



Terms & Conditions

Short Sea Services

TERMS AND CONDITIONS OF CARRIAGE

1. Definitions

- (a) “**Carrier**” means **CLdN ro-ro S.A.**, 3-7 rue Schiller, L-2519 Luxembourg, Grand Duchy of Luxembourg (R.C.S. Luxembourg B103.758) or **Cobelfret Ferries N.V.**, Sneeuwbeslaan 14, B-2610 Antwerp – Wilrijk, Belgium (BE 0413.127.453 RPR Antwerp).

Where the context permits, Carrier includes owners and charterers (whether by demise or otherwise) of the Ship, all servants or agents of CLdN ro-ro S.A. and Cobelfret Ferries N.V., or any other entity of CLdN LIGNES REGULIERES S.A. or any other entity of CLdN Terminaux S.A., and of the said owners and charterers and all of their independent contractors and sub-contractors together with their servants and agents as the case may be.

- (b) “**Carriage of Goods**” includes all activities by the Carrier in receiving, administrating, storing, handling, loading, stowing, lashing and unlashng, carrying, discharging, delivering and caring for the Goods.
- (c) “**CLdN Groups**” means the group CLdN LIGNES REGULIERES S.A. and/or the group CLdN Terminaux S.A., and all of their direct and indirect Subsidiaries.
- (d) “**Consignee**” includes the person named as such in the Waybill and the person to whom delivery of the Goods is to be made.
- (e) “**Dangerous Goods**” means any hazardous, noxious, dangerous or polluting goods, and those materials and substances, or their residues, designated as “dangerous” by the rules of the International Maritime Organisation and by any applicable legislation and regulations in force. This does not include petrol, diesel oil or other fuel present in reasonable quantities in the fuel tanks of vehicles.
- (f) “**Goods**” means the goods described or deemed to be described in the Waybill together with the Unit.
- (g) “**Illegal Person(s)**” means any person(s) who is (are) refused entry or permission to land at the port of discharge or whose entry or landing there is unlawful for any reason whatsoever.
- (h) “**Inco terms**” refers to the latest version of the International Commercial Terms created by the International Chamber of Commerce.
- (i) “**Lashing(s)**” shall include all devices used by the Carrier for securing the cargo for carriage.
- (j) “**Loss**” or “**Damage**” includes pecuniary, direct, indirect and consequential loss and damage as well as physical loss of and damage to the Goods or any other property or object.
- (k) “**Owner**” includes all persons and/or entities having any property title or legal interest in the Goods, the Unit or any part thereof.
- (l) “**Related Terminals**” means all terminals where the Ships of Carrier load or discharge Goods.
- (m) “**Rules**” means the Hague-Visby Rules as set out in, or incorporated in the Commercial Code of Belgium (Book II Commercial Code, art. 91).
- (n) “**Ship(s)**” means any vessel(s) or vessel capacity owned, chartered or used by the Carrier for the Carriage of Goods.
- (o) “**Shipper**” includes the person named as such in the Waybill and the person who presents the Goods and/or causes the Goods to be presented for shipment and/or settles Carrier’s invoice for service performed. For the purposes of clause 6 and 7 of these Terms and Conditions of Carriage Shipper shall be deemed to include Consignee and/or Owner.
- (p) “**Subsidiary**”: A subsidiary for the purposes of these Terms and Conditions of Carriage is to be understood according to the ‘Loi du 17 décembre 2010 concernant les organismes de placement collectif’. The list of subsidiaries can be consulted in the consolidated accounts of CLdN LIGNES REGULIERES S.A. and CLdN Terminaux S.A. at Centre administratif Pierre Werner, 13, rue Erasme L-1468 Luxembourg or at www.rcsl.lu and also at www.legilux.lu.
- (q) “**Time of Receipt**” means the moment at which the Goods have entered the terminal.
- (r) “**Unit**” means any vehicle, trailer, container, flat, and article of transport or other equipment in or on which the Goods are carried and/or stored and/or by which the Goods are loaded onto or discharged from the Ship.
- (s) “**Waybill**” means a non-negotiable ferry service receipt note (however described or titled on its face) issued as a receipt for the Goods on the Ship and which by reference to these Terms and Conditions of Carriage evidences the contract of carriage of goods by sea and which shall be in such form as the Carrier may from time to time determine.

2. Applicability

- (a) These Terms and Conditions of Carriage shall apply to each offer and all agreements or contracts for the Carriage of Goods (as defined herein) made by or entered into by or on behalf of (a) Carrier or (b) the CLdN Groups, as the case may be, where the Carriage of Goods is, or is intended to be, on board a ro-ro or lo-lo Ship owned, chartered or used by this company.
- (b) Any terms and conditions of a contractual partner of the Carrier are hereby expressly considered as not applicable and may only apply if, for each individual matter, the Carrier has expressly accepted them in writing.

