



## **TERMINAL SERVICES**

### **GENERAL TERMS AND CONDITIONS**

**Applicable as of 1 May 2022**

These Terms and Conditions apply to the Contract between us (as the Company) and you (as the Customer). At all times, the standard of duty of the Company is to use reasonable endeavours and not to guarantee a specific result. All provisions are important and relevant; however, your attention is drawn to clauses which:

- (i) Stipulate minimum/maximum cut-off times and maximum dwell-times;
- (ii) Place specific duties and liabilities solely upon the Customer, particularly (but without limitation) regarding submission of correct, complete and timely information, especially in the context of Customs Procedures/Customs Documents and formalities applicable to cross-border traffic of Goods (such as from/to non-EU countries);
- (iii) Bind the Customer to indemnify the Company in certain circumstances;
- (iv) Exclude or limit the Company's liability;
- (v) Entitle the Company to suspend or terminate the Services.

The Customer is advised to take out its own cargo and liability insurance.

## **Table of Contents**

- 1. Definitions and General Provisions**
  - 1.1 Definitions
  - 1.2 Interpretation
  - 1.3 Applicability
  - 1.4 Protection of Personal Data (GDPR)
  - 1.5 No Joint Liability
- 2. Scope and Content of Contract**
- 3. Intellectual and Industrial Property Rights**
- 4. Warranty of Authority by Customer**
- 5. Various Operational Aspects**
  - 5.1 Orders Must be Placed in Writing
  - 5.2 Duty of the Customer to Assist Operations
  - 5.3 Company's Discretion over Handling and Delivery Methods
  - 5.4 Delivery (PIN code system)
  - 5.5 Access to Terminal
  - 5.6 Sequence of Handling Goods
  - 5.7 Refusal of Goods
  - 5.8 Minimum/Maximum Cut-off time & Maximum Dwell-Time
  - 5.9 Delayed or Non-Shipment – Uncollected Goods – Notice of Removal – Shipping Back or Sale of Uncollected Goods
  - 5.10 Dangerous Goods – Waste – Destruction or Disposal of Harmful Goods
  - 5.11 Disposal of Perishable Goods – Unidentifiable Goods
  - 5.12 New or Used Vehicles
  - 5.13 Containers, Trailers and Used Vehicles
  - 5.14 Temperature-Controlled Goods
  - 5.15 Responsibility for Seals
  - 5.16 Subcontracting of Services and Additional Services
- 6. Offers & Quotations – Invoice & Payment Terms – Payment of Charges – Lien – Cross Default – Credit Facilities**
  - 6.1 Offers & Quotations
  - 6.2 Invoice & Payment Terms
  - 6.3 Interest – Liquidated Damages
  - 6.4 Rates – Currency – Charges – Expenses
  - 6.5 Prepayment – Security – No Set-off
  - 6.6 Cross Default – Security – Lien
- 7. Obligations of the Customer**
  - 7.1 Liability of the Customer
  - 7.2 Warranties: Documentation and Information
  - 7.3 Warranties: Persons – Goods
- 8. Cross-Border Traffic**
  - 8.1 Definitions
  - 8.2 Company's Limited Tasks
  - 8.3 Inspection of Goods – Moving of Goods
  - 8.4 Customs Duties, Tariffs
  - 8.5 Customer's Warranties
  - 8.6 Specific Information to be Provided by Customer
- 9. Exclusion of Liability – Indemnity**
- 10. Company's Liability in Contract or in Tort – Exclusions of Liability**
  - 10.1 General Rules
  - 10.2 Exclusions of Liability
- 11. Assessment of Damage and Loss – Amount of Compensation – Limitation**
- 12. Time for Notifying Claims – Claims Procedure – Time Bar**
- 13. Himalaya Clause – Claims in Excess of Company's Contractual Liability**
- 14. Miscellaneous Provisions**
- 15. Suspension – Termination**
- 16. Applicable Law and Jurisdiction**

## 1. Definitions and General Provisions

### 1.1. Definitions

In these general terminal terms and conditions (“**Terms and Conditions**”), the following capitalised words and phrases shall have the meaning set out below:

- (a) “**CLdN Group**” means the CLdN Links SA (RCS Luxembourg B73465) and its subsidiaries as understood by the *Loi du Grand-Duché de Luxembourg du 17 décembre 2010 concernant les organismes de placement collectif*. The list of subsidiaries can be consulted in the consolidated accounts of CLdN Links SA at Centre administrative Pierre Werner, 13 rue Erasme, L-1468 Luxembourg or at [www.rcsl.lu](http://www.rcsl.lu) and at [www.legilux.lu](http://www.legilux.lu).

The following list of members of the CLdN Group is not exhaustive, such that it will be considered to include any other terminal joining CLdN Links SA at any time in the future:

- CLdN Ports London Ltd (Co. N° 02535265)
- CLdN Ports Humber Ltd (Co. N° 00052665)
- CLdN Ports Killingholme Ltd (Co. N° 00278815)
- C.RO Ports Sutton Bridge Ltd (Co. N° 01577650)
- C.RO Ports Dartford Ltd (Co. N° 00462000)
- CLdN Ports Netherlands BV (KvK 24314655) (Rotterdam Terminal and Vlissingen Terminal)
- CLdN Automotive BV (KvK 24143674)
- Rotterdam Car Terminal BV (KvK 24255421)
- CLdN Ports Zeebrugge NV (RPR 0418.294.979) (terminals at Canada Quay, Britannia Dock, Swedish Quay, Albert II Dock)

- (b) “**Company**” means only the specific member(s) of the CLdN Group that enter(s) into a Contract with the Customer. Company includes, unless the context otherwise requires, its successors, assigns, sub-contractors, agents and employees.

- (c) “**Customer**” shall include the owner, consignor, haulier, shipper and consignee and their agents, subcontractors or any other person or entity and their agents having an interest in the Goods in respect of which activities or Services are carried out or provided by the Company.

- (d) “**Contract**” means any agreement between the Company and the Customer for the performance of Services in respect of the Goods (as manifested, amongst others, by the Customer’s acceptance of offers and/or quotes (whether by express agreement or by any single request/booking for Services, whichever occurs first), as issued by the Company, which Contract is considered to incorporate these Terms and Conditions (as may be updated periodically) in their totality.

- (e) “**Dangerous Goods**” means any hazardous, noxious, dangerous, radioactive or polluting Goods, and those materials and substances, their fumes, residues or vapours, designated as “dangerous” by the rules of the International Maritime Organisation (IMO) 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 or Units, provided that the requirements of the International Maritime Dangerous Goods Code (IMDG) or similar rules are met.

- (f) “**Data Protection Legislation**” means GDPR and/or applicable (national) legislation in relation to Personal Data.

- (g) “**GDPR**” means the General Data Protection Regulation: Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of Personal data and on the free movement of such data, and repealing Directive 95/46/EC. Any capitalised terms used in these terms and conditions regarding data protection shall have the meaning given to them in the GDPR.

- (h) “**Goods**” includes (as relevant) all cargo and its packing and/or Unit(s) and/or Vehicles entrusted by the Customer to the Company under the Contract, but excluding Vessels.

- (i) “**Gross Negligence**” means any fault or negligence committed recklessly and with knowledge that damage or loss would probably result therefrom.

- (j) “**Incident**” means any and all damage or loss occurring from the same cause.

- (k) “**Incoterms**” refers to the latest version of the International Commercial Terms created by the International Chamber of Commerce.

- (l) “**Personal Data**” means any information relating to an identified or identifiable natural person (“Data Subject”); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier, or by reference to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.

- (m) “**Terminal**” includes all docks, quays, wharfs, jetties, pontoons, parking areas, storage areas land and buildings used by the CLdN Group and/or used by the Company.

- (n) “**Services**” means all services, including, without limitation, loading, unloading, storage, transhipping, shunting and handling of Goods at the Terminal(s), provided by the Company under the Contract.

- (o) “**Unit**” means any trailer, container, chassis, flat and/or any vehicle of transport (including trains, wagons) or in general other equipment or article of transport, whether empty or in/on which Goods are carried and/or in/on which the Goods are entrusted to the Company and/or by which Goods are loaded onto or discharged from a Vessel.

- (p) “**Vehicle**” includes (without limitation) any self-propelled car, bus, van, pick-up, tractor, truck, high & heavy.

- (q) “**Vessel(s)**” includes all seagoing ships or inland barges, pontoons, tugboats, bunker boats, pilot boats, floating cranes and all marine-craft.

### 1.2. Interpretation

The commercial terms used in these Terms and Conditions and in all other documents drafted between the Company and the Customer are to be interpreted and specified in accordance with Incoterms.

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

### 1.3. Applicability

- (a) The terms and conditions of the Customer are hereby expressly considered excluded and not applicable. Any such Customer terms and conditions, as well as any different provisions than the present Terms and Conditions, will only apply if, for each individual case, the Company has expressly accepted them in writing.

- (b) The Customer who has once contracted under the present Terms and Conditions is deemed to have accepted the applicability of these Terms and Conditions for all, including future, obligations whether in contract or in tort.

- (c) The Company may, at any time, and at its sole discretion, modify these Terms and Conditions, with or without notice to the Customer. Any such modification will be effective immediately upon publication on the Company’s website [www.cldn.com](http://www.cldn.com). The Customer’s continued use of the Services following any such modification constitutes the Customer’s acceptance of such modified Terms and Conditions.

### 1.4. Protection of Personal Data (GDPR)

- (a) The Customer represents and warrants that it complies and undertakes to comply with the Data Protection Legislation.

