

## **GENERAL TERMS AND CONDITIONS**

**of the private limited company, J. van de Put Fresh Cargo Handling B.V., having its registered office at Schiphol, the Netherlands. Filed at the Chamber of Commerce in Amsterdam under number 34086621 (2009).**

### **Article 1 Definitions**

1. Pursuant to these terms and conditions, the term 'Van de Put' is understood to mean: J. van de Put Fresh Cargo Handling B.V., its companies/managing directors and all affiliated companies.
2. The term 'other party' is understood to mean: any party acting as client, lessee, buyer or otherwise in the conclusion of an agreement with Van de Put.

### **Article 2 Applicability**

1. These general terms and conditions are applicable to all legal relationships, including tenders, offers, quotations and agreements drawn up by Van de Put, and all work, deliveries and other (juristic) acts undertaken by Van de Put, and all obligations arising from other agreements concluded between the parties.
2. These general terms and conditions apply unimpaired to the agreements, work, deliveries and other (juristic) acts as referred to hereinafter.
3. Any derogation from the present terms and conditions is permissible only in so far as it is expressly agreed in writing. Those terms and conditions from which there is no written and express derogation remain fully in force.
4. The other party cannot derive any future rights from any written derogation from the present terms and conditions.
5. Application of general conditions invoked by the opposite party is expressly excluded.
6. If one of the provisions of these general terms and conditions is null and void, a provision that resembles as closely as possible the null and void provision and that is considered valid will be deemed to have taken its place. The same applies to provisions that Van de Put is unable to invoke for other reasons. The other provisions shall remain in full force and effect
7. In the event that these general terms and conditions are drawn up in a language other than Dutch, then in the event of conflict between that translation and the Dutch text in any part, the Dutch text will prevail for the part in question.

### **Article 3 Tenders, Offers and Quotations**

All estimates, quotations and offers, in whatever form, are without obligation, unless the contrary is expressly implied.

### **Article 4 Agreement**

1. An agreement comes into being only when the acceptance of the offer without obligation reaches Van de Put, unless Van de Put revokes its offer without obligation immediately following receipt of the acceptance.
2. The mere provision of a price quotation, estimate, advance calculation or similar communication by Van de Put, whether or not designated as an offer, does not oblige Van de Put to conclude an agreement.
3. If any reservation or any alteration of the offer is made in the acceptance, then, notwithstanding the provisions of the previous paragraph, the agreement will only become effective if and when Van de Put confirms in writing to the other party that it consents to this derogation from its offer. Such consent will, however, never be deemed to relate to the applicability of any general terms and conditions observed by the other party.
4. Any commitment undertaken by Van de Put only constitutes an obligation to perform to the best of its abilities. Van de Put cannot therefore guarantee that the work undertaken, the goods delivered or any other performance are suitable for the objective(s) envisaged by the other party.
5. (Juristic) acts of the other party with employees of Van de Put are not binding on Van de Put, unless and in so far as such (juristic) acts are accepted by Van de Put expressly and in writing.
6. Van de Put is authorised at all times to have this agreement performed by third parties.

### **Article 5 Prices/rates**

1. Prices and/or rates (together referred to hereinafter as 'prices') will be agreed by parties for all activities and, where applicable, deliveries and other (juristic) acts.
2. Price quotations in the agreement are always made on the basis of the prices applicable at the time of the offer.
3. The prices stated in the agreement are based on normal working hours.
4. All prices stated shall be exclusive of Value Added Tax (VAT) and any other levies imposed by the government, unless otherwise specified.
5. Van de Put is entitled to increase the agreed price if one or more of the following circumstances occur after the conclusion of the agreement:
  - a. an increase in the costs of raw materials, materials, semi-manufactures or services that are necessary for the performance of the agreement;
  - b. increase in despatch costs, wages and salaries, employer's charges, social insurance, costs involved in other conditions of employment;
  - c. transport, introduction of new and/or increase in existing government levies, import and export duties or other levies and/or taxes in the Netherlands and abroad, or, in general,
  - d. such circumstances as are comparable to any of the above.
6. If in the performance of the agreement extra costs have to be incurred (entailing more, out-of-the-ordinary or time-consuming activities) and/or extra risks are present, then Van de Put may add a surcharge onto the agreed prices that is proportionate to those extra costs and extra risks.
7. The number of hours' work specified by Van de Put are indicative only and are not binding, unless expressly stated otherwise.
8. Previously agreed or charged prices will not be binding on Van de Put.

### **Article 6 Deliveries and risk**

1. From the time of delivery at the agreed place, the delivered goods fall fully to the account and risk of the other party.
2. Any loading or unloading activities, involving equipment owned by the other party or a third party and used by Van de Put, shall be performed at the expense and risk of the other party.
3. Van de Put assumes no liability for any damage to, or caused by the use of loading and unloading equipment of the other party.
4. The other party is responsible for taking out adequate insurance cover for the use of loading and unloading equipment owned by the other party or a third party.
5. The acceptance of goods by the carrier from or on behalf of Van de Put will serve as proof that they have been received in externally good condition, unless the contrary is evident from the consignment note or proof of receipt.