- (c) The Shipper or contractual partner, who accepts for execution the offer of the Carrier (i.e. booking) under the present Terms and Conditions of Carriage, accepts the applicability of these Terms and Conditions of Carriage in all future agreements or transactions to intervene and for all services rendered.
- (d) The liability of the Carrier commences as from the Time of Receipt of the Goods booked for shipment and shall terminate upon the Goods or Units being collected by the Shipper of the Goods or Units or upon the expiry of 72 hours after discharge of the Goods or Units from the Ship, whichever is the earlier.
- (e) Goods or Units whether not booked or not collected within 72 hours after discharge of the Goods or Units from the Ship will remain on the terminal at their own risk and peril and/or subject to the relevant terminal’s stevedoring conditions, if applicable.

3. Carrier’s Liability Insurance

The Carrier will only take out liability insurance in accordance with his liability under the present Terms and Conditions of Carriage. The Shipper is strongly advised to take out proper cargo insurance, covering both particular and general average.

4. Interpretation

The commercial terms used in these Terms and Conditions of Carriage and in all other documents drafted between the Carrier and the Shipper are to be interpreted and specified in accordance with the Inco terms.

5. Waybill

- (a) No bill of lading shall be issued and no document issued in connection with this carriage shall be treated as if it were a bill of lading. A Waybill shall be issued by the Carrier upon request of the Shipper but neither the failure to do so nor any other act, omission, forbearance or conduct in relation to the issue of a Waybill shall deprive the Carrier of the benefit of these Terms and Conditions of Carriage nor release the Shipper, Consignee or Owner from the burden of these Terms and Conditions of Carriage.
- (b) For the avoidance of doubt any Waybill issued shall be subject to the provisions of the Hague-Visby Rules and shall be deemed to incorporate the description and identity of the Goods, Shipper and Consignee contained in any notice issued by the Carrier confirming that the goods have been booked or shipped as if such information had been included in the Waybill at the time of its issue.

6. Basis of Liability of the Shipper/Consignee/Owner

The Shipper accepts these Terms and Conditions of Carriage including all the provisions of this Clause on his own behalf and on behalf of the Consignee and/or the Owner. Shipper hereby warrants that he has authority to do so. Any reference to the liabilities, responsibilities, undertakings or promises of the Shipper herein (including promises to indemnify) shall (save where the context requires otherwise or expressly states otherwise) be deemed to refer also to the liabilities, responsibilities and promises of the Consignee and of the Owner (which shall be joint and several with the Shipper and with each other). The Consignee and Owner each further undertake all liabilities, responsibilities and promises of the Shipper hereunder, such undertaking being additional and without prejudice to their liability or to the Shipper’s own liability or responsibility. The provisions of this Clause are in addition to and without prejudice to the provisions of the Hague-Visby Rules.

7. Warranties and Liabilities of the Shipper/Consignee/Owner

- (a) Loading and discharging shall be at the Carrier’s expense (save that a charge may be raised by the Carrier upon the Shipper for the additional handling and lifting of Units). The Shipper, the Owner and the Consignee, jointly and severally, shall indemnify the Carrier against all costs, expenses, liabilities and any other consequences of the (machinery) breakdown or deficiency of any Unit or Goods during the course of loading or discharge, whilst on board the Ship or whilst on the terminal.
- (b) The Shipper, Consignee and/or Owner warrant that:
- Any person accompanying the Goods or Units is properly authorised to do so and will comply with the requirements of all applicable laws and regulations and the lawful instructions given by the Carrier. Any drivers accompanying the Goods or Units being carried must comply with the applicable law concerning the consumption of drugs or alcohol at all times whilst they are in their vehicles whether on the Carrier’s Terminal or on the Ships. In the event that the Carrier, its servants or agents reasonably believe a driver may be in breach of this provision, the Carrier may be entitled to refuse to carry the Shipper’s Goods or Units. The Shipper shall keep the Carrier harmless in respect of the consequences of the Carrier’s exercise of the right to refuse to carry the Goods or Units.
 - No Unit nor the Goods shall contain any Illegal Person.
- (c) The Carrier may open or otherwise handle any Unit or the Goods if directed to do so by customs or any other competent authority or if the Carrier in its sole discretion considers it necessary to do so (acting reasonably). This will be done at the Shipper’s risk and expense and the Carrier shall not be liable in any circumstances whatsoever for loss or damage or delay resulting therefrom.
- (d) The apparent condition of the Goods on receipt by the Carrier shall be as recorded in a condition report or contemporaneous video or photo recording (whichever system the Carrier may elect to use) made by the Carrier at the port of loading. A condition report or contemporaneous video or photo recording at the port of discharge shall be conclusive evidence as to the condition of the Goods on delivery. The Carrier shall not be responsible for, and the Shipper shall indemnify the Carrier against all consequences and liabilities resulting from inaccuracy or inadequacy of the description, weight, number, measure,

quantity, marks, value, condition, quality or contents of the Goods or defects in or overloading of Units or inadequacy of the securing, packing, sealing or stuffing of the Goods.