- (b) In connection with the Services, the Customer shall remain fully liable for (i) the Personal Data that the Company and the Customer process in the context of the Services; (ii) obtaining consent from any Data Subject to the collection, use, processing and transfer of their Personal Data; (iii) providing notices as legally required by Data Protection Legislation to any Data Subject; (iv) portals or websites of the Customer which the Company is required to use, and (v) any Personal Data that the Customer submits via Company portals or websites.

- (c) The Customer guarantees *vis-à-vis* the Company that the content, use and/or processing of Personal Data are not unlawful and do not infringe any rights of affiliates, subsidiaries, customers, subcontractors, agents, representatives, consultants, other third parties nor of Data Subjects related thereto, such as employees and workers.

- (d) The Customer shall indemnify the Company against any and all claims of affiliates, subsidiaries, customers, subcontractors, agents, representatives, consultants, other third parties or Data Subjects related thereto, such as employees and workers, instituted for whatever reason in connection with Personal Data.

In addition to any other available remedies, Customer shall defend, indemnify and hold harmless the Company from any and against all losses, damages, costs and expenses incurred as a result of the breach by Customer of this clause.

- (e) Notwithstanding any other provisions regarding the Company’s liability in this Contract, the Company’s aggregate maximum liability regarding any processing of Personal Data will – to the extent permissible by law – be limited per Contract to the price and/or rates and/or freight paid by the Customer to the Company under such Contract in the twelve (12) months immediately preceding the earliest event giving rise to the liability, or, if twelve (12) months have not elapsed, twelve (12) times the average monthly price and/or rates and/or freight paid by the Customer to the Company under such Contract from the start date of the Contract until the date of the earliest event giving rise to the liability, and in no case more than five thousand (5,000) Euro. The existence of more than one claim will not entitle the Customer to an increase in such limit.

- (f) Where necessary, any standard contractual clauses or a future replacing mechanism to exchange Personal Data between the European Union and Third Countries will automatically be part of this Contract.
- (g) The Company reserves the right to prevent misuse of Personal Data and undertakes to protect Data Subjects' rights. Therefore, any Data Subject connected to the Services shall direct any request under Data Protection Legislation to the Company's registered seat in writing using the Subject Access Request form available on the websites mentioned hereunder, sent via registered mail.
- (h) The Company's Privacy Policy concerning the processing of any Personal Data and Data Subjects' rights applies to and forms an integral part of the Contract and any agreement between the Company and the Customer. The Privacy Policy can be found at [www.cldn.com](http://www.cldn.com), as amended from time to time.

#### 1.5. No Joint Liability

Only the Company will be responsible and liable for the fulfilment of the Contract, to the exclusion of all other members of the CLdN Group. There shall be no liability, much less any joint liability, of the other members of the CLdN Group for the obligations of the Company.

## 2. Scope and Content of Contract

- (a) The Contract shall be governed by these Terms and Conditions. These Terms and Conditions (as may be periodically amended in line with clause 1.3(c)) shall override and exclude any other conditions stipulated or incorporated or referred to by the Customer and/or any course of dealings between the Customer and the Company which are not in accordance with these Terms and Conditions. Except as provided in clause 1.3(c), any addition or variation to these Terms and Conditions shall not be valid unless agreed in writing.

- (b) These Terms and Conditions do not apply to freight forwarding services or to services of a general agency nature carried out by the Company, such services being carried out under separate terms and conditions applicable only to those services.

If the Services of the Company are, nevertheless, qualified either by common agreement or by a competent court of law or arbitrator(s) as freight forwarding services, then the Services will be governed in any case by the latest edition in force of:

- for UK based terminals: British International Freight Association (BIFA) Standard Trading Conditions
- for Belgium based terminals: The Belgian Freight Forwarders Standard Trading Conditions (*Algemene Belgische Expeditievoorwaarden*)
- for Netherlands-based terminals: Dutch Forwarding Conditions / General Conditions of the Netherlands Association for Forwarding and Logistics (FENEX)

The Customer declares to know and to accept these terms and conditions.

- (c) The Company does not act as a depositary of the Goods, nor as a carrier under this Contract and does not undertake any liability as such. Notwithstanding this, in case the Company is held to be a depositary of the Goods or carrier by a competent court of law or arbitrator(s), these Terms and Conditions will still apply.
- (d) The Company will not take out insurance on behalf of the Customer. The Customer is strongly advised to insure the Goods amongst others against all risks, fire, hail, lightning, explosion, crashing of airplanes, storm damage, water damage, airborne contamination, floods and burglary including waiver of recourse by the insurers.
- (e) Without prejudice to the provisions of clause 5.14 below, the Company undertakes no responsibility for the maintenance or repair of any part of the Goods nor for the provision of power, fuel or other supplies therefore nor for maintaining the same at any particular temperature or in any other particular state or condition nor for the feeding or watering of livestock.
- (f) If the Company at any time decides not to rely on these Terms and Conditions or any part thereof, such departure will not constitute a precedent and will not apply to any other matter past or present other than the one for which these Terms and Conditions were departed from.
- (g) In so far as, and to the extent that, these Terms and Conditions do not provide for certain cases or situations, the customary local port practices shall apply in a complementary manner.

## 3. Intellectual and Industrial Property Rights

- (a) The Company remains the only possessor of the rights pertaining to the documents and specifications, in whatever form they might be, transferred to

the Customer within the context of the issue of an offer and/or the execution of a contract, whatever the way they might be handled or stored.

- (b) The Customer is required to return such documentation and specifications back to the Company at first request and in any case at the end of the Contract. The risks related to the documentation and specifications are born by the Customer until the documents are returned to the Company.
- (c) The Customer will, at any relevant time, check the correctness and the consistency of the documents and specifications and signal to the Company any discrepancies and incompleteness, failing which the Customer will be liable for all damage and loss that the Company might suffer as a result.
- (d) The Customer is required to clearly mark the documentation and specifications as being the property of the Company and inform third parties accordingly. The Customer must immediately inform the Company if the documentation and specifications are seized or have become unavailable in any way.
- (e) The Customer shall not use the documentation and specifications for other purposes than those for which it was provided, and the Customer shall not, either totally or partially, in any way whatsoever, reproduce them, provide them to third parties, or inform third parties of their content.

## 4. Warranty of Authority by Customer

The Customer expressly warrants to the Company that the Customer is either the owner or the authorised agent of the owner of the Goods, and further warrants that the Customer accepts these Terms and Conditions not only for itself (including the consignor, consignee, owner and shipper) but also for and on behalf of every other person or legal entity who is or may hereafter become interested in the Goods.

## 5. Various Operational Aspects

### 5.1. Orders Must be Placed in Writing

The Company will only perform the Services on receiving orders in writing to do so from the Customer (or authorised representative) either at the time each Service is required, or in accordance with any contractual arrangement to provide such Services over a period of time.

The Company will, on application, supply forms of request for the Services by the Company. All requests by telephone must be immediately confirmed in writing by the Customer. The Company will not, in any case, be responsible for any errors in complying with such orders where they are communicated by telephone and are not promptly confirmed in writing.

### 5.2. Duty of the Customer to Assist Operations

The Customer shall make every effort to facilitate the operations of the Company, whether by permitting the Company to use all or any structure or items of equipment owned or used by the Customer (whether on a Vessel or elsewhere) and by the supply of full power and or lighting therefore where appropriate at all times without charge. No responsibility shall attach to the Company for any accident howsoever arising out of or caused by or contributed to by any defect in the structure or equipment hereby supplied and the Customer shall indemnify the Company against any claims in relation to any such accident.

### 5.3. Company's Discretion over Handling and Delivery Methods

Subject to specific written instructions given to the Company by the Customer and accepted by the Company in writing, the Company reserves complete freedom and discretion in respect of the means and procedure to be employed in the provision of the Services, including but not limited to the receipt, collection, unitisation, stuffing, stripping, packing, carrying, handling, tallying, loading, lashing/unlashing, discharging or delivery up of Goods. If in the Company's opinion the interests of the Customer so require, the Company may deviate from the Customer's instructions (whether or not accepted by the Company) in any respect and any expenses reasonably incurred thereby shall be for the Customer's account.

### 5.4. Delivery

- (a) The Customer authorises the Company to deliver the Goods to the consignee or to the representative of the consignee or to any person whom the Company reasonably believes to be authorised to take delivery on behalf of the consignee. It shall be the responsibility of such person and of the Customer to the exclusion of any liability (of any nature whatsoever) of the Company of any nature whatsoever and howsoever (including by the negligence of the Company) to identify and collect the Goods in respect of which delivery has been demanded. In no circumstances shall the Company be liable in excess of the limitation of liability provided in clauses 10 and 11.
- (b) Such delivery shall constitute due fulfilment of the Company's obligations as to delivery of the Goods.
- (c) In the event that any Goods are collected by or on behalf of the Customer in which the Customer has no legal interest whatsoever, such Goods shall (if identified) be returned forthwith upon identification. The Customer shall

indemnify the Company for any damage or loss arising out of the collection of such Goods and any failure to return them or any delay in returning them to the Company.

- (d) The Customer declares that it is fully acquainted with the physical and documentary delivery procedure applicable at the Terminal, and agrees that the level of security offered by this procedure is adequate for its needs.

#### **PIN CODE SYSTEM**

The Customer shall make use of the system-generated unique "PIN CODE SYSTEM". This system ensures a high degree of reliability and safe delivery. The Customer shall assume full responsibility for not making use of the PIN CODE SYSTEM. The Company is exempt from liability if – despite applying the chosen delivery procedure correctly – the Goods are nevertheless delivered to a wrong person or legal entity.

#### **5.5. Access to Terminal**

The Company will not be bound to admit a person or Goods to the Terminal or to allow Vessels to berth there except by prior arrangement with the Customer.