### **Article 7 Security**

1. Before making delivery or continuing the delivery or (otherwise) starting performance of the agreement, Van de Put is entitled to require sufficient security for the prompt fulfilment of the payment obligations of the other party.
2. In the case of any default, the other party is obliged to provide sufficient security, including pledging, (this being a matter for the assessment of Van de Put) in order to secure fulfilment of the payment obligations. The security provided must be such that the claim and any interest and costs due in respect of it are duly covered. In the event of any default, the other party will be obliged, at the first request of Van de Put, to fulfil his payment obligations to it in some other way acceptable to Van de Put. Van de Put will always be entitled to refuse the mode of payment proposed by the other party as referred to in the previous sentence.
3. The other party hereby grants Van de Put in advance a right of pledge on all property that may be transferred to the control of Van de Put by the other party within the framework of the agreement, as additional security for everything which the other party, in any capacity and on any grounds whatsoever, may owe to Van de Put, including non-exigible and contingent debts.

4. Van de Put exercises a right of pledge on all property that may be transferred to the control of the other party by Van de Put within the framework of the agreement, as additional security for everything which the other party, in any capacity and on any grounds whatsoever, may owe to Van de Put, including non-exigible and contingent debts. The costs associated with the retention of property shall be borne by the other party.

5. The refusal by the other party to provide the requested security will entitle Van de Put to dissolve the agreement, without prejudice to its right to claim compensation for any loss or damage suffered by it.

#### **Article 8 Payment**

1. The other party is obliged to issue payment to a bank or giro account designated by Van de Put within fourteen (14) days of the invoice date, without deduction of any discount, compensation or set-off against any (other) claim which the other party may have on Van de Put. All costs arising in connection with the performance of Van de Put shall become due and payable immediately from commencement of an agreement, even without an invoice being issued.

2. If Van de Put has two or more claims on the other party, then a payment by the other party will be used first of all to pay off statutory debt and/or the designated portion of that debt, regardless of which claim or which component the other party designates.

3. If the payment period intended in paragraph 1 is exceeded, then contractual interest at a rate of 12% a year will be owed from the due date, without any notice of default being necessary, together with reimbursement of any judicial and/or extra-judicial costs to be calculated on the basis of the collection rates of the Netherlands Bar Association, in accordance with the *Vademecum Advocatuur* (Reference Book for the Bar), Part 'Legislation & Regulations', subject to a minimum of € 118,00, irrespective of whether those costs have actually been incurred.

4. If the statutory interest in a given period exceeds the contractual interest, then the statutory interest will be owed for that period instead of the contractual interest.

5. Judicial costs include all costs for the collection of the claim, such as the costs of seizure, litigation costs and the costs of an application for bankruptcy.

#### **Article 9 Complaints**

1. Following supply and/or other performance by Van de Put, the other party will check without delay whether Van de Put has properly fulfilled the agreement and will also be obliged to notify Van de Put in writing immediately if he finds that this is not the case. The other party should in any event carry out the investigation referred to in this paragraph and make the relevant notification within no more than eight (8) calendar days after delivery or completion, under penalty of cancellation of the other party's right of recovery. With respect to perishable goods, the aforementioned term is 1 x 24 hours.

2. In the event of non conforming goods or performance, Van de Put will always be entitled to replace such goods or performance with new goods or performance that are/is sound or, at the discretion of Van de Put; fulfilment of the agreement will then be deemed to be fully sound and proper.

3. The performance of Van de Put shall in any case be considered to be a proper performance between the parties if the other party has put into use, processed, worked or delivered to third parties the goods or part of the goods delivered or if he has caused same to be put into use, processed, worked or delivered to third parties, unless the other party has observed the stipulations contained in the first paragraph of this article.

4. The performance of the agreement shall be considered to be a proper performance if the other party has failed to carry out the inspection or to give notice as referred to in paragraph 1 of this article in time.

5. The invoice of Van de Put will be deemed to be correct if the other party has not submitted a written protest to Van de Put within no more than eight (8) calendar days of the date of the invoice. With respect to perishable goods and property, the aforementioned term is 1 x 24 hours.

6. If the periods referred to in the first and fifth paragraphs must be deemed to be unacceptably short according to manifest criteria of reasonableness and fairness, even for a careful and attentive other party, then these periods will be automatically extended until no later than the first opportunity when the investigation or, as the case may be, notification to Van de Put may reasonably be deemed possible for the other party.

7. Any claim to damages against Van de Put shall be extinguished by the mere lapse of one (1) year after the claim arises, commencing from the day that the other person became aware of the damage, and of the identity of the responsible person.

#### **Article 10 Non-attributable failure (*Force Majeure*)**

1. The term *Force Majeure* is understood to mean: all circumstances that are independent of and beyond the control of Van de Put, and that are of such nature that fulfilment of the obligations is temporarily or permanently impossible or, according to criteria of reasonableness and fairness, cannot be required anymore.

