

GENERAL TERMS AND CONDITIONS OF EMONS CARGO B.V.

1. APPLICABILITY

1. These terms and conditions apply to all our offers, agreements and any ensuing undertakings.
2. These terms and conditions can only be deviated from in writing, and shall only apply with respect to the specific agreement to which the deviations relate.
3. These terms and conditions apply as well as the other terms and conditions declared applicable by us to the respective agreement. In the case of any discrepancy between a provision from these terms and conditions and a provision from the other terms and conditions declared applicable by us to the respective agreement, the provision from these terms and conditions shall prevail, unless explicitly specified otherwise.

2. OFFERS, ORDERS

1. Our offers are to be considered as one whole and shall be valid for 30 days or any time longer or shorter as indicated in the offer, but shall at any time be made free of any obligation. An agreement between the parties shall only have been effected upon our confirmation of the contracting party's acceptance, or once we will effectively implement the agreement.
2. In the case of an order without our prior offer, an agreement shall only have been effected upon our confirmation within fourteen days upon receipt, or once we will effectively implement the agreement.

3. PRICES

1. All prices are inclusive delivery from our company and are exclusive of VAT. They are based on any price-fixing factors whatsoever applicable to the offer at such time.
2. We are entitled to increase the stated or agreed prices pursuant to an increase in said price-fixing factors arising after the offer or after the agreement was effected, even if such an increase was to be anticipated.

4. DELIVERY AND RISK, OBLIGATION TO BUY

1. If our agreement with the contracting party is not a transport agreement, the sections of this article shall be applicable.
2. The delivery time is the period stated in the agreement for the delivery of the items. The stated delivery times shall not at any time be considered deadlines. In the event that the delivery time should be exceeded, we shall only be in default upon receipt of a notice of default in writing. We shall be entitled to deliver an order in parts, to be invoiced separately. We shall be entitled to deliver 10% in excess of or less than the agreed quantity with an appropriate increase/decrease of the purchase price.
3. The delivery time commences as soon as the agreement has been concluded, any information required for the fulfilment of our obligations has been provided to us, any permits/formalities (including the VAT tax number of the contracting party) required for such a fulfilment have been obtained, fulfilled or notified by the contracting party, and the payment, if and to the extent payment must be made at the time of the order, has been received. The delivery time shall be extended by the period during which we have suspended our performance pursuant to these terms and conditions and/or the law, or during which we have been impeded to fulfil our obligations due to force majeure as referred to in section 7. 4. Delivery shall take place from our company (EX WORKS, Incoterms 1990). The items are considered to have been delivered and the risk involved with the items shall be transferred to the contracting party:
 - as soon as the items are located in the means of transport, even if we provide the transport;
 - if cooperation from the contracting party as referred to in the next section in subsection b., is (considered to be) refused.If and to the extent delivery is agreed carriage paid within the European territory of the countries that are members of the EEC and of the EFTA, the items shall be insured by us, which insurance shall cover regular transport risk but not war risk or any other extraordinary risks.
5. The contracting party undertakes to give its cooperation required for the execution of our performance. Cooperation is considered to have been refused:
 - a. if we provide the transport and the items have been offered to the contracting party for delivery and this has proved to be impossible;
 - b. if the contracting party provides the transport, and the items are not collected by them or on their behalf on the agreed date.In these cases, the contracting party shall be promptly in default without any further notice. All our costs resulting from such refusal shall be paid by the contracting party, without prejudice to any of our other rights with regard to such default. Said costs explicitly comprise a reasonable compensation for storage, in accordance with the rates commonly used on the relevant location.

5. PAYMENTS

1. Payment terms shall not at any time be later than 30 days after the invoice date. Amounts are not to be offset by the contracting party unless we have fully and unconditionally acknowledged the counter-claim.
2. If no payment has been received from the contracting party within the agreed payment term, we shall be entitled to charge interest over the invoice amount from the due date, which shall be equal to the statutory interest increased with 1% for each month or part of the month that the contracting party continues to be in default, without prejudice to any other of our rights in this respect.
3. The contracting party shall pay any in-court or out-of-court collection costs incurred by us in order to effect fulfilment of the contracting party's obligations. The out-of-court costs shall be charged pursuant to the collection rate upon the recommendation of the Dutch Bar, to a minimum of € 125.00, without prejudice to our right to claim a higher payment for the actually incurred loss.
4. Payment must be made without any deductions at our office into an account in the Netherlands to be designated by us, or in another manner at our indication. Any payments made by the contracting party shall at any time first be used to settle any interest and costs due, and subsequently any payable amounts with respect to which no valid reservation of title can be stipulated, and subsequently the longest outstanding payable invoice, even if the contracting party states that the payment is related to another or later (invoice) payment.
5. We are entitled to require the contracting party to provide a security. The security must be such that our claim as well as any interests and costs accruing thereon are properly covered, and that we shall be able to seek recourse with respect to this unimpeded and without any effort. If the contracting party should refuse to provide security, we shall be entitled to suspend (further) fulfilment of our obligations towards the contracting party.