#### **5.6. Sequence of Handling Goods**

- (a) Vessels moored and Goods (which, for clarity includes arrivals by trains, wagons) arriving at the Terminal will be dealt with in the order and time-slots determined by the Company, at its sole discretion. The Company shall, in no case, be responsible or liable for delay.
- (b) The Company shall not be liable to pay or refund demurrage or any other compensation for the use of Units or Vessels or for their not being ready in time, nor to compensate any other loss or damage suffered as a result of delay or interruption howsoever caused in the performance of the Services.
- (c) The Customer shall ensure that all Goods and Vessels arrive and are handled and depart in conformity with the Company's verbal or written requirements and regulations as well as those of any competent authority or relevant legislation. The Company reserves the right, at its sole discretion, with all responsibility, liability and costs excluded, to remove or have removed any Goods or Vessels remaining at or on the Terminal against the Company's instructions.
- (d) The Customer warrants and undertakes to the Company that any Vessel shall vacate the Terminal by the tide and date agreed in writing with the Company or, if no such tide and date have been agreed, by the first available tide (day or night) after completion of loading or discharging (as the case may be). Without prejudice to the foregoing, the Customer further undertakes that no such Vessel shall lay-by or be detained beyond such tide and date in relation to which time shall be of essence and the Customer shall indemnify and hold harmless the Company in respect of any loss, damage, liability, costs, and expense arising directly or indirectly from breach by the Customer of this obligation.

#### **5.7. Refusal of Goods**

The Company shall be entitled to refuse the Goods from entering its Terminal or premises, at its sole discretion, at any time and without any liability or compensation whatsoever, including (but without limitation) when the Customer does not or not timely execute any of its obligations or when the Company reasonably believes that the Customer is, or may come to be, in breach of its obligations, including (but without limitation) in respect of customs costs and formalities obligations and provision of information obligations as set out in clause 8, or when the port of destination of the Goods is not duly authorised or accredited or otherwise legally set-up to receive the Goods in full compliance with Customs Documents, Customs Procedures or other legal requirements.

#### **5.8. Minimum/Maximum Cut-off Time & Maximum Dwell-Time**

- (a) Unless otherwise agreed in the Contract, the Customer shall present the Goods at the Terminal of the port of loading at least two (2) hours but in no case more than twenty-four (24) hours before the scheduled departure of the Vessel.
- (b) Unless otherwise agreed in the Contract, the Customer shall:
- (i) ship all Goods within twenty-four (24) hours from entering the Terminal ("gate-in") at the port of loading; and
- (ii) collect, have collected or otherwise remove all Goods from the Terminal within twenty-four (24) hours from discharge from the Vessel (first-point-of-rest) at the port of discharge.
- (c) Unless otherwise agreed in the Contract, if the Customer:
- (i) presents the Goods for shipment earlier than twenty-four (24) hours before the scheduled departure of the Vessel, the Company may refuse entry of such Goods into the Terminal or, if accepted, such Goods may be subject to applicable Terminal rates (which may take the form of scaling charges) payable by the Customer, as applied by the relevant Terminal. Such Goods on the relevant Terminal shall also be subject to any applicable port rules or customs legislation.

- (ii) does not ship all Goods within twenty-four (24) hours from entering the Terminal or does not collect, have collected or otherwise remove the Goods from the port of discharge within twenty-four (24) hours after discharge from the Vessel, then the Goods shall be at the risk of the Customer, and shall be subject to applicable Terminal rates (which may take the form of scaling charges) payable by the Customer. Such Goods on the relevant Terminal shall also remain subject to these Terms and Conditions, and in all cases without prejudice to the provisions of clause 5.9 below, and to any applicable port rules or customs legislation.

For purposes of (c)(i) and (c)(ii), the rates for the relevant Terminals (as amended periodically) are accessible at [www.cldn.com](http://www.cldn.com).

- (d) Where the relevant Terminal applies charges to the Goods in accordance with clause 5.8(c), invoices may be issued by the Terminal. The Customer shall, in such cases, recognise the Terminal as an invoicing party.
- (e) In addition to the measures set out in (c) above, the Company shall be entitled to remove and deal with the Goods in accordance with these Terms and Conditions, especially as set out in clause 5.9 hereunder.

The Company draws the attention of the Customer to the fact that the maximum permissible duration of stay of Dangerous Goods in port areas is strictly regulated by international or local environmental legislation or port rules. The Customer shall promptly have Dangerous Goods removed from the Terminal, in order to avoid infringement of such restrictions. The Customer shall be liable for, and shall hold the Company harmless for all damages, losses, consequences or fines, due to the failure to comply with the maximum permissible period, regardless the cause.

- (f) Where the Customer, whose Goods remain unshipped or uncollected, in breach of these Terms and Conditions and/or otherwise contrary to the specific provisions in the Contract, has other goods due to arrive at the Terminal (whether for discharge or for loading, and including where such other goods are carried on board a Vessel of the CLdN Group), then the Company shall be entitled (on account of non-collection and until resolution thereof) to suspend its Services also in respect of such other goods.
- (g) The provisions of this clause shall apply also where any Goods are delayed, blocked, not cleared, or otherwise remain on the Terminal outside or beyond the cut-off time and/or maximum dwell time (stipulated in these Terms and Conditions or as otherwise specified in the Contract) (including where such Goods are in transit or through-shipment) as a direct or indirect result of the Customer not fulfilling correctly, completely, accurately and timely all Customs Documents and Customs Procedures incumbent upon the Customer by law and/or under the Contract agreed with the Company, including these Terms and Conditions.

#### **5.9. Delayed or Non-Shipment – Uncollected Goods – Notice of Removal – Shipping Back or Sale of Uncollected Goods**

- (a) Without prejudice to the right of the Company to payment of charges and/or to issue specific instructions in relation to the dwell-time or storage of Goods, the Customer will ensure that the Goods are brought to the Terminal in line with (without limitation) the cut-off time stipulated in clause 5.8(a) and are collected from the Terminal as soon as possible and at latest (without limitation) in line with the maximum dwell-time stipulated in clause 5.8(b). If, as may be the case – but only if agreed in writing with the Company – the Contract contains specific derogations, provisions and conditions in relation to minimum and/or maximum dwell-times, the Customer shall observe such specific derogations, provisions and conditions strictly and without exception.
- (b) Despite clause 5.8(c), if Goods remain on a Terminal beyond twenty-four (24) hours, or beyond any specific dwell-time or storage time otherwise agreed in the Contract (as set out in clause 5.9(a) above), the Company shall be entitled to give notice of removal to the Customer requiring the removal of the Goods by the date stated in the said notice of removal. In such event, the Customer guarantees such removal as instructed by the Company, without protest or delay.
- (c) If the Goods remain uncollected after the removal date stated in the abovementioned notice to the Customer, then the Company may at its discretion, without further notice and without any responsibility or liability (i.e. at the sole risk and cost of the Customer):
- (i) have the Goods moved to another location or carried back to the Terminal of departure or to another CLdN Group Terminal; and/or
- (ii) change the customs regime of the Goods from temporary storage to bonded warehousing or any other relevant Customs Procedure and hereby authorises and mandates the Company to act (or have performed) behalf of the Customer; and/or
- (iii) sell or otherwise dispose of the Goods; and/or
- (iv) exercise its lien as provided in clause 6.6.

The proceeds of any such sale shall be used:

- (i) to defray the expenses of the sale including any commissions or any tax, customs duties or other costs the Company would be required to pay; and/or
- (ii) to pay any unpaid debt of the Customer to the Company or the CLdN Group whether related to the subject-matter in question or not.

The balance, if any, will be held or deposited in escrow for the benefit of the Customer.

#### 5.10. Dangerous Goods – Waste – Destruction or Disposal of Harmful Goods

- (a) As a general rule, it shall be the Company's sole discretion whether or not to accept certain categories of Goods which may be, or become, subject to import/export restrictions or prohibitions, including (without limitation) Dangerous Goods, waste, dual-use goods. The Company may, as a condition for acceptance of such Goods, (i) demand additional information to be provided by the Customer at booking stage (and no later than the time of arrival at the port of loading); (ii) impose additional terms, conditions or measures; (iii) refuse or reject such Goods after "gate-in" where such Goods become subject to such import/export restrictions or prohibitions or where the Customer fails to fulfil its obligations under (i) and (ii).
- (b) Dangerous Goods may not be presented at the Terminal unless with the prior written agreement of the Company. A number of product categories are not permitted for shipment or on Terminal due to restrictions outlined by the respective port authorities and/or the Vessel's documents of compliance and/or as a matter of policy of the Company.
- (c) The Customer must provide the Company or the carrier (as may be applicable) with a correct Dangerous Goods 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 or Goods all necessary notices to comply with the applicable regulations and legislation in order to indicate that the Goods are Dangerous Goods. Furthermore, the accompanying documents and/or declarations (e.g. ADR, RID) shall be in compliance with the applicable regulations and legislation.
- (d) Carriage of Dangerous Goods shall at all times be at the sole risk of the Customer who shall always be liable for any injury, including loss of life, damage or loss resulting from such carriage even if the Company is under a strict liability arising from the performance of the Services.
- (e) The Customer shall take control of Dangerous Goods at the Company's first demand. In any case, the Company shall be entitled in its sole discretion to disembark, destroy or otherwise render innocuous such cargo without liability to compensate the Customer 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 Customer shall remain responsible for any amount due to the Company for the performance of the Services as well as for the costs and expenses incurred by the Company in taking such action.
- (f) Where any Goods are, or become noxious, hazardous, inflammable, explosive, infectious, diseased or verminous or likely to harbour or encourage infection or disease or vermin or other pests, and/or where Goods cause leakages or spillages for whatever reason, or otherwise in any way are or become polluting or dangerous or otherwise likely to cause pollution or damage, whether alone or in combination with other goods and whether or not by reason of the act or omission of any person, the Customer shall, at the Company's first demand, take immediate control and measures, and shall be responsible for any related cost. In any case, the Company shall be at liberty to destroy or otherwise deal with the Goods as in its discretion may seem desirable at the sole and full cost and responsibility of the Customer. The Customer shall indemnify the Company against all loss, damage, costs, claims, liability and expenses arising out of or in connection to damage caused by such Goods or in connection to dealing with the Goods by the Company.

