



### *Translation*

*In the event of any difference of interpretation, the Dutch original of this English translation shall apply*

## **General Terms and Conditions of the private company Qargo Packers B.V.**

**Filed with the Chamber of Commerce of Rotterdam under number 24148197**

### **Article 1: Definitions**

In these terms and conditions the following terms shall mean:

1.1 Qargo Packers B.V.: the private company Qargo Packers B.V., established at Pastoriestraat 1 in Pernis Rotterdam (3195 HT), Netherlands.

1.2 Principal: each/all legal entity(ies)/individual(s) who has/have concluded an agreement with Qargo Packers, or who wishes/wish to conclude an agreement and beside these parties, his/her/its/their representative(s), authorized representative(s) and assign(s).

### **Article 2: Activities**

The activities of Qargo Packers are among others, but not exclusively, the production and supply of packing materials (including wooden cases), the packing of goods or cargo in its workshop and/or on location, the handling of goods and/or cargo, including heat treatment, in order to render them suitable for storage and transport, the transport and the arranging of the transport of packing materials and goods destined for storage and transport, the discharge, the securing and the arranging of the securing of containers and other cargo, providing packing advice and arranging for the execution of such advice, the intake, storage, removal, stock management, order handling, order collecting, loading, invoicing, labelling, information exchange and information management relating to goods, in as far as this may have been agreed between the Principal and Cargo Packers.

### **Article 3: Applicability**

The following general terms and conditions shall apply to the activities of Qargo Packers, depending on the nature of the activities:

#### \* Transport

For the part of the performance of the agreement that Qargo Packers acts as the carrier, the carriage of goods by road/sea/air/rail is subject to the (mandatory) regulations and conditions, to which reference is made in the subject transport document (sea-/air-waybill, B/L, consignment note, etc.); in all instances of road



haulage, which is not governed by general terms and conditions, to which reference is made in a transport document, the Dutch General Transport Conditions 2002 (AVC 2002), filed at the Registry of the District Courts of Amsterdam and Rotterdam shall apply in addition to the CMR Convention.

\* Forwarding

For the part of the performance of the agreement that Qargo Packers contracts the transport out (if it has another party perform the transport) the Dutch Forwarding Conditions (Fenex Conditions), filed on 1 July 2004 at the Registry of the District Courts of Amsterdam, Arnhem, Breda and Rotterdam shall apply.

\* Storage

For the part of the performance of the agreement that Qargo Packers stores the goods on its premises (so that it is to be considered a warehouse company) the Dutch Warehousing Conditions (filed by the Fenex on 15 November 1995 with the Registry of the District Court of Rotterdam) shall apply.

\* Other activities

These general terms and conditions shall be applicable to all other activities of Qargo Packers. These terms and conditions are also applicable to all other contracts, tenders and the legal and factual acts carried out in the performance of any such contract or tender. Stipulations varying from these terms and conditions are only valid with the prior written approval of Qargo Packers.

In case of uncertainty regarding the question as to which set of general terms and conditions is applicable, this set of the general terms and conditions of Qargo Packers shall prevail.

Unless expressly indicated and/or stipulated otherwise (including the specific reference to the applicability of different terms and conditions to transport, forwarding, storage and logistical activities), these general terms and conditions are applicable to any and all proposals, offers, agreements and deliveries of goods and/or services by Qargo Packers. Qargo Packers rejects the applicability of any general terms and conditions used by the Principal.

Qargo Packers is entitled to change the general terms and conditions during the course of the agreement and shall, as the occasion arises, inform the Principal of the changed terms and conditions.

#### **Article 4: Contracts/offers**

4.1 All offers of Qargo Packers shall be free of any obligations, regardless the form, in which they are made. Any variation from offers shall only be binding upon Qargo Packers, if they have been confirmed by Qargo Packers in writing. Offers



may be revoked by Qargo Packers within two working-days after they have been accepted by the Principal.

4.2 The management board of Qargo Packers shall have sole authority with respect to the acceptance of offers and assignments. Legal acts committed by agents and/or personnel shall only be binding after a written confirmation by Qargo Packers.

4.3 Contracts shall have been concluded after a written confirmation of Qargo Packers, or after Qargo Packers has started with the performance of the contract within ten days following the receipt of the assignment.

4.4 Qargo Packers can only be bound to agreements made orally, if these have been incorporated in a document.

4.5 In as far as applicable the offers are based on the information provided by the Principal. The Principal vouches for the correctness thereof. All statements by Qargo Packers relating to figures, dimensions, weight and other designation of the products and/or services have been made carefully, but Qargo Packers cannot guarantee that no differences will occur.

