26 and 27, the Company may, but is under no obligation to, at the risk and expense of the Merchant sell or dispose of the goods:

(a) on giving 14 days notice in writing to the Merchant which in the opinion of the Company cannot be delivered as instructed;

(b) without notice, where goods which have perished, deteriorated or altered, or are liable to do so, in a manner which has caused or may be reasonably expected to cause loss or damage to any person or property or to contravene applicable regulations or requirements.

29. The Company will have a particular and general lien on all goods and documents in its possession for all sums due at any time from the Merchant and on giving 14 days notice in writing to the Merchant, will be entitled to sell by public auction or private treaty or dispose of goods at the expense of the Merchant and apply the proceeds in or towards the payment of sums due.

30. The Company is entitled to retain and be paid all brokerages, commissions, allowances and other remunerations customarily retained by or paid to freight forwarders.

#### **Containers**

31.(a) If a container or alternative has been packed or stuffed by or on behalf of the Merchant, the Company will not be liable for loss of or damage to the goods caused by:

(i) the manner in which the container has been packed or stuffed,

(ii) the unsuitability of the contents for carriage in the container or alternative,

(iii) the unsuitability or defective condition of the container or alternative.

If the container or alternative is supplied by the Company this paragraph (iii) will only apply if the unsuitability or defective condition was not caused by negligence on the part of the Company or would have been apparent upon reasonable inspection at or prior to the time when the container was packed or stuffed,

(iv) the fact that the container is not sealed at the commencement of the carriage, except where the Company has agreed to seal the container.

(b) Where the Company is instructed to provide a container or alternative, in the absence of an agreement to the contrary, the Company is not obliged to provide a container of any particular type or quality.

#### **Methods and routes of carriage**

32. The Company may at any time and without notice to the Merchant:

(a) use any means of transport or storage whatsoever;

(b) transfer the goods from one conveyance to another including transshipping or carrying the goods by any other means of transportation whatsoever, even though transshipment or forwarding of the goods by such means may not have been contemplated or provided for herein;

(c) load and unload the goods at any place (whether or not any such place is named on the Consignment Note and store the goods at any such place;

(d) comply with any orders or recommendations given by any government or authority or any person or body purporting to act as or on behalf of such government or authority or having under the terms of the insurance on any conveyance employed by the Company the right to give orders or directions.

#### **General liability**

33. Shipments or carriage from countries where the CIM-Convention applies to other countries where the SMGS Convention applies: the shipper (the consignor) under the Consignment note is seen to be the consignor under the CIM contract of carriage and consignee under the same, and as the consignor under the SMGS contract of carriage.

Shipments or carriage from countries where the SMGS-Convention applies to other countries where the CIM Convention applies: the shipper (the consignor) under the Consignment note is seen to be the consignor under the SMGS contract of carriage and consignee under the same, and as the consignor under the CIM contract of carriage.

34.(a) Unless otherwise provided in these conditions, the Company is not liable for loss or damage arising from:

(i) the act or omission of the Merchant or any person acting on their behalf,

(ii) compliance with the instructions given to the Company by the Merchant or any other person entitled to give them,

(iii) insufficiency of the packing or labelling of the goods except where this service has been provided by the Company,

(iv) handling, loading, stowage or unloading of the goods by the Merchant or any person acting on their behalf,

(v) inherent vice of the goods,

(vi) acts of war, acts of terrorism, riots, civil commotions, strikes, lockouts, stoppage or restraint of labour,

(vii) fire, flood or storm,

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

(ix) any liability exempted under an applicable law, convention or treaty, including (without limitation) Rail Freight Transport Regulations of China (Tieyun N° 40 article 59), SMGS (Article 22.2) and CIM.

(b) The Company is not liable for loss or damage to property other than the goods themselves, howsoever caused.

(c) Subject to clause 21, the Company is not liable for any indirect or consequential loss or damage, including but not limited to economic loss, loss of profit or delay.

35. Carrier will under no circumstances accept liability for the consequences of breakdown/ malfunctioning of the reefer unit due to an incident or occurrence or unforeseen shortage of fuel beyond the Carrier's reasonable control and the Merchant will hold harmless from or indemnify the Carrier for any liabilities, loss, damage, costs and expenses arising therefrom.

36. If the Company acts as principal, and if it can be proved where the loss of or damage to the goods occurred, the Company's liability will be determined by the provisions contained in any international convention or national law, the provisions of which:

(a) cannot be departed from by private contract, to the detriment of the claimant; and,

(b) would have applied if the claimant had made a separate and direct contract with the actual provider of the particular service.