2. The *Force Majeure* exists, *inter alia*, in the event of: war, (threat of) terrorism, mobilisation, riots, industrial action, strikes, stagnation and/or disruptions in the manufacture and/or processing by Van de Put or a subcontractor of raw materials or additives, obstruction of the transport route, breakdowns of machinery used by Van de Put, suppliers or third parties involved in the performance of the agreement, any breakdown of vehicles used by Van de Put or third parties, any shortcoming on the part of suppliers or third parties involved, delay in the supply of parts, any disruption of the business of Van de Put or in that of one of the suppliers or third parties involved in performing the agreement, government measures such as the seizure of goods, the refusal to grant permits, import and export restrictions, staff sickness, extreme or unexpected stagnation of traffic, fire, extreme and/or unsuitable weather conditions, storm damage, flooding and other natural disasters, and any delay or shortage of capacity at Van de Put that is caused by the above-mentioned circumstances.

#### **Article 11 Dissolution**

1. Without prejudicing its other rights, Van de Put shall be entitled to partly or wholly terminate the agreement in writing with immediate effect, or to annul the order or agreement, without a notice of default being required, and without a duty to pay any form of compensation or to provide indemnification if:

- a. a suspension of payment has been requested by or given to the other party;
- b. the other party has filed for bankruptcy, or has been declared bankrupt,
- c. the other party has failed in the performance of its obligations, or Van de Put has good cause to fear that the other party will fail in the performance of its obligations.

2. Van de Put shall be entitled to suspend or wholly terminate the agreement in writing, without a duty to pay any form of compensation or to provide any guarantee.

3. All claims of Van de Put against the other party shall, in such case, fall due immediately.

#### **Article 12 Liability**

1. The liability of Van de Put on account of the agreement with the other party shall be limited to the provisions of Article 14 of these general terms and conditions.

2. Van de Put is not obliged to pay compensation as a consequence of failure in the fulfilment of any obligation or as a consequence of an unlawful act if it cannot be imputed to Van de Put. This is the case where the failure is not imputable to its fault and is not attributable to some cause for which it is responsible by law, by juristic act or in accordance with standard practice.

3. Van de Put accepts no liability of any kind for defects in the performance of the agreement due to the fault or involvement of the other party or third parties for whom the other party is responsible

4. Van de Put is also not liable for loss or damage caused by the implementation by employees of Van de Put of instructions, advice or directions of the other party which fall outside the scope of the activities resulting from the order, unless the other party proves that this is attributable to intent or gross negligence of employees of Van de Put.

5. The obligation to compensate loss or damage incurred may not in any case relate to any loss of turnover or any other business loss and/or consequential loss.

6. In no case will the obligation to compensate loss or damage ever exceed an obligation to credit the amount of the invoice (excluding turnover tax) in respect of the part not performed or incorrectly performed.

7. Van de Put shall never be liable for any damage or for any loss on any ground whatsoever, insofar as such damage or loss is not covered by insurance.

8. Van de Put does not accept any liability arising from any of the goods delivered, work undertaken, advice issued or research undertaken.

9. If the goods and services delivered to Van de Put are guaranteed by the supplier of such goods or services, Van de Put will transfer these rights insofar as possible at the first request and at the expense of the other party.

10. Persons in positions of authority, partners, managers, employees and others involved at Van de Put can invoke the same defences against the other party in order to refute or limit liability if they are sued by the other party.

11. If two or more other parties have together entered into an agreement, or two or more people have signed an agreement with Van de Put, then each of them will be jointly and severally liable for each obligation of the other parties resulting from that agreement.

### **Article 13 Indemnification**

1. The other party undertakes to indemnify Van de Put against and compensate it for all loss or damage, costs and interest that may arise as a direct or indirect result of claims of third parties in connection with the implementation of the agreement.

2. If Van de Put holds any goods in connection with the implementation of the agreement, the other party undertakes to indemnify Van de Put against any claim made by a third party for damage, whether direct or consequential, arising in any way whatsoever in connection with the goods delivered.

3. The other party is also obliged to indemnify Van de Put against loss or damage consisting of and/or caused by fines, claims, periodic penalty payments or other measures imposed by the authorities.

4. These indemnification obligations are also valid for persons in positions of authority, partners, managers, employees and others involved at Van de Put.

### **Article 14 Applicable law**

1. Quotations, offers, acceptances, agreements, deliveries and other (juristic) acts are governed by the law of the Netherlands.

2. Supplementary to paragraph 1, and depending on the type of work being performed, the following shall be applicable:

a. FENEX, the Netherlands Association for Forwarding and Logistics, the most up to date version, which Van de Put will send free of charge upon request; b carriage of goods by road within the Netherlands; the General Transport Conditions (AVC), the most up-to-date version;

c. international carriage of goods by road; Convention on the Contract for the International Carriage of Goods by Road, the version ratified in the Netherlands (CMR).

3. The scope of application of the Vienna Convention on Contracts of Sale or any other treaty which conflicts with this clause shall be precluded.

### **Article 15 Disputes**

All disputes will be exclusively adjudicated by the competent civil court in Haarlem, being the court in the judicial district in which Van de Put has its registered office. Van de Put will, however, be entitled, if it so desires, to submit duly qualified disputes to another court that has jurisdiction at law.