#### 5.11. Disposal of Perishable Goods – Unidentifiable Goods

Where the Company is in possession of perishable Goods of any nature, which are not taken up immediately upon arrival or subject for any reason to perish before shipment or delivery which, in the opinion of the Company, are insufficiently addressed or marked or are otherwise so unidentifiable that the Company cannot determine on what vessel they should be shipped or to whom they should be made available for collection, the Company may sell or otherwise dispose of such Goods without any notice to the Customer, sender, owner or consignee of the Goods. All charges and expenses arising in connection with the sale or disposal of the Goods shall be payable by the Customer, including costs of cleaning and sanitation of the Terminal and equipment of the Company.

#### 5.12. New or Used Vehicles

In relation to new (i.e. new from OEM plant) or used (i.e. not new-production) Vehicles:

- (a) The Customer has duly examined the properties and characteristics of the Terminal, and agrees and accepts that these suit its needs and expectations.

- (b) The Customer is satisfied with the level and quality of fencing, protection and surveillance.
- (c) The Customer accepts and exonerates the Company for all risks inherent to the parking of unpacked Vehicles on an open-air compound, in an industrial environment and will take out proper insurance.
- (d) The Company accepts no liability for deterioration of any sort of transport protection (such as, without limitation, wax- or wrap guard protection, body covers with zips, etc.) or for damage caused by such deterioration of transport protection.
- (e) The Company accepts no liability for loose items in or around the Vehicles, whether the "transport mode" of the Vehicles is engaged or not.

#### 5.13. Containers, Trailers and Used Vehicles

- (a) The Customer shall ensure that Units or Vehicles marked, booked or declared as "empty" shall, in fact, be completely and totally empty (containing only air), and shall not contain any lashings, general packaging materials, empty racks, etc.; and in the latter case, the Customer shall, instead, inform the Company that such Units whilst not containing Goods, do contain such lashings, general packaging materials, empty racks, etc.
- (b) The Company will not be liable for cosmetic damages and ordinary wear and tear inherent to container or trailer (or Unit or used Vehicle) handling. The Company will redeliver in trade-customary condition.
- (c) The Customer agrees that containers can be stationed up to five (5) tiers high at the sole risk of the Customer, and the Customer will be liable for any damage so caused to the Company and third parties.
- (d) The Customer is aware of and allows the Company to load / move / discharge containers in the "double-stacked-modus", and agrees this is customary ro-ro terminal practice.
- (e) The Customer warrants that external condition of the containers and/or trailers (or Units or Vehicles) as well as the lashing and securing of cargo or Goods within or on the containers and/or trailers (or Units or Vehicles) shall be adequate and suitable for the relevant mode of transport, whether by road and/or sea and/or inland waters and/or rail transport, and shall comply with all national and international applicable regulations and due diligence principles for the intended transport modus.

#### 5.14. Temperature-Controlled Goods

- (a) Upon written request by the Customer, the Company will endeavour to connect any temperature controlled Goods or equipment to a supply of electricity at the Customer's expense, but the Company shall not be liable for any damage or loss to the Goods arising from any failure to make such connection. The Company will not be responsible for maintaining the Goods at any required or specific temperature whether on the Terminal or not and shall not be liable for any damage or loss arising from any failure to maintain such temperature.
- (b) Upon written request by the Customer, any temperature controlled Goods or equipment running on its own supply of electricity can be checked by the Company on a regular basis, but the Company will not be responsible for maintaining the Unit at any required or specific temperature whether on the Terminal or not and shall not be liable for any damage or loss arising from any failure to maintain such temperature.

#### 5.15. Responsibility for Seals

The Company shall not be required by the Customer to carry out any seal check or to note seal numbers on any document at any time whatsoever. Where seal numbers are noted for whatever reason by the Company, then, notwithstanding anything to the contrary in these Terms and Conditions, no representation whatsoever is made by the Company as to the accuracy of the number noted nor to the condition of the seal. No representation is made by the Company neither as to the condition of the container nor as to its contents.

#### 5.16. Subcontracting of Services and Additional Services

- (a) Where a third party needs to be subcontracted by the Company for the performance of the Services or for additional services (i.e. in addition to the Services agreed in the Contract), the Company is free to choose the subcontractor and the Company will be entitled to rely on, and apply to the Contract, any terms and conditions of the said subcontractor. The price / rates for additional services may be invoiced separately and shall not be part of the price of the initial Contract, unless otherwise agreed in writing.
- (b) All and any such additional services shall at all times be subject to these Terms and Conditions (particularly, but without limitation, the limitations of liability set out herein), to the extent permissible by law.

**6. Offers & Quotations – Invoice & Payment Terms – Payment of Charges – Lien – Cross Default – Credit Facilities**

**6.1. Offer & Quotations**

- (a) Unless expressly stated otherwise any written offer and quotation will only be valid for fifteen (15) days from the day it was issued. All offers and quotations are subject to these Terms and Conditions and are exclusive of VAT, duties and generally any applicable tax.
- (b) Written offers and quotations may contain specific terms and conditions. If the written offer and quotation contains conditions or clauses conflicting with these Terms and Conditions, then the offer and quotation accepted by the Customer prevails.
- (c) Offers and quotations are always subject to the availability of space at the relevant Terminal at the port of loading and/or port of discharge.

**6.2. Invoice & Payment Terms**

- (a) Unless expressly agreed otherwise in the written quotation, in the Contract, or on the invoice, all invoices and generally all charges, expenses, or other sums shall be paid by the Customer within eight (8) working days of the date on which the invoice is issued.
- (b) In providing the Services, the Company may engage the services of subcontractors. In such cases, and in respect of such services, the Company is entitled to designate – and the Customer shall duly acknowledge – the subcontractor as invoicing party.
- (c) Payment shall be made in the place, in the manner, and in the currency stipulated in the invoice. The Company is entitled to refuse to be paid by way of cheques.
- (d) Only the currencies, quantities, weights, and/or volumes accepted in a specific and written form by the Company will be considered valid for the invoices.
- (e) Credit facilities (payment terms and/or a monetary limit) are a discretionary favour, not a "right", and are always granted on a case-by-case basis and evaluation, for an undetermined period, and taking into consideration available Customer solvency data and market information. Accordingly, credit facilities are subject to constant review, and can be reformulated or made subject to additional security being put up, and/or can be cancelled (such decisions to be notified in writing) at any time, without any obligation of the Company to motivate this decision, and without any indemnity whatsoever being due in that respect.
- (f) Any such credit facilities exceptionally granted by the Company are subject to the condition of strict compliance by the Customer with the terms of such credit facilities, meaning that any breach, irrespective of the nature or magnitude (e.g. exceeding the payment term by one (1) day, or exceeding the credit limit by 1 Euro) shall trigger the immediate and automatic (with no prior notice) cancellation and withdrawal of the granted credit facilities as a whole. Accordingly, all outstanding invoices shall then become due at once in their totality, and interests thereon will accrue as from the issuing date of the invoice(s). Payment terms mentioned on the invoices shall, consequently, become null and void and shall be read as "immediate payment" instead.
- (g) If the Customer is, becomes, or is known to be in default of its payment obligations vis-à-vis any third party, then regardless of the nature or amount of the default of payment, any credit facilities granted under this clause shall be automatically cancelled and withdrawn as a whole, and accordingly all outstanding invoices will become due at once, and interests thereon will accrue as from the issuing date of the invoice(s). Payment terms mentioned on the invoices shall, consequently, become null and void and shall be read as "immediate payment" instead.
- (h) All invoices and all charges, expenses, or other sums are – as a general rule – payable by the Customer. If the Company agrees (in writing) that any invoices, charges, expenses, or other sums are to be paid by a specific Customer or by any other person, the Customer shall in all cases remain liable vis-à-vis the Company for the payment of such amounts.
- (i) No undertaking by the Company to collect from a consignee or any other person any sum payable to the Customer, and no demand by the Company on any such person, shall constitute a waiver or release by the Company of any rights against the Customer.

**6.3. Interest – Liquidated Damages**

- (a) Any amount due and not paid at the due date will be increased of full right and without notice as from the date the invoice was issued with interests and with liquidated damages for business disturbance.
- (b) The interest will accrue at the interest rate determined in accordance with the Belgian Statute of 2 August 2002 (as amended by Belgian Statute of 22 November 2013, as may be further amended), enforcing European Directive 2011/7/UE of 16 February 2011, (as may be amended) increased by 8 percent points, and rounded up to the higher half percent-point. However, the applicable interest rate shall never be less than 10% per annum.

- (c) The liquidated damages for business disturbance will be 10% of the outstanding principal amount with a minimum of five hundred (500) Euro and a maximum of fifty thousand (50,000) Euro, without prejudice to the right of the Company to prove and to claim any damages or loss in excess of such amount.

