

## The Van der Vlist General Terms and Conditions

Filed with the Chamber of Commerce of Rotterdam, the Netherlands, on 1 October 2010.

### I. General provisions

These General Terms and Conditions of Van der Vlist have been drawn up for use by the companies that form part of the Van der Vlist Group for their offers and/or agreements and/or work performed and/or deliveries made and/or any other type of performance provided in the broadest sense of the words, with no exception. Any terms and conditions applied by our clients and/or third parties will not apply, and the applicability of such terms and conditions is hereby explicitly rejected. Any conditions contained in documents that we issue, such as consignment notes, delivery receipts or any other document will apply only with due observance of the following provisions. We are also entitled to invoke our General Terms and Conditions in connection with non-contractual claims against us, including any claims in connection with product liability.

The 'Van der Vlist Group' is defined to mean the group of companies, located either in the Netherlands or abroad, that are directly and/or indirectly affiliated with Van der Vlist Transportgroep B.V., a company incorporated under Dutch law, having its registered office and maintaining a place of business in the Netherlands, and each individual company that forms part of that group.

'Van der Vlist' is defined to mean the company that forms part of the Van der Vlist Group that concludes an agreement with a client or intends to do so.

'Agreement' is defined to mean the Agreement between Van der Vlist and a client, pursuant to which Van der Vlist – represented by a duly authorised officer – undertakes towards that client to provide a particular service or to perform in some way, in the broadest sense of the words.

### II. Applicable standard conditions

The following customary standard conditions apply in addition to these General Terms and Conditions, depending on the nature of the assignment, work or other performance, or any part of it that can reasonably be considered independent, on the understanding that in the event of any discrepancy between the provisions contained in these General Terms and Conditions and the provisions contained in the standard conditions, the provisions contained in these General Terms and Conditions will prevail, unless the provisions contained in the standard conditions provide Van der Vlist with more extensive security, protection and/or limitation of

liability, in which case the provisions contained in the standard conditions will prevail:

- a. **for the transport of goods by road and/or over land:**  
the Convention on the Contract for the International Carriage of Goods by Road (Geneva 1956) as supplemented by the 1978 protocol (CMR), in respect of both domestic and cross-border transport, unless any other mandatory provisions of law apply;
- b. **for forwarding activities (including customs activities):**  
the 'Dutch Forwarding Conditions', which were filed with the Registry of the District Court of Rotterdam on 1 July 2004;
- c. **for physical distribution (not including storage):**  
the 'Physical Distribution Conditions', which were filed with the Registry of the District Court of Rotterdam on 1 September 2000;
- d. **for storage activities:**  
the 'Warehousing Conditions', which were filed with the Registry of the District Court of Rotterdam on 1 March 1994;
- e. **for stevedore activities:**  
the 'Rotterdam Stevedore Conditions', which were filed with the Registry of the District Court of Rotterdam on 12 August 1976;
- f. **for crane or jackscrew activities (including horizontal and/or vertical movement on land or over water, using any type of equipment):**  
the 'General Terms and Conditions for the Execution of Assignments by Crane Operators', which were filed with the Registry of the District Court of Rotterdam and entered into effect on 1 January 1994;
- g. **for combined transport:**  
for each part of the transport, the rules of law that apply in respect of that part and Articles 8:40 to 8:52 of the Dutch Civil Code (Burgerlijk Wetboek);
- h. **for transport by air:**  
the standard conditions stated on the reverse side of the air waybill, as well as the conditions which are referred to on that reverse side;
- i. **for all other work, including additional work and ancillary activities:**  
insofar as they cannot be included in any of the work listed above, such as contracting, assembly and disassembly/construction and repair work in the broadest sense of the words, mounting, etc. are governed by the 'Physical Distribution Conditions' referred to under subsection c of this Article.

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If standard conditions are revised, the revised text will apply as from the date on which it is filed, without prejudice to our right to declare that conditions other than the aforementioned standard conditions govern a particular assignment, activity or other performance.

### III. Offers

- a. Regardless of the form in which they are issued, all offers from Van der Vlist, however they may be named, are completely without engagement and apply only for the term indicated in the offer. If an offer from Van der Vlist does not indicate a term, the offer will apply for a maximum term of two months.
- b. Deviations from offers will bind Van der Vlist only if Van der Vlist has accepted them in writing.
- c. A later offer will overrule any earlier offer, without it being possible to derive any right from the earlier offer(s).
- d. Any drawings, indications of sizes and weights or illustrations related to offers will be binding only if and insofar as Van der Vlist has referred to them or accepted them as the basis for the price for the offer.
- e. Every offer is based on performance by Van der Vlist under normal conditions and during normal working hours, unless the offer explicitly indicates otherwise.