- (e) i. Seaworthiness of the Goods: The Shipper warrants the suitability of the Goods for carriage by sea. The Carrier shall not be liable in the event of failure of points or parts of the Goods to which Lashings have been made or of damage to the Goods caused by Lashing(s) or by their having been lashed.
- ii. Goods offered for carriage in containers or trailers: Lashing and securing of goods inside, is warranted by the Shipper to be suitable, accurate, and consistent for sea transport, and in accordance with applicable regulations and good industry practice.
- iii. The Shipper shall indemnify the Carrier, or keep the Carrier harmless, against damage caused to the Ship, the Ship's equipment (including lashing gear) or any other cargo as a result of breaking of lashing due to characteristics of cargo's lashing points.
- (f) The Shipper shall indemnify the Carrier for all losses, costs and expenses arising from claims by and for all liabilities to third parties in respect of (i) loss, damage, misdelivery or delay in connection with the Goods in excess of the Carrier's liabilities (if any) under these Terms and Conditions of Carriage; and (ii) any damage to any property or interests of third parties or to the Ship caused by the Goods.
- (g) i. Dangerous Goods shall not be shipped or sent for shipment or storage without prior permission from the Carrier. Such goods are to be packed, stowed and transported under conditions fully compliant with the rules and regulations from time to time governing the transportation of IMDG/IMO classified goods. The Shipper accepts that no liability shall be borne by the Carrier in respect of any legal charges or demands for compensation made against the Carrier which are a direct result of breach of the said regulations by the Shipper.
- ii. The Shipper must provide the Carrier with a correct declaration and all information required as to the necessary precautions to be taken in respect of Dangerous Goods and must affix to the relevant Unit all necessary notices to comply with the applicable regulations and legislation in order to indicate that the cargo is dangerous. In the absence hereof the Carrier shall have an absolute right to refuse shipment. Furthermore, the accompanying ADR documents have to be in compliance with the applicable regulations and legislation.
- iii. Carriage of Dangerous Goods shall at all times be at the sole risk of the Shipper and/or the Consignee who shall always be jointly and severally responsible for any injury, including loss of life, loss or damage resulting from such carriage even if the Carrier is under a strict liability arising from the shipment, or sending for shipment, or storage of such cargo.
- iv. The Shipper undertakes to take control of Dangerous Goods at the Carrier's first demand. In any case, the Carrier shall be entitled in its sole discretion to disembark, destroy or otherwise render innocuous such cargo without liability to compensate the Shipper and/or the Consignee and/or any other person for any resulting loss (including costs for cleaning, removal or disposal of or compliance with safety regulations or requirements, fines, penalties of whatsoever nature and however arising), and in such event, the Shipper shall remain responsible for all freight and other charges due to the Carrier as well as for the costs and expenses incurred by the Carrier in taking such action.
- (h) The Shipper shall be responsible at all times for ensuring that every person (whether or not authorised) travelling with a Unit has all the documentation required by immigration, customs, health and other regulations and authorities, and the Shipper shall be liable to indemnify the Carrier forthwith in respect of all financial consequences arising as a result of any such person failing to comply with such requirements. The Carrier's right of lien for unpaid freight as provided by clause 16 shall extend to any financial consequences arising under this clause.
- (i) i. The Shipper warrants the Goods are lawful merchandise of the ports of loading and discharge and will indemnify the Carrier against all costs, expenses, customs' fines, liabilities and any other consequences of the Goods not being lawful merchandise at the said ports or at any other port or place where the Goods may be.
- ii. The Shipper warrants he will not send Goods or Units for shipment or storage that are not allowed by the Carrier.
- iii. The Shipper agrees to indemnify the Carrier against all liability, loss and expense which the Carrier may incur if the Goods when received by the Carrier contain Illegal Persons (whether or not the Shipper or any other person interested in or connected with the Goods is aware of such fact).

8. Carrier's Rights and Liabilities

The Goods are received, stowed, carried, discharged and otherwise handled and kept by the Carrier under and subject to the following provisions:

(a) Force Majeure Clause

- i. The Carrier shall not be liable for any damages, or losses, or any consequences of whatsoever nature arising from breach of the agreed services, which is caused by an Act of God, or an act of government or regulatory authority, by fire, hail, snowfall, flood, inundation or storm or unusual atmospheric circumstances, atmospheric or industrial fall-out, airborne contamination, exhaust fumes, ordinary wear and tear and deterioration inherent to open-air storage, bird droppings, by war, terrorism, vandalism, riot or civil commotion, strikes, lock out, blocking or labour disputes or breakdown in or interruption on communications or, in general terms, by any other reason, event or circumstance beyond the Carrier's control.
- ii. In case of Force Majeure affecting the obligations of the Shipper, he is required to keep the Carrier informed in writing as soon as possible of the details and of the development of the situation giving rise to Force Majeure.
- iii. If the Carrier is of opinion that the Force Majeure affecting the Shipper or the Goods shall delay the Carrier's execution of the Carriage of Goods too much, or that this execution shall be more onerous to carry out or shall cause operational difficulties for the Carrier, he is entitled not to perform the Carriage of Goods, either totally or partially. Carrier shall notify Shipper in writing as soon as possible thereafter to inform the non performance of the Carriage of Goods for reason of Force Majeure.