**6.4. Rates – Currency – Charges – Expenses**

- (a) The Company reserves the right to adjust its rates and charges for any Services quoted in Pound sterling (£) and where the Pound sterling (£) is devalued or suffers a depreciation in respect of the Euro (€) of more than five per cent (5%) in the time between when an Offer for the Services is issued and the time when the relevant invoice is issued. Any such increase shall be in proportion to the extent of the devaluation of the Pound sterling (£) versus the Euro (€) in such timeframe.
- (b) The Company shall not be responsible or liable for any increased charges, rates of custom duties or tariff, which increase comes into force in respect of the Goods before, during or after the performance of the Services by the Company and for which the Customer is charged, even if such increase or less favourable rate of duty or tariff might have been avoided had the Services been performed at a different time.
- (c) All bank charges associated with the making of any payment shall be for the account of the Customer.
- (d) Without prejudice to the more specific clause in these Terms and Conditions, the Company reserves the right to charge additional costs it incurs, including, without limitation, alterations in costs, consumables, insurance premiums, customs and excise or other duties, taxes, and all levies, deposits, charges and costs or outlays levied by any authority, governmental or otherwise, incurred as a result of the Goods, the Services, or generally as a result of specific actions or measures imposed by such authority or government.
- (e) Charges for Services are earned by the Company upon entry of the Goods on the Terminal or upon the berthing of the Vessel at the Terminal, whether the Goods are damaged or lost or not.

**6.5. Prepayment – Security – No set-off**

- (a) The Company may at any time demand prepayment of the whole or part of any amount due or which might become due under the Contract.
- (b) The Customer shall, at the first written request, provide the Company with valid and sufficient security to guarantee the payment of any such amount.
- (c) If the Customer fails to provide a valid and sufficient security, or if the Customer fails to reimburse the Company immediately, then the Company shall have the right without further notice and without any responsibility or liability (i.e. at the sole risk and cost of the Customer): (i) to have the Goods moved to another location or carried back to the Terminal of departure or to another CLdN Group Terminal, and/or (ii) to change the customs regime of the Goods from temporary storage to bonded warehousing or any other relevant Customs Procedure (and hereby authorises and mandates the Company to act (or have performed) on behalf of the Customer, and/or (iii) to sell or otherwise dispose of the Goods, and/or (iv) exercise its lien as provided in clause 6.6.
- (d) The Customer shall not be entitled to set-off any amount due to the Company against any amount to which the Customer may be entitled or which it claims to be entitled to receive from the Company.

**6.6. Cross Default – Security – Lien**

- (a) A default or breach of any nature whatsoever by the Customer of any of its obligations under the Contract, will be considered to constitute a material breach of its obligations (of any nature whatsoever) towards each and all entities of the CLdN Group, and will entitle these entities, immediately and without notice, to suspend or terminate any of their obligations towards the Customer, to trigger/accelerate their rights against the Customer and/ or to enforce any security. Such default or breach will automatically cancel and render all credit facilities null and void and accordingly will make each outstanding invoice become due immediately.

If the Customer is part of a group:

- (i) the Customer guarantees the performance by each and every entity of the Customer's group of any and all of such entities' obligations towards the relevant entities of the CLdN Group; and
  - (ii) a default or breach committed by any entity of the Customer's group towards any entity of the CLdN Group will be considered a breach by the Customer under the Contract and will give rise to the right of any entity of the CLdN Group as described in the preceding paragraph.
- (b) The Company shall be entitled, whether together with or independently of other rights accorded under these Terms and Conditions and/or by law, to request a European Account Preservation Order (EAPO) under Regulation (EU) No. 655/2014 in order to secure its rights for payment, interests and all costs associated thereto to the maximum extent permitted by law; or to take any similar action as may be available in similar legislation of non-EU countries.

- (c) The Company may exercise, upon all Goods in its possession, a right of pledge or lien (under Belgian law: a "*pandrecht*") not only for any charges and expenses related to the Goods, but also for all amounts due by the Customer to the Company on any account up to a maximum amount of fifty million (50,000,000) Euro.
- (d) In the event of any such charges, expenses and amounts not being paid within ten (10) days of the notice of the exercise of the right of pledge or lien, the Company may sell the Goods and apply the proceeds for the satisfaction of all such charges, expenses and amounts, and also of all charges and expenses arising during the exercise of such lien. The Company may move any Goods in its possession from any place in the world to Belgian territory and enforce the right of pledge or lien in Belgium under the Belgian Pledge Law. The lien also entails a right of retention (under Belgian law: "*retentierecht*") that allows the Company to retain the Goods in its possession and to refuse to hand over the Goods to any person including a Customer as long as any amount for which the lien can be exercised remains unpaid.
- (e) The lien shall extend to costs and expenses and liabilities incurred by the Company in exercising and maintaining the lien or in exercising its right of sale.
- (f) Each member of the CLdN Group is entitled to rely on the payment securities and liens stipulated in the Terms and Conditions of other members of the CLdN Group and is entitled to enforce securities, rights of pledge and liens upon goods in the possession of these other members of the CLdN Group.

## **7. Obligations of the Customer**

### **7.1. Liability of the Customer**

- (a) The Customer shall comply with all its obligations under the Contract including these Terms and Conditions and under the applicable law and will be liable for damage or loss suffered by the Company as a consequence of any breach of any such obligation.
- (b) The Customer shall indemnify and hold the Company harmless from and against any claim from a third party or a specific customer resulting directly or indirectly from any breach by the Customer of any obligation or warranty under the Contract.
- (c) The Customer shall indemnify and hold the Company harmless (with reliance on Force Majeure by the Customer being hereby expressly excluded) from and against any and all charges, duties, excise, VAT, fines (including settlement of fines proposed by relevant authorities), claims for liability, losses, damages and costs, and claims against any bank guarantees, bonds or security (issued by the Company in favour of relevant authorities), imposed or sanctioned by any relevant authority and/or claimed by any party, entity or person, howsoever and whenever arising as a direct or indirect result of (without limitation): (i) non-payment, incorrect payment or unsuccessful recovery of customs duties or other taxes by the Customer; (ii) incorrect, incomplete, fraudulent information, declarations or data submitted by the Customer to the relevant authorities; (iii) abandonment, non-collection/non-release or delayed collection, release or recovery of the Goods by the Customer from the Terminal or premises of the Company.
- (d) The Customer acknowledges that in performing its obligations, time shall be of the essence and it shall inform and keep the Company updated at all times in respect of the customs status of the Goods and provide at Customer's own initiative all evidence in support thereof.
- (e) The Customer shall indemnify the Company for all losses, costs and expenses arising from claims by and for all liabilities to third parties in respect of (i) loss and/or damage of the Goods in excess of the Company's liabilities (if any) under these Terms and Conditions, and (ii) any damage to any property or interests of third parties or to a Ship caused by the Goods.

### **7.2. Warranties: Documentation and Information**

- (a) The Customer shall ensure that the Company and/or relevant entities and authorities are given a full description of the Goods sufficient to identify the Goods and in addition is given full particulars and details of the parties involved, the Goods and any hazards connected therewith. The Company shall be permitted by the Customer to give any such particulars to whomsoever the Company deems necessary. The Customer shall supply to the Company in writing all such information relating to the Goods as shall be necessary to enable the Company to comply with its duties under the applicable health and safety legislation and any regulations there under, or made by or under any other enactment for securing or protecting the health or safety of persons, or the prevention or reduction of damage to or pollution of the environment or its natural resources.

Such account of the contents and quantities of each Vessel discharging or loading Goods at the Terminal shall be supplied to the Company before the discharge commences or immediately after the loading has been completed.

- (b) Where the Customer is under obligation to provide, submit or input information or documentation in relation the Goods (whether to the Company or to a relevant

entity or authority) and such information or documentation is incorrect, incomplete, late or otherwise not in conformity with applicable legislative or regulatory requirements (for instance, without limitation, Customs Procedures, waste Goods, dangerous Goods), the Company may, but only at its sole discretion, and on a case-by-case basis (and in no case to be interpreted in any way as a waiver or forfeit of the continuing sole obligations of the Customer), assist the Customer with remedial action (only to the extent permissible and possible) in order to, for instance, manually input, update or correct any missing, out-dated or incorrect information as provided or submitted by the Customer. The Company may cease or resume such tasks at any time, and shall be entitled to apply a surcharge for each task so performed, payable by the Customer. Furthermore, in the performance of such tasks, the Company shall not (under any circumstances) be deemed to act, as a principal or customs agent or broker, or take on any responsibility or obligation, and the Company shall in all cases be exempt from all liability (including in the case of error), and the Customer shall remain fully and solely responsible vis-à-vis the Company as set out in these Terms and Conditions. Any such measures shall be without prejudice to the Company's right to indemnification by the Customer, in accordance with the Customer's liability as set out herein.

- (c) Where, on the reasonable suspicion of the Company and/or on notification or alert by the relevant authorities, it appears that the Customer has maliciously or negligently provided, submitted or inputted incorrect, incomplete, late or non-conforming information or documentation in relation to the Goods and/or that the Goods have been delivered for transport and/or transported and/or collected following transport under such irregular status, then the Company shall be entitled to immediately, and without notice, take all and any remedial and/or prohibitive measures as necessary or as required under applicable legislation or operating licence rules and requirements by which the Company is bound. The Company may, without limitation, cease or refuse shipment of the Customer's Goods or further bookings for transport; request of payment security or bond, or otherwise take any other escalation measure deemed appropriate in the context of the severity of the case. Any such measures shall be without prejudice to the Company's right to indemnification by the Customer, in accordance with the Customer's liability as set out herein.