6. LIABILITY

1. We shall only be liable for any loss caused to the contracting party, which is directly and exclusively caused by us, provided that only such loss shall be compensated that is covered by our insurance, or ought to have reasonably been insured as is common practice in the industry, with due allowance for the following restrictions:

a. any business loss shall not be eligible for compensation (business interruption, port charges and any other expenses, loss of income and the like) caused in any manner whatsoever. The contracting party must, if so desired, provide cover through an insurance against such a loss.

b. we are not liable for any loss whatsoever afflicted by or caused during the execution of our activities to any movables and/or immovables of the contracting party or any third parties.

c. we are not liable for any loss caused by the intent or gross negligence of auxiliary persons.

d. the loss to be compensated by us shall be moderated if the compensation to be paid by us to the contracting party is a minor compensation compared to the extent of the loss suffered by the contracting party. Our total liability will never exceed the last of the following two amounts: € 25,000 or an amount equal to the total price stipulated in the relevant agreement, exclusive of VAT. We shall only be bound to pay higher damages if they should be assigned to the contracting party by their insurers in accordance with the applicable policy conditions. We shall not at any time be liable for any soil contamination of any kind whatsoever, irrespective of the cause of such contamination.

2. If in transport agreements, or during the execution of transport activities, the contracting party has incurred any loss as referred to in the respective provisions of the CMR treaty and/or the 1983 General Transport Terms and Conditions and/or the FENEX terms and conditions, the relevant liability regulations provided in such treaty and/or in such terms and conditions shall be applicable, irrespective of the provisions in section 1.

7. FORCE MAJEURE

We shall not be deemed responsible for a default in the fulfilment of any of our obligations, and we shall not be liable for such default in the event of any negligence and/or default of or at our suppliers, sub-contractors and/or carriers, in the case of fire, strikes or lock-out, riots or revolt, war, government measures, including export, import or transit prohibitions, frost and any other circumstances that are such that we can no longer be reasonably required to be bound to our obligations. A default as referred to in this section will be considered sufficient grounds for dissolution.

8. RIGHT OF RETENTION

1. We are entitled to retain any items that we hold on behalf of the contracting party or of which the contracting party is the owner until such time that the contracting party has fulfilled all of its obligations towards us, provided such items are directly or to a sufficient extent related to the non-fulfilment in order to justify such retention. If we should lose control of any items that come under this right, then we shall be entitled to claim such items as if we were the owners.

2. The relevant 1983 terms and conditions and/or the Fenex terms and conditions apply to any transport agreements or agreements for transport activities in addition to subsection 1.

9. RIGHT OF LIEN

Any goods, documents and moneys that we hold or will be holding for any reason and for any purpose whatsoever, shall serve us as a collateral for any claims that we have or will have against the contracting party. In the case of non-payment of the claim, the collateral shall be sold in public, or through a private sale, if an agreement has been reached with respect to this after the entitlement to sell the collateral arose.

10. INDEMNITY

In respect of third parties, our liability for the loss caused during the implementation of the agreement to which these terms and conditions apply will not at any time exceed the loss we would be liable for in respect of our contracting party. The contracting party shall protect us from any further liability and will, where possible, stipulate a respective exoneration for our purpose in its agreements with third parties. The contracting party shall fully protect us from any claims for damages from third parties, based on the infringement of intellectual property rights, through the use of drawings, information, materials or parts, or caused by the application of work methods provided to us or imposed on us by or through the contracting party in order to implement the agreement.

11. SEVERAL LIABILITY

In the event that we should effect an agreement with two or more persons or legal entities, each such person or legal entity shall be severally liable for full compliance with any commitments ensuing for them from the agreement.

12. APPLICABLE LAW, DISPUTES

1. Our offers, agreements and any ensuing undertakings shall be governed by Dutch law only. Applicability of the Vienna Sales Convention (Trb. 1981, 184; 1986, 61) is however explicitly excluded.

2. Any disputes resulting from our offers and/or agreements shall be submitted to the competent court at the location where we are established, subject to the statutory competence of the County Court.

3. The Dutch language shall prevail when interpreting or construing these terms and conditions.

Milsbeek, February 2000