37. If any legislation is compulsorily applicable to any carriage, these conditions will, as regards such business, be read as subject to this legislation and nothing in these conditions will be construed as a surrender by the Company of any of its rights or immunities or as an increase of any of its responsibilities or liabilities under such legislation. If these conditions are repugnant to this legislation to any extent, the conditions will be overridden to this extent, but no further.

38. If the Company acts as a principal in respect of a carriage of Goods by air, and the carriage involves an ultimate destination or stop in a country other than the country of departure, the Montreal Convention or the Warsaw Convention may be applicable to the liability of the carrier in respect of loss of, damage or delay to cargo. The Conventions govern and in most cases limit the liability of carriers in respect of loss of or damage to cargo.

If the Company acts as a principal of a carriage of Goods by sea, the Hague Rules and Hague-Visby Rules will apply compulsory.

If the Company acts as a principal for a carriage of Goods by road and the carriage involves an ultimate destination or stop in a country other than the country of departure OR such carriage by road is performed within Belgium, the CMR Convention will apply compulsory.

39. The provisions of CIM (COTIF) apply to the services and activities of the Company, except to the extent that this is inconsistent with any provision in these conditions, including (without limitation):

(a) Clauses 3-5 (Company acting as agent)

(b) Clauses 38-39 (Compulsory application of conditions)

(c) Clause 42 (Amount of compensation).

#### **Amount of compensation**

40. Unless otherwise provided by these conditions, the liability of the Company will not exceed the following:

(a) in respect of all claims other than those subject to clause 40 (b), the lesser of,

(i) the value as defined in clause 41,  
(ii) USD 2 per gross kilogramme of the goods lost or damaged, and,  
(iii) the limit specified in Rail Freight Transport Regulations of China (Tieyun N° 40) Article 56 where the Regulations apply of the goods lost, damaged, misdirected, misdelivered or in respect of which a claim arises.

(b) in respect of claims for delay the Company's carriage charges only in respect of the goods delayed.

41. Compensation is calculated by reference to the ex-works invoice value of the goods plus carriage charges and insurance if paid. If there is no invoice value, compensation is calculated by reference to the value of the goods at the place and time when they are delivered to the Merchant or should have been so delivered, fixed according to the current market price.

42. By express written agreement and on payment of additional charges, higher compensation may be claimed from the Company not exceeding the value of the goods or the agreed value, whichever is the lesser.

43. The defences and limits of liability provided for by these conditions will apply in any action against the Company, whether founded in contract or tort.

#### **Notice of loss, time bar**

44. The Company will be discharged of all liability unless:

(a)

(i) notice of any claim is received in writing by the Company within 14 days after the date specified at clause 44 (c), except where the Merchant can show that it was impossible to comply with this time limit and that the claim has been made as soon as reasonably possible and,

(ii) suit is brought in the proper forum and written notice is received by the Company within nine months after the date referred to at clause 44 (c), and,

(iii) where the Company responds to the Merchant's claim, the Merchant replies to the Company's response within 60 days of having received it.

(b) Where a law, convention or treaty, including (without limitation) Rail Freight Transport Regulations of China (Tieyun N° 40), SMGS or CIM applies and specifies a period shorter than any period specified at clause 44 (a), this shorter period will prevail over the period specified at clause 44 (a).

(c) The date referred to at clause 44 (a) is:

(i) in the case of loss or damage to Goods, the date of delivery of the Goods,

(ii) in the case of delay or non-delivery of the Goods, the date that the Goods should have been delivered,

(iii) in any other case, the event giving rise to the claim.

#### **Jurisdiction and law**

44. It is hereby specifically agreed that any suit by the Merchant, and save as additionally provided below any suit by the Company, shall be filed exclusively

in the Courts of Belgium and Belgian Law shall exclusively apply.

The Merchant agrees that it shall not institute suit in any other court and agrees to be responsible for the reasonable legal expenses and costs of the Company removing a suit filed in another forum. The Merchant waives any objection to the personal jurisdiction over the Merchant of the above agreed fora.

In the case of any dispute relating to Freight or other sums due by the Merchant to the Company or for any other reason in relation to any dispute or interest in relation to any contract as stipulated in clause 22, the Company may, at its sole option, bring suit against the Merchant in the fora agreed above, or in the countries of the place of receipt, port of loading, port of discharge, place of delivery or in any jurisdiction where the Merchant has a place of business or where jurisdiction can be found with regard to any contract or liability as meant by clause 22.

#### **Miscellaneous**

45. Headings of clauses or groups of clauses in these conditions are for indicative purposes only.

46. If any provision in these conditions is found to be unenforceable, the remainder of the conditions will remain unaffected.