### **7.3. Warranties: Persons – Goods**

- (a) The Customer warrants that all and any persons accompanying the Goods are properly authorised and cleared (by any relevant authority) to do so and will comply with the requirements of all applicable laws, regulations and instructions of the Company (including but not limited to laws, regulations and instructions regarding the consumption of alcohol and or drugs, immigration, customs or health). Likewise, all Goods and Vessels entering the Terminal or mooring there shall comply with all relevant requirements of all applicable laws, regulations, as well as instructions of the Company.
- (b) The Customer warrants that the Goods
  - (i) Will not contaminate or cause danger, injury, pollution or damage to persons, any other goods or the Company's premises or the water and air adjacent thereto.
  - (ii) Are not infested, verminous, rotten or subject to fungal attack or are liable to become so.
  - (iii) Are not overheated or liable to become so.
  - (iv) Require no special protection other than as may be agreed in writing between the Company and Customer due to their vulnerability for instance to heat, cold, natural or artificial light, moisture, salt, pilferage, vandalism, joyriding by intruders, or proximity to other goods or from their flammability.
  - (v) Contain no drugs unless the Customer is licensed or otherwise lawfully authorised in respect thereof, contraband, pornographic or other illegal matter.
  - (vi) Are properly and sufficiently packed to ensure their safety and to allow mechanical handling without causing damage or danger.
  - (vii) Are properly and sufficiently marked, documented (and carry at all times all required documents) and labelled for all shipping, cargo handling, dispatch, customs and like purposes, lashed and secured, in accordance with all of the relevant regulations applicable nationally and internationally, and shall indemnify the Company for all the consequences, liabilities, costs and expenses including the cost of cleaning, removal or disposal and fines or penalties of whatsoever nature and howsoever arising from the failure to properly label the Goods.
  - (viii) Are properly marked with warnings as to the hazardous nature of any contents and the precautions to be taken in handling the same and with such warnings as may be necessary for ensuring the safety and health of all persons likely to handle or come into contact with the goods or their contents in the event of the escape of anything injurious there from.
  - (ix) Shall not, except for persons legally authorised and cleared to accompany the Goods, contain any person or human corpse, including but not limited



to stowaways and illegal migrants. The Company shall be exempt from any liability in respect of such person or corpse and the consequences of the presence thereof. It will not be relevant whether the presence of persons or corpse in the Goods is known to the Customer or not.

- (x) Are suitable for the performance of the Services by the Company. The Customer warrants that when Goods are presented in or on a Unit the lashing and securing of cargo or Goods inside / on that Unit is suitable, accurate, and consistent for the performance of the Services and in accordance with applicable regulations and good industry practice
- (xi) Are lawful in the ports of loading and discharge.

## 8. Cross-Border Traffic

The provisions under this heading form an integral part of these Terms and Condition. The said provisions have been so organised for convenience only, and are understood, interpreted and applied in connection with the entirety of the Terms and Conditions and in the context of the entirety of the scope of the Contract.

### 8.1. Definitions

In addition to the definitions set out in clause 1.1:

- (a) **“Customs Documents”** means, amongst others, the documents and/ or data and/or information (in any format that is customary and/or permissible by law) necessary or required by relevant customs authorities in the relevant jurisdiction(s) under applicable relevant legislation, rules and procedures for the fulfilment of Customs Procedures in respect of the import, export or transit of the Goods forming the subject-matter of the Contract with the Customer, such as (but without limitation or exclusion) either, all, or any combination of the following (depending on the specific circumstances):

- Export declaration, generally citing a MRN reference number
- Transit (T1) declaration, generally citing a MRN reference number
- Union (EU) (T2, T2L, T2FL) or UK status document
- Import declaration, generally citing a MRN reference number
- (Simplified) Frontier Declaration, generally citing a DUCR/MUCR reference number
- ATA Carnet
- TIR Carnet
- CMR
- CIM Consignment Note
- Import / Export Cargo Shipping Instruction issued to the freight forwarder
- Bill of Lading and / or Waybill
- Commercial invoices and packing lists
- Origin certificates (e.g. EUR.1, Form A, A.TR)

Any other document or record-keeping that is used for transport and/or importing and/or handling and/or storing and/or exporting the shipment

- (b) **“Customs Procedures”** refers to, amongst others, the processing, warehousing, storage, release, clearance, payment of customs duties/excise/tariffs, inspection, certification, processing of Customs Documents, the customs status of the Goods and / or the customs (suspension) procedure imposed or required by relevant customs authorities in the relevant jurisdictions, in relation to the import, export or transit of the Goods forming the subject-matter of the Contracts, such as (but without limitation or exclusion) either, all or any combination of the following (depending on the specific circumstances):

- Union (EU) status goods (either by origin or their release into free circulation in the EU)
- UK status goods (either by origin or their release into free circulation in the UK)
- Non-Union (non-EU) status goods (goods from outside the EU that have not been cleared for free circulation in the EU)
- Non-UK status goods (goods from outside the UK that have not been cleared for free circulation in the UK)
- External Transit Procedure (T1)
- Internal Transit procedure (T2, T2L, T2LF)
- Release for Free Circulation
- Customs Warehousing
- Inward Processing (IPR)
- Outward Processing (OPR)
- Export (EU / UK status goods)
- Re-export (non-EU / non-UK status goods)
- Temporary Storage

- Temporary Admission
- End-Use

### 8.2. Company’s Limited Tasks

- (a) Except for those limited customs-related tasks, Customs Documents, Customs Procedures and obligations the Company may be bound to perform by applicable law (and only to the extent that – and for as long as – such legislation requires), the Company shall not undertake any such customs-related tasks, Customs Documents, Customs Procedures.
- (b) Neither shall the Company organise or be responsible for the organisation and/or payment of customs formalities, logistics, organisation or processes.
- (c) Limited tasks which the Company may be required to perform may include: notification to customs authorities of arrival of Goods, discharging Transit movements confirmation of loading and/or exit, handling and sharing of messages from and to relevant (customs and/or port) authorities, Entry\* Summary Declaration and Summary Declarations for Temporary Storage and/or Storage in Bonded Warehouse, relevant messages to relevant customs and/or port authorities, unless the Company is legally bound to undertake such tasks. In any event, the responsibility for, and costs related to these tasks shall in all cases be borne by the Customer.

\* Unless otherwise agreed in advance and in writing, it shall be the responsibility of the Customer (and not of the Company) to ensure or procure that the outbound/outgoing customs procedure always includes a Safety and Security declaration.

\* It shall be the responsibility of the Customer (and not of the Company) to ensure that no Goods are delivered where the applicable Customs Procedure has expired.

### 8.3. Inspection of Goods – Moving of Goods

- (a) The Customer understands and accepts that Goods may be subject to inspections, checks and controls, Customs Procedures imposed/required by relevant authorities at any time during which the Goods are in the custody of the Company. The Customer understands and acknowledges that where so instructed by the relevant authorities, the Company may (amongst other things) break seals, open, unpack, move and allow access to the Goods.
- (b) The Customer understands and accepts that the relevant authorities may order or direct that the Goods be moved to another location (which may be within or outside the Terminal) for inspection, controls or Customs Procedures. In such cases, it is the Customer who shall be responsible for the cost and timely organisation of haulage to such other location. Where the Customer does not (or where the Company is not confident that the Customer will) timely organise such haulage, the Company may itself organise for such haulage – and the Customer’s authority to the Company is hereby granted – for the collection and transport of the Goods to any instructed point of inspection, control or Customs Procedure; all of which shall be at the sole risk and cost of the Customer.
- (c) The Customer understands and accepts that the Company may also be instructed to change the customs regime of the Goods from temporary storage to bonded warehousing or any other relevant Customs Procedure and/or to store the Goods, and hereby authorises and mandates the Company to act (or have performed) on behalf of the Customer, and accepts all applicable charges in preparing and submitting any and all customs declarations as may be necessary.
- (d) All and any such measures above, as undertaken by the Company in complying with instructions of the authorities, shall be at the sole risk and cost of the Customer. The Company shall in no event be liable for the condition of Goods following such inspection or intervention by the authorities. Without prejudice to the generality of the indemnity provisions set out in clause 7.1, the Customer shall at first written request indemnify and hold the Company harmless from and against any and all charges, fines, claims, damages, liability imposed against, and all costs incurred by, the Company by the authorities arising from such inspection or intervention.

### 8.4. Customs Duties, Tariffs

- (a) The Customer alone (and not the Company) shall be liable for any duty, tax, levy, impost, fine settlement or outlay and all associated costs or damages of whatsoever nature claimed or imposed by any relevant authority for, or in connection with, the Goods and the connected Customs Procedures and Customs Documents. Therefore, it shall be the Customer who shall be liable and responsible for any payment, settlement of fines, expense, damage or loss incurred or sustained by the Company in connection therewith.
- (b) The Customer is well aware of the fact that the Company might be summoned by the relevant authorities to pay taxes such as import duties, excises, specific excises, or fine settlements and all additional costs and charges that might be caused as a result (direct or indirect) of the Customer’s non-compliance with Customs Procedures, Customs Documents, import/ export formalities, mistaken or incomplete information provided to the relevant authorities, mistaken,

incomplete, incorrect or false customs or import/export declarations, abandonment, damage, loss (including due to crime) or destruction of the Goods. Without prejudice to the generality of the indemnity provisions set out in clause 7.1, the Customer shall pay upon the Company's first written request all losses, damages and amounts, principal sum, interests and costs which the authorities require or sanction against the Company to pay and to compensate the Company for any resulting (direct or indirect) damage, cost or delay incurred.

- (c) Where the Customer does not pay any relevant authority or the Company on first written request, the Company shall have the right without any notice and without any responsibility or liability (i.e. and at the sole risk and cost of the Customer): (i) to have the Goods moved to another location or carried back to their terminal of departure or to another CLdN Group Terminal; (ii) to sell or otherwise dispose of the Goods in order to recover all costs, damage, loss and delays so incurred, and/or (iii) to exercise the lien set out in clause 6.6.
- (d) Clause 6.5 shall apply in full, and at the sole discretion of the Company, in respect of any exposure the Company considers it may have towards a customs claim.