4.6 Qargo Packers shall only be bound to any additions to the contract, after it has explicitly accepted such additions. This explicit acceptance must result from a written confirmation of Qargo Packers or after Qargo Packers has started with the performance of the contract within ten days following the receipt of the assignment..

4.7 Cancellation of a contract by the Principal can only take place with the written consent of Qargo Packers and against payment of the costs and damage incurred by Qargo Packers with a minimum of 20% of the invoice amount involved with the contract, increased with any transport costs.

## **Article 5: Prices**

5.1 Prices are based on factors determining the cost price and, unless the contrary appears explicitly and in writing, they are exclusive of turnover tax, insurance costs and transport costs. In case Qargo Packers has initially not charged the Principal for turnover tax and it later turns out that this is wrong, the Principal shall have to pay this turnover tax to Qargo Packers upon first request.

5.2 The Principal shall be bound to pay as additional costs to Qargo Packers any costs incurred on account of loss of time and delay as well as any travelling time, travelling and accommodation expenses of personnel of Qargo Packers and third parties contracted by Qargo Packers in case of delay through no fault of Qargo Packers. The Principal shall also be bound to pay as additional costs to Qargo Packers any costs in connection with activities which the personnel of Qargo



Packers is ordered to perform by or on behalf of the Principal during the term of the work.

5.3 In case after the contract has been concluded, one of the factors determining the cost price has been changed, including purchase prices, taxes, salary costs, social contributions, freight, modification of the rates of exchange, Qargo Packers shall be entitled to increase the original price accordingly,

## **Article 6: Delivery and transfer of risk**

6.1 The term of delivery shall be determined roughly and shall be merely indicative. Exceeding a term of delivery shall never give title to damages.

6.2 Unless otherwise agreed, delivery shall be ex warehouse (EXW - Ex Works, according to the latest version of the Incoterms). Qargo Packers shall have delivered when the products have been made available to the Principal at the premises of Qargo Packers, not cleared and not loaded on a vehicle.

6.3. Apart from what has been stipulated in article 6.2 of these terms and conditions, delivery shall be considered to have taken place:

- a: in case of dispatch by a haulier: by transfer of the goods to this haulier;
- b: in case of dispatch by Qargo Packers: at the moment that the Principal signs for receipt of the consignment;
- c: in case of dispatch with a transport means of the Principal or a third party contracted by the Principal: upon delivery or presentation for dispatch.

6.3 The risk will pass together with delivery. As from the moment of delivery and for the period that ownership has been reserved, the Principal is obliged to insure the goods against damage caused by fire, explosion and water and against theft and to make the policies for these insurances available for inspection by Qargo Packers upon request. Any and all claims of the Principal against the insurers under these insurances, shall be assigned to Qargo Packers forthwith, as soon as Qargo Packers so desires.

6.4 In principle the transport costs shall be for the account of the Principal, unless explicitly agreed otherwise.

## **Article 7: Payment**

7.1 Payments to Qargo Packers shall be made at the office of Qargo Packers, without any discount, suspension or deduction being applied, in the designated currency, ultimately within 30 days from the date of the invoice. The Principal shall never be entitled to set off any claim he may have against a claim of Qargo Packers.



7.2 In case of late payment the Principal shall be in default by operation of law, any discounts shall no longer be applied and as from the due date until the date of full settlement the Principal shall be due to pay the statutory interest for commercial transactions on the invoice amount (with a minimum percentage of 8%).

7.3 Apart from what has been provided in article 7.2 of these terms and conditions Qargo Packers shall also be entitled to receive payment of all judicial and extrajudicial costs, including the costs for legal assistance, which Qargo Packers must incur as a consequence of the non-fulfilment by the Principal of his payment obligations. The extrajudicial costs of Qargo Packers, to be calculated on the amount to be collected, shall be determined to be at least 15% of the Principal amount, with a minimum amount of EUR 500--.

### **Article 8: Complaint and Guarantee**

8.1 If the goods are made available by Qargo Packers without the Principal or a third party on his behalf having established the condition thereof in the presence of Qargo Packers or, in case of visible losses or damage ultimately on the moment that the goods have been made available, or in case of invisible losses or damage within five working-days following the moment the goods have been made available, without the Principal having notified Qargo Packers of any reservations, stating the general nature of the loss or damage, the Principal shall be considered to have received the goods in a good condition, barring notice to the contrary. The abovementioned reservations must be made in writing. Any complaints regarding invoices must also be made in writing within five working-days following the receipt of the invoice.