(b) Hague-Visby Liability Regime

1. The Carrier's liability is governed by the provisions of the Hague-Visby Rules. The Rules shall govern the Carriage of Goods, save as follows:

i. Article I and Article III rules 3, 4, 7 and 8 and Article X and paragraph 3 and the proviso to paragraph 1 of Article VI of the Rules shall be deleted.

ii. Any reference to a "Bill of Lading" in the Rules shall be treated as a reference to a "Waybill".

iii. The Goods as defined herein shall be treated as one package or unit for the purposes of Article IV, paragraph 5(a) of the Rules.

2. The liability of the Carrier is limited to whatever is prescribed by the Hague-Visby Rules. The amount per kilo of the lost or damaged Goods to which the Carrier's liability is limited will be 2 SDR or the amount dictated by the Rules from time to time.

3. The Carrier's liability is also governed by all other relevant statutory limitations of and exemptions from liability from time to time in force and the provisions set out in these Terms and Conditions of Carriage. In the event of inconsistency with the Rules as amended, these Terms and Conditions of Carriage shall prevail.

(c) Carrier's Liability Regime

1. The Carrier is only responsible for the Carriage of Goods. The Carrier will not act in the capacity of, or be considered as, a consecutive Carrier under any other Convention or Treaty, such as e.g. the C.M.R. Convention.

2. Neither the Carrier nor the Ship shall be liable for:

i. Delay;

ii. Loss or damage of any nature whatsoever which occurs either before the Goods enter the terminal, either after the Goods have left the terminal at the discharging port or the expiry of the period of 72 hours after discharge of the Unit or the Goods from the Ship, whichever is the earliest;

iii. Misdelivery (save as provided in Clause 13 hereof);

iv. Loss of use of the Goods or any indirect or consequential loss therefrom;

v. Loss, delay or mishandling of any documents sent forward with the Ship and/or issued on receipt of the Goods;

vi. Illegal acts of Illegal Persons trespassing on the terminals, or on board of the Ships, or damages resulting from any such acts;

vii. The presence of any Illegal Persons in the Goods.

3. The Shipper bears all liability for damages, claims, fines and expenses that may arise from the presence of Illegal Persons in his Goods. The Carrier shall be exempt from any liability in respect of Illegal Persons.

4. The Carrier shall not be liable for personal injury to or loss of life of drivers or passengers of vehicles, or other persons who are or whose presence is connected with the Goods or for loss or damage to or delay in connection with their luggage.

5. The Shipper agrees to indemnify the Carrier at first demand against all such claims in respect of any such liability and against all costs and expenses incurred in relation to such claims under this clause 8.

6. The Carrier shall have the option without notice to the Shipper to carry the Goods on deck or under deck.

7. Loading and/or stowing and/or discharging manoeuvres performed by selfdrivers, will be at Shipper's risk, and Shipper will be responsible for any loss or damage caused to other Goods, or Units, or to the Ship itself.

8. This Clause is without prejudice to the Carrier's defences, rights and immunities under the Rules.

9. The liability of the Carrier as well as the amount of compensation will be determined on the ground of the following criteria:

i. Firstly the Terms and Conditions of Carriage as printed overleaf the non-negotiable receipt note (incorporating the Hague-Visby Rules);

ii. Secondly the Guidelines for the settlement of claims as issued by the North Sea Operator's Claims Conference known as the NSOCC Green Card;

iii. Thirdly the Belgian (maritime) law and claims adjustment practise.

9. Voyage and Performance of the Carrier

(a) The Carrier is at liberty to sail before or after advertised sailing times, to depart from the intended or advertised route, to alter and to extend the same, and to call at any ports on or not on that route in any rotation, and to stay there as long as he considers necessary and desirable for any purpose, moreover to sail with or without pilots, to tow Ships and to be towed and to render assistance of any nature whatsoever, also to dry-dock for any purpose and to make trial trips with whole or parts of the Goods on board and all of the foregoing are included in the contract voyage.

(b) No deviation of whatsoever kind shall at any time be considered a breach of these Terms and Conditions of Carriage.

(c) The Carrier may forward the Goods by any Ship or Ships whatsoever, including transshipment, and if for any reason whatsoever the Carrier is of the opinion that the Ship is prevented or hindered from entering or leaving any port or otherwise from proceeding with the voyage then the Carrier in its sole discretion may abandon the voyage or proceed to any other port (including return to the port of loading) and may there discharge or take such other steps with regard to the Goods as it may think fit. Any port at which the Goods are so discharged may at the Carrier's option be deemed the port of discharge hereunder and the voyage will be considered as terminated.

(d) The Carrier is at liberty (regardless whether a freight quotation has been issued or accepted) to refuse Goods for transport, at Carrier's sole discretion.

(e) Any regular services for the Carriage of Goods performed by the Carrier can be terminated immediately and existing liner services can be altered by the Carrier at any time or new liner services can be created.

(f) Only Goods booked for the Carriage of Goods will be accepted into the Terminal.