#### 8.5. Customer's Warranties

- (a) The Customer warrants the accuracy, sufficiency and completeness of all Customs Documents, Customs Procedures, data, documents and information furnished to the Company and/or to the relevant authorities by or on behalf of the Customer.
- (b) The Customer understands and acknowledges that the Company shall discharge its obligations, act upon and rely only on the basis of the documents and information provided by the Customer and that the Company shall not have the duty to inquire into or investigate the accuracy, sufficiency or completeness of any such documents or information. The Customer shall immediately inform the Company of any errors, discrepancies, incorrect statements, omissions in any Customs Documents, documents and information submitted to the Company and/or to the relevant authorities, including any and all supporting documentation as evidence.
- (c) Where information, Customs Documents, data or required submissions or declarations are furnished to the relevant authorities and/or to the Company by a third party and/or via a service provider or platform that is/are contracted or mandated or otherwise utilised or relied upon by the Customer in discharging its Customs Documents and Customs Procedures obligations (for instance via a customs agent utilising Port Community System, Portbase, RX Seaport, or the like), the Customer:
  - (i) Shall remain at all times fully and directly responsible and answerable to the Company for the acts and/or omissions of such third party and/or service provider or platform as though such acts and/or omissions were those of the Customer itself;
  - (ii) Warrants that any information submitted on the Customer's behalf is and remains at all relevant times fully accurate and complete;

The Customer shall, in general, provide the Company with any and all information relevant to any Customs Documents and/or Customs Procedures, as (and in the manner) stipulated by the Company and/or by relevant law and national requirements, and as (and in the manner) stipulated by the Company for the Company's own processes as may be agreed with the relevant authorities periodically and/or as required for process improvements.

Under no circumstances shall the Company be responsible or liable for the (direct or indirect) consequences vis-à-vis (i) relevant authorities (for instance, without limitation, customs duties, tariffs, fines, penalties, additional handling costs) and/or (ii) third parties (for instance, without limitation, delay, non-delivery, additional handling costs) where the Customer fails to provide, or fails to provide in time, information, Customs Documents, data or required submissions or declarations, or where such information or documentation so provided is insufficient, inaccurate, erroneous or fraudulent.

- (d) The provision under (a) amongst other things relates to information that is or needs to be provided to any relevant authority, whether by the Customer or by the Company. The Customer shall provide, enter, complete, submit and transmit to any relevant authority, and within time-limits in force, all and any relevant and/or required Customs Documents, information, data, instructions, transactional documents for purposes of any Customs Procedure, phytosanitary and/or veterinary processes, or for other purpose whatsoever as may be required for import/export clearance, and within the time period necessary so as to permit the Company to perform the Carriage of Goods without delay, hindrance, liability or additional cost. In addition, the Customer shall clearly and timely inform the Company that such obligation has been duly discharged and fulfilled.
- (e) The Customer alone shall be responsible for, and do its utmost to organise and fulfil, at its sole cost, all and any necessary Customs Procedures, Customs Documents, customs (export, import, transit) formalities, processes, logistics, organisation or arrangements, submissions and declarations (including as set out above), physical movement/transport to/from off-site inspections, or,

generally, any other task or measure that is required in fulfilment of all legislation applicable to the export or import of the Goods.

- (f) The Customer alone shall be responsible for the payment of any customs duties, levies, VAT or other taxes, costs, all of which related to the import and export of the Goods or any Customs Procedure. In particular, but without limitation, the Customer shall ensure that the Goods to be transported on the Ship have customs declarations in place and/or pre-logged with all relevant authorities before the Goods board the Ship and that the Goods are authorised and customs-cleared for export or import or any other Customs Procedure, such that the Company is able to perform the Services without delay, hindrance, liability or additional cost and in compliance with any applicable law.
- (g) The Customer shall maintain all commercial invoices and all other document of any type supporting its import/export clearance or any other Customs Procedure and compliance obligations in proper form and order, in all languages required by the laws of the relevant country of departure and/or arrival, and shall provide such documentation to the Company immediately upon request
- (h) The Customer shall maintain all necessary records and documentation for the duration of time limits specified by applicable law (e.g. customs law, tax law). Whilst the Company may itself maintain records and documentation in respect of the Customer and Goods, the Company shall in no case be considered as a "record-keeper", and shall be under no obligation whatsoever to the Customer or to third parties vis-à-vis the Customer to act as "record keeper", except limitedly if and when provided by law.
- (i) The Customer acknowledges that in performing its obligations, time shall be of the essence and it shall inform and keep the Company updated at all times in respect of the customs status of the Goods and provide at its own initiative all evidence in support thereof.

#### 8.6. Specific Information to be Provided by Customer

- (a) At the time of conclusion of the Contract and at latest before entry of the Goods at the Terminal at the port of departure ("gate-in"), the Customer shall describe, define, provide and submit to the Company:
  - (i) Port of entry, Port of exit, document type related to the export, re-export, outward processing relief, T1/T2, storage handling or any other Customs Document type; and
  - (ii) Per consignment:
    - Consignee: the customs party responsible for the declaration of this consignment: name, address, city + postcode, country, EORI number
    - Consignor: The responsible customs party, same data as consignee + EORI number
    - Notify (optional): The customs party that can be notified upon arrival, same data as consignee, e-mail address
    - Consigned Place (optional): Location where the consignment was created (UN location code)
    - Receipt Place: Location where the consignment is (UN location code) sent to
    - Document Type: The customs document type
    - Document Number: The customs document number (MRN), Document valid till (time) for specific documents, document valid to (place) for specific documents
  - (iii) Per consignment item:
    - Shipping marks: marks and numbers of the goods, number of packages
    - Type of Packages: UN coded type of package
    - Commodity code: HS-code / CN-code
    - Description: Gross weight in kilograms, net weight in kilograms, volume in cubic meters (if applicable, e.g. in respect of shipments destined for the United Kingdom), UN no. (if applicable), technical name (if applicable)
  - (iv) All veterinary, sanitary, phytosanitary, human consumption, animal consumption information regarding the Goods as may be required to fulfil requirements at the port of loading and at the port of arrival.
- (b) Before the Goods leave the Terminal at the port of arrival, the Customer shall provide the following information to the Company:
  - (i) MRN and document type related to the import, re-import, inward processing relief, T1/T2 or any other customs document type and confirmation that the procedure has been accepted by the relevant authorities.
  - (ii) All veterinary, sanitary, phytosanitary, human consumption, animal consumption information regarding the Goods as may be required to fulfil requirements at the port of loading and at the port of arrival.
- (c) (i) The above information is required and relied on by the Company in order for the Company to discharge its legal obligation, in respect of imports/ exports

between certain jurisdictions, to submit an Entry\* Safety and Security Declaration for Goods that are unaccompanied (i.e. driverless Units and Vehicles). Such obligation shall be performed by the Company as and when required of the Company by applicable law, and the Customer hereby expressly appoints the Company (and/or its nominee or subcontractor) to perform this obligation on the Customer's behalf.

(ii) In respect of Goods that are accompanied (e.g. Units with drivers), unless otherwise agreed on a case-by case basis (and subject to conditions, such as proof/confirmation of submission by the Customer or haulier), the Company shall itself, all times take on the responsibility of submitting the Entry Safety and Security Declaration on behalf of the Customer, for which purpose the Customer hereby expressly appoints and mandates the Company. This is despite the obligation to submit an Entry Safety and Security Declaration ordinarily resting with the haulier of the Goods (meaning that the submission of the Entry Safety and Security Declaration ordinarily rests with the Customer, ensuring and/or procuring that such Entry the Safety and Security Declaration is duly submitted by itself or by the haulier).

\* Unless otherwise agreed in advance and in writing, it shall be the responsibility of the Customer (and not of the Company) to ensure or procure that the outgoing customs procedure always includes a Safety and Security declaration.

- (d) Any form of "customs simplification" procedure shall not be automatically available to the Customer. The Customer shall first request the Company for such simplified procedure and the Company shall have sole discretion, on a case-by-case basis, as to whether to accept/implement any such simplified procedure. Where the Company does accept/implement such simplified procedure, the consequences shall be at the sole and full (and unlimited) liability and responsibility of the Customer, and in any case such simplified procedure may be suspended or terminated at any time by the Company.
- (e) The Customer shall provide as part of the booking process, and the Goods shall be accompanied at all relevant times by, the required certification and/or TRACES (TRAdE Control and Expert System) IPAFFS (Import of Products, Animals, Food and Feed System) and/or other compliance certification (for instance, without limitation, Excise Movement Control System (ECMS)) as required in the relevant jurisdictions. Customer shall confirm compliance with required inspection and issue of certification (and provide evidence thereof) within the relevant border inspection jurisdiction.

#### **9. Exclusion of Liability – Indemnity**

- (a) The Company shall not be liable for any damage or loss caused by or to any person, Goods or Vessels during their stay on/at the Terminal beyond what is provided in these Terms and Conditions.
- (b) The Customer shall be liable (and indemnify the Company) for any damage or loss caused by such a person, Goods Vessels to the Company or to a third party.

#### **10. Company's Liability in Contract or in Tort – Exclusions of Liability**

##### **10.1. General Rules**

- (a) The Company is not liable for any damage or loss of any nature whatsoever which occurs before the Goods enter the Terminal and after the Goods leave the Terminal.
- (b) At all times, the standard of duty of the Company is to use reasonable endeavours and not to guarantee a specific result. The Company shall perform its duties with a reasonable degree of care, diligence, skill and judgement.
- (c) The Company shall only be liable for damage or loss to or in respect of the Goods caused by breach of Contract and/or any non-compliance with the instructions given in writing and in due time, and provided that the breach of Contract and/or non-compliance was caused by Gross Negligence of the Company.
- (d) The burden of proof lies upon the Customer.
- (e) The provisions of clauses 9 and 10 also apply to the liability the Company might incur as a consequence of breach of contract.
- (f) Exclusions and limitations of liability according to these Terms and Conditions shall apply to every claim against the Company whether such claim is based in contract or in tort.