8.2 The day on which the goods have been made available shall not count for determining the abovementioned terms.

8.3 Within the term referred to in article 8.1, Qargo Packers guarantees the sound condition of the good delivered. The guarantee shall not be applicable if the defect is the consequence of any of the circumstances mentioned below:

- improper use;
- normal wear and tear;
- force majeure or any other causes beyond the fault of Qargo Packers;
- modification or repair by the Principal or by a third party.

8.4 The Principal may only rely on the guarantee provision in these terms and conditions, if he has fulfilled his obligations towards Qargo Packers. The payment obligation of the Principal shall not be suspended by the filing of a complaint.



8.5 The Principal shall lose all remedies and powers available to him because of the defective condition, if he shall not have filed his complaint within the stipulated period or if he shall not have enabled Qargo Packers to repair the defects. After expiry of the terms, the good delivered shall be considered as having been accepted irrevocably and unconditionally.

## **Article 9: Liability**

9.1 Neither towards the Principal nor towards third parties shall Qargo Packers be liable for any damage resulting from the (performance of the) contracted work, as intended in article 2 - including damages to or deformation of the cargo as a result of the heat treatment - unless intent or gross negligence on the part of Qargo Packers is involved, conditional intent not being considered intent. Qargo Packers shall never be liable if there is question of force majeure.

9.2 Also if intent or gross negligence is involved on its part or on the part of its employees and third parties contracted by it, Qargo Packers shall never be liable towards the other party or towards third parties for any consequential damage, indirect damage, delay damage, commercial damage such as loss of profit or immaterial damage. The liability that Qargo Packers has accepted remains limited to cases of personal injury and/or property damage resulting from intent or gross negligence.

9.3 Any liability of Qargo Packers for any damage shall in any case be limited, per incident, to 50% of the amount invoiced or to be invoiced by Qargo Packers with respect to the assignment until the moment on which the damage causing fact has occurred, with a maximum of EUR 5,000 per incident. Liability shall in all instances be limited to EUR 100,000.

9.4 The Principal is obliged to take care of a sufficient, overall liability Insurance for all direct and indirect damage referred to in this article.

9.5 If damages are claimed from Qargo Packers for damage suffered by a third party in relation to goods or performances delivered or, respectively, made by Qargo Packers, the Principal shall explicitly be bound to hold Qargo Packers harmless with regard to this claim.

9.6 At all times Qargo Packers shall have the right to repair any damage of the Principal, if and in as far as possible. This shall also include the, right of Qargo Packers to take measures that can prevent or as the case may be, limit the damage.

9.7 The damage referred to in article 9.1 shall only qualify for compensation, if it has been incurred during the guarantee period referred to in article 8 of these terms and conditions.



## **Article 10: Insurance**

10.1 Unless explicitly agreed with the Principal in writing, Qargo Packers is not obliged to take care for any Insurance of the goods. If it has been agreed between Qargo Packers and the Principal that Qargo Packers shall take care for the Insurance of the goods for the account of the Principal, Qargo Packers may, at its discretion, either conclude the insurance in the name of the Principal, or include the insurance under a policy of Qargo Packers. The value to be insured shall be the amount indicated by the Principal.

10.2 In all cases where the goods have been insured by the intermediary of Qargo Packers, Qargo Packers shall have the right to collect the indemnities for and on behalf of the interested parties and to recover all its claims against the Principal on any account whatsoever. The balance shall be paid to the Principal.

10.3 If in case of damage to or loss of goods due to fire or any other cause the cooperation of Qargo Packers is required or desirable for the determination of the damage or the loss, Qargo Packers shall cooperate against payment of the costs incurred with such cooperation and remuneration for its services. Qargo Packers may make its cooperation conditional on cash payment thereof or on the issuance of security for any and all claims Qargo Packers may have on any account whatsoever as well as for the costs and remuneration referred to in the present paragraph.

## **Article 11: Reservation of Title, Rights of Retention and Pledge**

11.1 After delivery Qargo Packers shall remain the owner of the goods delivered until the moment on which the Principal shall have made all his considerations in return. The reservation of title included in this provision is subject to the extended reservation of title that also extends to other and future supplies.

11.2 As long as a reservation of title is effective with respect to the goods for the benefit of Qargo Packers, the Principal may not encumber, assign, lease, pledge or transfer the goods to a third party under any other name as a loan or otherwise.