10. Freight and invoice terms

- (a)
 - i. Freight shall be deemed earned by the Carrier and is payable to the Carrier on shipment of the Goods (whether lost or not lost) and shall be paid in full without deduction of any allowance, credit, discount, right of set-off or counterclaim.
 - ii. No act, omission, forbearance or conduct by Carrier (including the provision of credit facilities) shall constitute any admission or promise that the Carrier will forego any of its rights hereunder or waiver of any such rights.
- (b) The Carrier is entitled to determine the payment method from time to time. The Carrier is entitled to refuse to be paid by way of cheques.
- (c) Payment shall be made in the country, in the manner, and in the currency stipulated on the invoice made by the Carrier. All bank charges associated with the making of such payment shall be for the account of the Shipper. Similarly, all deductions or commissions related to payment with credit cards shall be for account of the Shipper.
- (d) The Carrier shall not be responsible for "shipper's charges forward" at any time.
- (e) Freight is payable by the Shipper. Whenever the Carrier agrees that freight may be paid by any other person or party, the Shipper shall indemnify the Carrier against any claim for freight not so paid within thirty days from shipment of the Goods (also when lost or partially lost).
- (f) Unless expressly agreed otherwise in the freight quotation, or in a separate contract with the Shipper, or unless stated otherwise on the invoice, all invoices are to be paid on the date of invoice (i.e. maximum within 8 calendar days from the date of invoice). In case of failure to pay timely, interest will *de jure* and without further notice be due on all outstanding amounts, and will start to accrue as from the date the invoice was issued.
- (g) The currencies, quantities, weights, and/or volumes accepted in a specific and written form by the Carrier are the only ones that will be considered valid for the invoices.
- (h)
 - i. The interest will be calculated at the interest reference tariffs as determined by the ECB. Calculation as determined in the European directive 2000/35/EG of June 29th, 2000.
 - ii. Formula: ECB tariff, increased by 7 percent points, and rounded upwards up till the higher half percent-point. However, interest will not be less than 12 percent per annum.
- (i)
 - i. If within a term of 15 calendar days, after the Shipper was put on notice, by means of a registered letter, the Shipper still fails to pay, then the principal amount claimed will be increased *de iure*, with 10 percent extra, with a minimum of 500 euro and a maximum of 50.000 euro, by way of a lump sum indemnity for additional administration, follow-up of debtor position (credit control services) and disturbance of trade.
 - ii. Alternatively, the Carrier shall be entitled, in his exclusive right of option, not to claim the above lump sum, but to claim instead the reasonable full indemnification for recovery costs (including costs generated by conservatory or executory arrest, or enforcement of liens).

11. Credit facilities

- (a) If the Carrier has granted payment facilities in writing, then the benefit of such credit facilities is given under the condition subsequent of strict observance and compliance by the Shipper to these credit terms.
- (b) Non-compliance with the credit terms granted, and regardless the nature or amount of the non-compliance, will be sanctioned, without further notice, with the automatic cancellation and withdrawal of the granted credit facility as a whole, and accordingly then all outstanding invoices will immediately become due and payable, and interests thereon will have accrued as from the date of the invoice(s). Any payment terms mentioned on the invoices shall then become null and void and shall read "prompt payment" instead.
- (c) If no such prompt payment is received, then the Carrier is entitled to exercise all securities, liens, retentions or similar actions as stipulated elsewhere in the present Terms and Conditions of Carriage and/or to suspend any further performance immediately.
- (d) If and when credit terms have been breached and accordingly automatic cancellation has taken place, then – once the Shipper has rectified his breach of contract – credit terms can only be granted by authorised persons of the Carrier.
- (e) Pending such written reinstatement, further bookings accepted, shipments performed or invoice issued by the Carrier cannot be construed as a tacit waiver of this automatic cancellation of credit facilities.
- (f)
 - i. Credit facilities (whether payment terms and/or a monetary limit) are a discretionary favour, not a "right", and are always granted on a temporary *ad hoc* basis until further notice.
 - ii. A decision to cancel credit facilities will be notified in writing, but without any obligation of the Carrier to motivate this decision, and no indemnity whatsoever shall be due in that respect.

12. Freight quotations

- (a) Unless stated otherwise on the freight quotation, all our price quotations have a maximum validity of 15 calendar days only, and will automatically expire if not accepted in writing, within these 15 calendar days.
- (b) Freight quotations are effective on the date specified in the quotation, and are exclusive of VAT. Freight quotations are made subject to re-confirmation by the Carrier after receipt of the Shipper's order.
- (c) If the freight quotation form contains conditions or clauses conflicting with clauses of the present Terms and Conditions of Carriage, then the confirmed freight quotation form prevails. Quotations are always subject to the availability of free capacity on the Carrier's Ship.
- (d) Any proposal and/or quotation Carrier submits, is formulated on the express condition that our calculated labour cost will not be adversely affected by labour cost increases as they might result from the safeguarding of employees' rights. Such effects and costs, resulting in higher labour cost levels being incurred and thus affecting our initial cost calculation will be for account of the customer.
- (e) The Carrier reserves the right to vary prices to cover any additional costs to the Carrier including (without limitation) alterations in fuel costs, exchange rates, insurance premiums, customs and excise or other duties, taxes, and all levies, deposits, charges and outlays levied by any authority, governmental or otherwise, in connection with the Goods, their

storage or transportation.