##### **10.2. Exclusions of Liability**

- (a) Without prejudice to the foregoing and exclusions stipulated elsewhere in these Terms and Conditions, the Company shall not be liable for any damage or loss caused by an Act of God or Force Majeure; governmental or regulatory act of authority; fire, hail, snowfall, flood, storm or lightning, unusual atmospheric circumstances, atmospheric or industrial fall-out, airborne contamination, exhaust fumes, rodent or vermin damage, bird droppings; war, terrorism, vandalism, riot or civil commotion, strikes or labour disputes; quarantine restrictions and/or any social and public health measures (imposed or required by relevant authorities and/or by relevant trade entities on the Company, on any

entity within the CLdN Group, on relevant individuals (for instance, without limitation, quarantine of crews or of terminal handlers)) in relation to Goods and/or in relation to carriage or port operations; breakdown in or interruption on communications and/or the use or operation (malicious or not) of any computer, computer system, computer software programme, malicious code, computer virus, computer process or any other electronic system, or otherwise any kind of cyber incident (malicious or not), or, in general terms, by any other reason, event or circumstance beyond the Company's control or which the Company cannot prevent by the exercise of reasonable diligence.

- (b) The Company's liability is limited to loss of and damage to the Goods. The Company is not liable for delay, consequential and indirect loss or damage, such as but not limited to loss of profit and business interruption.
- (c) The Company shall not be liable for personal injury or loss of life, nor for loss or damage to luggage howsoever caused.
- (d) The Company shall be under no liability for damage or loss caused by theft or other criminal offence not committed by a person within/staff of the Company.
- (e) The Company shall in no case be held responsible for any duty, tax, levy, impost, fine settlement or outlay and all associated costs or damage of whatsoever nature is claimed or imposed by any relevant authority in respect of Customs Procedures and Customs Documents.

#### **11. Assessment of Damage and Loss – Amount of Compensation – Limitation**

- (a) If the Company is liable for compensation in respect of total or partial loss of Goods, such compensation shall be calculated by reference to the value of the Goods at the place and time at which the Contract was entered into. For new Vehicles, the basis for calculating a claim is the production cost of the new Vehicle.
- (b) Compensation for damage to or loss of the Goods (including in relation to new Vehicles) is limited to two (2) Special Drawing Rights (SDR – as defined by the International Monetary Fund) per kilo lost or damaged. This amount shall be converted into national currency on the basis of the value of that currency on a date the claim arose.
- (c) In any event, the liability of the Company is, unless otherwise expressly agreed, limited so that no compensation shall be paid for loss or damage exceeding fifty thousand (50,000) SDR for damage to Goods or, in case of damage to Vessels five hundred thousand (500,000) SDR, for each Incident. If such damage or loss has been incurred by several Customers and the damage amount exceeds fifty thousand (50,000) SDR or five hundred thousand (500,000) SDR respectively, then any compensation shall be proportionally distributed and as a matter of consequence each Customer is only entitled to a proportional compensation.

#### **12. Time for Notifying Claims – Claims Procedure – Time Bar**

- (a) Any claim by the Customer under the Contract must be notified in writing to the Company as provided in the relevant "Claims Procedure for CLdN Terminals" as applied by the Company at the time the claim is to be notified, which can be found on [www.cldn.com](http://www.cldn.com). Any claim not notified in this way within the above period shall be considered waived, extinguished and absolutely barred.
- (b) In the absence of publication of a Claims Procedures for CLdN Terminals any claim by the Customer under the Contract must be notified in writing to the Company:
- (i) within thirty (30) days from the date of shipment from or entry to the Terminal (as the case may be) in the case of loss or damage to the Goods.
- (ii) within thirty (30) days from the date when the Goods should have been shipped from or have entered the Terminal (as the case may be) in the case of delay in delivery or non-delivery;
- (iii) within thirty (30) days of the event giving rise to the claim, in any other case.

Any claim not notified in writing with the above period of thirty (30) days shall be considered waived, extinguished and absolutely barred.

- (c) Any action whether in contract or in tort, against the Company is time-barred after the expiry of twelve (12) months following the date of the Incident or following the date that the Goods were, or should have been delivered to the Terminal, whichever is the earliest, unless suit is brought before the competent court in the meaning of clause 16 of these Terms and Conditions.

#### **13. Himalaya Clause – Claims in Excess of Company's Contractual Liability**

- (a) All Bills of Lading or contracts of carriage signed by or on behalf of the Customer (i.e. with other carriers) shall include a clause providing that all rights, exclusions and limitations of liability contained therein for the benefit of the Customer can be relied upon by the Company.
- (b) The Customer confers the benefit of all the rights, exclusions and limitations of liability provided in the Contract for the benefit of the Company upon the

employees and agents of the Company, and upon its or their subcontractors, and upon all other persons required to render services in relation to the Contract.

- (c) The Customer agrees to hold harmless and indemnify the Company, the employees and agents of the Company, and their subcontractors, and all other persons required to render services in relation to the Contract against all claims or demands whatsoever by whomsoever in excess of their liability as limited under (a) and (b).

#### 14. Miscellaneous Provisions

- (a) Any quotation the Company submits, is formulated on the condition that the calculated labour cost will not be adversely affected by labour cost increases as they might result from the safeguarding of employees' rights. Higher labour costs being so incurred and thus affecting our initial cost calculation, will be for account of the Customer.
- (b) The non-applicability of one or several provisions of these Terms and Conditions shall not affect the applicability of the other provisions.

Both parties will immediately take the action necessary to replace the provision concerned by a valid provision which approximates the original intention of both parties as closely as possible.

- (c) The fact that one of the parties would fail to react against the noncompliance of the contractual stipulations by the other party can never be considered by the other party to be a permanent waiver of the stipulation(s) under consideration.
- (d) The Customer is required to regard as confidential all that it has come to know concerning the Company in the scope of the offer, the conclusion and the execution of the Contract, including the claims handling and to require the same of its employees and staff and of eventual third parties intervening in the same framework. This article aims at, but not exclusively, the data and the information regarding machines, installations, and parts of machines and installations which were developed by the Company. All communications and conversations, whether by telephone, e-mail correspondence or any other electronic information exchange medium, might be recorded, monitored, read by others than the intended recipient and/or archived to ensure compliance with regulatory procedures and the Company's quality standards and to provide evidence.
- (e) Claims that the Customer might have against the Company are non-transferable to other parties, without a prior written authorisation from the Company.
- (f) The Customer shall comply strictly with any anti-corruption law and/or regulation that might apply to the Contract. No advantage, bribe, gift, payment, consideration or benefit whatsoever, which constitutes an illegal and/or corrupt practice in relation to the conclusion or the fulfilment of the Contract can or will be offered or made by the Customer, directly or indirectly to any person within/staff of the Company and/or any subcontracting party and/or any third party.

#### 15. Suspension – Termination

- (a) The Company is entitled either to suspend the Services forthwith or to terminate the Contract at any time, either totally or partially, by means of a written notice, which shall have immediate effect.
- (b) The Company is, in any case, entitled either to suspend the Services forthwith or to terminate the Contract at any time, either totally or partially, by means of a written notice, which shall have immediate effect, in the following (cumulative or alternative) circumstances:
- (i) The Customer is in breach of any of the provisions of the Contract and/or of these Terms and Conditions, and, provided the breach can still be remedied, fails to remedy such breach within a period stipulated by the Company in a notice given in writing requesting such remedy;
- (ii) The Company has good reason to believe that the Customer will not fulfil its obligations;
- (iii) Any arrest or lien is executed upon any of the Goods or goods or property of the Customer;
- (iv) The Customer becomes insolvent, seeks creditor protection, offers to make arrangements with or for the benefit of its creditors or commits any act of bankruptcy or, being a limited company has a liquidator or receiver appointed of the whole or any part of its undertaking property or assets, or is declared bankrupt, or has decided to windup;
- (v) An order is made or a resolution is passed or analogous proceedings are taken for the winding up of the Customer (save for the purpose of reconstruction or amalgamation without insolvency and previously approved in writing by the Company);
- (vi) Substantial changes occur in the ownership or shareholding of the Customer;

- (vii) The Customer has offered any advantage, bribe, gift, payment, consideration or benefit which constitutes an illegal and/or corrupt practice in relation to the conclusion or the fulfilment of the Contract to any person within/staff of the Company;

- (viii) The Company is of opinion that a case of Force Majeure shall delay the execution of the Contract by too far an extent, or that this execution shall be too onerous to carry out or shall cause unreasonable difficulties for the Company. In case of Force Majeure affecting the obligations of the Customer, the latter is required to keep the Company informed by written means of the details and of the development of the situation giving rise to Force Majeure.

- (c) In case of such a suspension or termination of the Contract, no compensation is due by the Company.
- (d) Notwithstanding any such suspension or termination the Customer shall pay the Company at the Contract rate for all work done and equipment supplied up to and including the date of termination or suspension.

#### 16. Applicable Law and Jurisdiction

- (a) The Contract between the Company and the Customer is governed by Belgian law, and generally any legal or factual relationship between the Company and the Customer, either in contract or in tort, shall be governed by and interpreted in accordance with Belgian law.
- (b) All disputes will be subject to the exclusive jurisdiction of the competent courts in Antwerp, Belgium.
- (c) However, at the option of the Company, the Company may bring any claim or action in any otherwise competent jurisdiction of its choice.

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v. 1 May 2022