11.3 After Qargo Packers has invoked its reservation of title, it may recall the goods delivered. For this purpose, the Principal shall enable Qargo Packers to enter the premises where these goods are located.

11.4 Qargo Packers is entitled to retain goods, documents and funds for the account and the risk of the Principal, until the claims of Qargo Packers against the Principal on any account whatsoever, shall have been paid in full. Any and all goods, documents and funds of the Principal, which Qargo Packers may have or will have in its possession on any account whatsoever and for whatever purpose,





shall serve as a security for all claims which Qargo Packers has and/or will have against the Principal.

11.5 Towards any party demanding delivery, Qargo Packers shall have a right of pledge or a right of retention in respect of all goods, documents and funds which Qargo Packers may have or will have in its possession on any account whatsoever and for whatever purpose, for all claims which Qargo Packers may have against the Principal and/or the owner.

11.6 Qargo Packers may also execute the rights attributed to it in paragraph 1 for anything the Principal is still due to it in relation to previous assignments.

11.7 Qargo Packers shall consider any party who, on behalf of the Principal, entrusts goods to it for the performance of work, as being authorized by the Principal to create a right of retention and a right of pledge on these goods.

11.8 Failing payment the goods retained shall be sold - without a court order or any other authorization being required - privately or in public, such at the discretion of Qargo Packers.

## **Article 12: Prescription and Expiry**

12.1 Each claim against Qargo Packers shall expire by the mere lapse of 12 months.

12.2 In case of total loss, damage or depreciation the term mentioned in paragraph 1 shall commence as from the first of the following days:

- the day on which Qargo Packers will deliver the goods or should have delivered the goods;
- the day on which Qargo Packers has notified the Principal thereof.

## **Article 13: Force Majeure**

13.1 Force Majeure shall mean any circumstance beyond the control of the parties, as a result of which the performance of the contract is obstructed permanently or temporarily and which, neither by force of law nor according to standards of reasonableness and fairness, should be for the account of Qargo Packers. In case of an event of force majeure on the part of Qargo Packers, its obligations under the contract shall be suspended as long as the situation of force majeure continues.

13.2. In as far as not already included, events of force majeure shall also be: strikes, lockouts, blockades, embargoes, government measures, war, revolution and/or other similar events, electrical failure, intermittence of electronic communication lines, fire, explosion and other calamities, water damage, flood,





earthquake and other natural disasters, as well as extensive illness of personnel of an epidemical nature.

13.3. As long as the force majeure situation continues, the obligations of Qargo Packers shall be suspended. In case of force majeure, Qargo Packers shall also be entitled to modify or dissolve the contract, such at the discretion of Qargo Packers.

13.4. During the force majeure situation Qargo Packers is not bound to compensate any damage incurred by or with the Principal nor is it bound to do so after termination of the contract.

#### **Article 14: Dissolution**

14.1. If the Principal fails to fulfil his obligations under the contract, Qargo Packers shall be entitled – apart from what has been stipulated in the contract– to dissolve the contract without the intervention of the court. The dissolution shall only take place after the defaulting party has been notified of the default in writing and he has been granted a reasonable term to remedy the serious shortcoming..

14.2. In case the Principal:

- a. has been declared bankrupt, or in case an application for his bankruptcy has been filed, or in case the Principal assigns his estate or assets, or that a bankruptcy application has been filed against him, or in case the Principal files for a (provisional) suspension of payments or if a (provisional) suspension of payments has been ordered, or if an attachment is made in respect of all or part of his property;
- b. Deceases or is placed under guardianship;
- c. fails to fulfil any obligation incumbent upon him pursuant to the law or to these terms and conditions;
- d. ceases his business operations (either in whole or in part) or liquidates his company;
- e. is no longer considered able to fulfil his obligations under the agreement;
- f. has the intention to move from the Netherlands,

Qargo Packers shall be entitled, by the mere occurrence of any of these circumstances, to suspend its activities or to dissolve the contract wholly or partially without the intervention of the court and without any warning or notice of default being required and without being liable towards the Principal.

#### **Article 15: Applicable Law and Disputes**

15.1 Dutch law, with the exclusion of the Vienna Sales Convention, shall apply to any contracts and other legal relations between Qargo Packers and the Principal.



15.2 All disputes resulting from and/or in connection with the contracts and legal relations referred to in the previous paragraph shall exclusively be submitted to the competent Judge in Rotterdam.