- (f) The Carrier may at any time demand prepayment of the whole or part of its charges or expenses. If further charges or expenses are incurred as a result of any delay or default however arising, the Shipper shall forthwith on demand pay all such sums to the Carrier. The Carrier, at its discretion, is entitled to obtain at first request reasonable security to guarantee any outstanding amounts.
- (g) No undertaking by the Carrier to collect from a Consignee or any other person any sum payable to the Shipper, and no demand by the Carrier on any such person, shall constitute a waiver or release by the Carrier of any rights against the Shipper.

13. Delivery and Storage at each Terminal

- (a) The Shipper authorises the Carrier to deliver the Goods to the representative of the Consignee or to any person whom the Carrier reasonably believes to be authorised to take delivery on behalf of the Shipper, the Consignee or the Owner. It shall be the responsibility of such person and of the Shipper, the Consignee or the Owner, to the exclusion of any liability of the Carrier, to identify and collect the Goods in respect of which delivery has been demanded. In no circumstances shall the Carrier be liable in excess of the limitation of liability provided in Clause 8.
- (b) Such delivery shall constitute due fulfilment of the Carrier's obligations as to delivery of the Goods.
- (c) In the event that any Goods are collected by or on behalf of the Shipper, Consignee or Owner, in which he has no legal interest whatsoever, such Goods shall (if identified) be returned forthwith upon identification and in any event the Shipper shall indemnify the Carrier for any loss or damage arising out of the collection of such Goods and any failure to return them or any delay in returning them to the Carrier.
- (d) A claim shall only be admissible if the Shipper can prove that the Carrier acted in a grossly negligent or fraudulent manner.
- (e) The Shipper, Owner, or Consignee shall arrange for delivery to be taken of the Goods immediately and promptly after discharge from the Ship, and not later than 72 hours after the said discharge, unless any other period would have been agreed specifically in writing between the Carrier and the Shipper. Thereafter, the Goods remain on the premises at the sole risk of the Shipper and/or Consignee and/or Owners and subject to the local port rules. The Shipper shall indemnify the Carrier against all expenses so incurred.

14. Responsibility for Seals

- (a) The Carrier shall not be responsible for checking container seals or seal numbers and shall not be required by the Shipper to carry out any seal check or to note seal numbers on any document at any time whatsoever.
- (b) Where, for whatever reason, seal numbers are noted for whatever reason by the Carrier then, notwithstanding anything to the contrary in these Terms and Conditions of Carriage, no representation whatsoever is made by the Carrier as to the accuracy of the number noted nor as to the condition of the seal. The Carrier is entitled to place additional Carrier seals, but in doing so does not accept any liability whatsoever.
- (c) Carrier shall be entitled at any time to breach a seal affixed upon the Goods, if Carrier is instructed to do so by a competent authority and/or in case of emergency. Carrier shall not be liable to Shipper, Consignee or Owner for any consequences or costs following such breach of a seal.

15. Responsibility for temperature controlled/refrigerated cargo

- (a) Upon written request by the Shipper the Carrier will endeavour to connect any Unit to a supply of electricity. The Carrier shall not be liable for any loss or damage to the Goods arising from any failure to make such connection.
- (b) The Carrier does not accept responsibility for maintaining the Goods at any required or specific temperature and shall not be liable for any loss or damage to the Goods arising from any failure to maintain such temperature.

16. Lien, Breach of Contract and Protection of the Carrier

- (a) The Carrier (in addition to and without prejudice to all its rights to exercise a lien on the Goods or any part thereof apart from this clause) shall have a lien (and throughout this Clause such right of lien shall include a right of pledge such as e.g. the Belgian "pandrecht" and/or a right of retention) on the Goods or any part thereof for all freight, additional freight, disbursements, storage and other expenses, or other charges and all other sums whatsoever which are or become due to the Carrier in respect of the Goods or under these Terms and Conditions of Carriage, and for all other sums which are or become due to the Carrier from the Shipper and/or the Consignee and/or the Owner whether in respect of previous shipments or on general account or otherwise however. In this Clause "sums" includes but is not limited to damages for breach of contract and other unliquidated claims, costs, expenses, liabilities and general average and all previously unsatisfied debts whatsoever.
- (b) The lien shall extend to include interest on all sums which are or after the lien is exercised become due as aforesaid and costs and expenses and liabilities incurred by the Carrier in exercising and maintaining the lien or in exercising the following rights of sale.
- (c) The Carrier shall be entitled (and is hereby authorised by or on behalf of the Shipper, Owner and Consignee) to sell the Goods or any part thereof which are not delivered and/or collected within three months after the date of discharge, whether or not any lien has been or might be exercised over such goods. The sale may be by public auction or otherwise and the proceeds may be applied (in priority to any party against whom the right of lien can effectively be relied upon) in full or part settlement of the sums due to the Carrier. The Shipper, Consignee and/or Owner as the case may be, remaining liable to pay the balance, if any, of such sums to the Carrier. The Carrier will pay the balance, if any, of the proceeds of sale to or order of the Owner.
- (d) Without prejudice to the generality of Clause 6 above the Shipper expressly warrants that he has authority to contract (as in sub-paragraphs (a), (b) and (c) hereof) on behalf of the Consignee and the Owner from time to time as well as on his own behalf. The Shipper expressly agrees to indemnify the Carrier against all consequences and liabilities arising out of the exercise of such lien and power of sale if the exercise proves to be unlawful or ineffective as against the Consignee and/or Owner and/or any other person.
- (e) The right of lien shall cease as soon as the Carrier has been paid all amounts not in dispute and has been given sufficient security for the payment of any amount which is in dispute or the precise amount of which cannot be ascertained and providing for payment to be made within a reasonable time after determination of liability for and/or quantum of such amount.

- (f) The Carrier is entitled to terminate the contract, either totally or partially, by means of a written declaration and without further notice, with immediate effect if:
- i. The Shipper is in breach of one or more of his obligations, or if it becomes clear that full execution shall be impossible; a delay of more than 10 calendar weeks is considered as such a breach;
 - ii. The Carrier reasonably fears that the Shipper shall be unable to fulfil his obligations;
 - iii. The Shipper is declared in bankruptcy, or is in cessation of payments, or has decided to wind-up, or has asked for a judicial debt agreement, or seems to be insolvent in any other way;
 - iv. Serious changes occur in the ownership or shareholding of the Shipper.
- (g) i. In case of breach of contract, the Carrier is not obliged to any form of compensation. The Shipper is required to safeguard the Carrier against and bear the losses coming from complaints from third parties resulting directly or indirectly from the breach of contract.
- ii. In the case of breach of contract, the Shipper is required to compensate all the costs made by the Carrier, without prejudice to the right of the Carrier to demand full compensation. The Shipper is also required to reimburse the expenses incurred by the Carrier.
- iii. Furthermore, the Carrier may suspend its contractual performance and invoke the "Exceptio non adimpleti contractus" (Carrier's "Right not to perform the contract").
- (h) The CLdN Groups will on basis of reciprocity be entitled to make use of, and invoke all payment securities and liens stipulated in these Terms and Conditions of Carriage and will be entitled to enforce securities and liens upon Goods held within the CLdN Groups, i.e. under the custody of any company of the CLdN Groups, regardless whether these Goods are on the CLdN Groups Ships, crafts, trucks, trailers, containers or premises of any of the Related Terminals.
- i) Cross default clause:
- i. The Carrier is a Subsidiary of the CLdN Groups.
 - ii. A default or breach of any nature whatsoever by the Shipper of any of its obligations under the present Terms and Conditions of Carriage towards the Carrier, will be considered to constitute a material breach of its obligations (of any nature whatsoever) towards each entity of the CLdN Groups and will entitle any entity of the CLdN Groups – immediately and without further notice – to suspend or terminate any of its contractual obligations towards the Shipper and to trigger or accelerate its contractual rights vis-à-vis such Shipper and/or to enforce any security or surety granted to it by the Shipper. Such breach will automatically cancel and render all credit facilities null and void and accordingly will make each outstanding invoice become due immediately.
 - iii. If the Shipper is a part of a Group, a default or breach committed by any entity of that Shipper's Group towards any entity of the CLdN Groups will be considered a breach by the Shipper under the present Terms and Conditions of Carriage and will give rise to the right of any entity of CLdN Groups as described in the preceding paragraph.
 - iv. In addition, in the case the Shipper is a part of a Group, the Shipper hereby guarantees for the benefit of any specific Carrier involved under the present Terms and Conditions of Carriage or any other relevant entity of the CLdN Groups (as the case may be) the due and punctual performance by each and every entity of the Shipper's Group of any and all of such entity's obligations towards the relevant entity of the CLdN Groups.
 - v. The Carrier can enforce bad debts against assets of any company in the Shipper's group, which has received these Terms and Conditions of Carriage and – based thereupon – has transacted business with the CLdN Groups.
 - vi. Any breach by the Shipper or the Shipper's group towards any entity of the CLdN Groups will automatically render all credit lines, payment facilities and payment terms granted to any company of the Shipper's group under the present Terms and Conditions of Carriage null and void vis-à-vis any entity of the Shipper's group. The payment of all services rendered and invoiced by any entity in the CLdN Groups will then become due with immediate effect.

17. Anti-bribery Clause

- (a) No offer, gift, payment, consideration or benefit whatsoever, which constitutes an illegal and/or corrupt practice and/or which is in connection with the conclusion and/or performance of services covered by these Terms and Conditions of Carriage, can or will be made by Shipper, Consignee or Owner, directly and/or indirectly to Carrier or a subcontracting and/or a third party, as an inducement or reward for the execution of these services.
- (b) Any such practice will constitute a breach of these Terms and Conditions of Carriage and will be grounds for immediate termination of Carrier's performance and for any additional actions, whether civil and/or criminal, that Carrier sees fit.

18. Sub-contracting, Protection and Claims

- (a) The Carrier may sub-contract all or any part of its obligations hereunder.
- (b) The Shipper undertakes that no claim whatsoever shall be made in relation to the Goods against any servant or agent of the Carrier. Every such servant or agent shall have the benefit of all provisions herein as if such provisions were expressed to be for its benefit, and in entering into this contract the Carrier does so to the extent of those provisions, both on its own behalf and as agent and trustee for such servants, agents and sub-contractors.
- (c) The Carrier shall be entitled to be paid by the Shipper on demand an amount equal to any sum recovered by such Shipper or any other person from such servant or agent of the Carrier for any claim whatsoever (including claims arising out of the negligence of such servant or agent) made in relation to the Goods.

(d) The Shipper undertakes that no claim whatsoever shall be made other than under these Terms and Conditions of Carriage and if such claim should be made, to indemnify the Carrier against all costs, liability or expense of any nature whatsoever incurred by or suffered by the Carrier in consequence thereof.

(e) Financial claims that the Shipper might have against the Carrier are non-transferable to other parties without a written authorisation from the Carrier.

19. General Average

- (a) General Average shall be adjusted according to York Antwerp Rules 1994 and as amended by any subsequent amendments or revisions of the said rules subsequent thereto and in force at the Time of Receipt and shall be prepared at the port of Carrier's option, by an established adjuster to be appointed by the Carrier.
- (b) Such deposit as the adjuster and/or the Carrier may deem sufficient to cover the estimated contribution of the Goods and any salvage and special charges thereon shall, if required, be paid by the Shipper, Owner and/or Consignee to the Carrier or its agents prior to delivery and may be converted as at any time into any other currency as the Carrier shall think fit, at the risk of the depositor. In case of accident or salvage the measures and arrangements of the Carrier or the master shall be collectively and individually binding on the Shipper and/or Consignee and/or Owner. If a salving ship is owned or operated by the Carrier, salvage shall be paid for in full as if the said salving ship belonged to a third party.

20. New Jason Clause

In the event of accident, danger, damage or disaster before or after the commencement of the voyage, resulting from any cause whatsoever, whether due to negligence or not, for which or for the consequence of which the Carrier is not responsible, by statute, contract or otherwise, the Goods and the Shipper shall jointly and severally contribute with the Carrier in general average to the payment of any sacrifices, losses or expenses of a general average nature that may be made or incurred and shall pay salvage and special charges incurred in respect of the Goods.

21. Time-bar and Claim Procedure

- (a) In case of visible loss or damage, Carrier shall only accept Shipper's immediate protest, i.e. through a recheck procedure or by written notice. Any other loss or damage will only be accepted by Carrier if notified by Shipper in writing within 72 hours from delivery of the Goods.
- (b) In any event the Carrier and the Ship shall be discharged from all liability in respect of loss or damage unless suit is brought before competent Belgian court within one year after discharge of the Goods from the Ship.
- (c) Claimants shall comply with claims-principles resulting from the Hague-Visby Rules.
- (d) Furthermore claims will be subject to the "CLdN CLAIMS PROCEDURE" or the "COBEL-FRET FERRIES' CLAIMS PROCEDURE" as applied by Carrier from time to time.

22. Non-Disclosure Clause

- i. The Carrier remains the only possessor of the rights pertaining to the documents and specifications, in whatever form they might be, transferred to the Shipper within the context of the issue of an offer and/or the execution of a contract, whatever the way they might be handled or stocked.
- ii. The Shipper shall not use the documentation and specifications for other purposes than the ones he has received them for, and shall not, either totally or partially, in any way whatsoever, reproduce them, transfer them to third parties, or inform third parties of their content.
- iii. The Shipper is required to regard as confidential all he has come to know concerning the Carrier in the scope of the offer, the conclusion and the execution of the contract, including the claims handling, and to require the same of his personnel and of eventual third parties intervening in the same framework.

23. Law and Jurisdiction

- (a) These Terms and Conditions of Carriage and all contracts to which they apply and all disputes in connection with or arising out of or in relation to these Terms and Conditions of Carriage or the Carriage of the Goods and Units hereunder shall be subject to the law of Belgium, and shall be subject to the exclusive jurisdiction of the Commercial Court of Antwerp, Belgium. ("Exclusive": save for the right of option of the Carrier, as stipulated in clause 23 (b) below).
- (b) However:
- i. The Carrier may also, at his exclusive right of option, bring any claim or action (especially for the purpose of recovering bad debt) against the Owner, Shipper or Consignee before the Courts of the place where these parties either have their registered office or their commercial – or branch office, or have tangible assets and;
 - ii. Nothing contained in this Clause shall prevent the Carrier from invoking such other law or jurisdiction as may be necessary for the enforcement of the Carrier's rights of lien under Clause 16 or otherwise.
- (c) If any term of these Terms and Conditions of Carriage shall be found to be invalid or unenforceable then such invalidity or unenforceability shall not affect any other provisions all of which shall remain in full force and effect.
- (d) The English text is the original version of these Terms and Conditions of Carriage. In case of a dispute arising from the translation into another language of those Terms and Conditions, the English original text will prevail.

1.12.2011