### IV. Prices

- a. All the agreed prices are exclusive of VAT and are based on the situation that applies at the time of the offer or the Agreement. If one or more cost-price factors subsequently increase, including but not limited to wage costs, fuel costs, taxes and other government measures, insurance costs, changes in exchange rates, import duties, etc., Van der Vlist will be entitled to increase the original price accordingly and those adjusted prices will be binding, also in respect of current agreements.
- b. All the agreed prices are in euros. If prices are denominated in foreign currency and the exchange rate of that currency changes to Van der Vlist's disadvantage, Van der Vlist will be entitled to change the prices so that their equivalent value in euros remains the same as it was at the time at which the Agreement was concluded.

- c. Van der Vlist's prices do not include duties imposed by the government, customs authorities or other agencies, including VAT, import duties, penalties, etc., any guarantees or security to any party whatsoever or any costs for surveillance (such as police surveillance), technical inspections, or other obligations or costs. Those amounts will be charged separately.
- d. Prices or rates that are based on a particular time period, such as leasing or making persons, goods or spaces available, the term will commence when the person or object is made available to the client in Van der Vlist's company (or possibly at another location indicated by Van der Vlist) and will end when that person or object is once again made fully available to Van der Vlist at that same place. However, the term will be extended automatically by any term necessary to repair damage that occurs during the term in which the person or good has been made available in the event that the client is liable for the damage in question on the ground of these General Terms and Conditions.
- e. Van der Vlist's prices are based on normal performance, to be provided during normal working hours and for a normal period of time. For any special performance, unusual work, particularly time consuming work or work that requires extra effort, and in the event of disruptive influences with respect to the performance or with respect to the term or time, Van der Vlist will be entitled to an extra remuneration, to be determined in all fairness, such as waiting expenses, etc. or the extra costs incurred, such as crane costs, to be paid by the client.
- f. Van der Vlist's prices are calculated on the basis of locations that can be safely and readily accessed, used and driven on, including loading and unloading locations. If it appears in retrospect that those conditions have not been met, Van der Vlist will be entitled to increase the prices by any and all additional costs incurred plus a reasonable profit on those amounts, or Van der Vlist will be entitled to refrain from performing the assignment or to break it off and cancel it prematurely at a time to be determined by Van der Vlist, in which case Van der Vlist will be entitled to receive payment in accordance with its right in the event that Van der Vlist had carried out the assignment in full.

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### V. Payment and payment default

- a. Van der Vlist's invoices must be paid within 30 days of the invoice date. Payment must be made without any deduction or setoff of any kind whatsoever, by transferring the amount due to the bank account indicated by Van der Vlist.
- b. If the client has not made payment by the due date it will be in default, without any notice being required, and the client will owe Van der Vlist default interest at a rate of 1.5% a month on the amounts due, as from the due date in question.
- c. If the client is in payment default it will owe any and all costs and representation) that Van der Vlist incurs in connection with collecting the amount due.
- d. If the client is in payment default Van der Vlist will in any event be entitled to suspend its obligation to perform under the part of the agreement in respect of which the client has committed breach. In addition Van der Vlist will be entitled to suspend the performance of any other Agreements that the parties have concluded until the client has complied with all its obligations towards Van der Vlist, without prejudice to Van der Vlist's right to compensation of damage, interest and/or other costs.
- e. The client shall not refuse or suspend any payment on the ground of alleged defective or incomplete performance on the part of Van der Vlist in the event that Van der Vlist has not acknowledged a breach on its part in writing.
- f. Van der Vlist may request the client at any time to make full or partial payment in advance or to furnish adequate security for its present or future payment obligations towards Van der Vlist. If the client fails to comply with Van der Vlist's request to make payment in advance or to furnish adequate security, Van der Vlist will be entitled to terminate or suspend the Agreement in whole or in part, effective immediately.

### VI. Right of retention and right of pledge

- a. Van der Vlist is entitled to refuse to surrender moneys, goods and/or documentation that Van der Vlist has in its possession in connection with the order and/or work to any parties that have a right to delivery of such

moneys, goods and/or documentation on any grounds other than the agreed order or work.

- b. Van der Vlist is entitled to exercise the right of retention in respect of moneys, goods and/or documentation that Van der Vlist has in its possession in connection with the assignment and/or work in respect of any amount that Van der Vlist owes or will owe in connection with that assignment or work and in connection with another order or work.
- c. All goods, documentation and/or moneys that Van der Vlist has in its possession or acquires on any grounds whatsoever will be deemed to be subject to a right of pledge within the meaning of Article 3:236 of the Dutch Civil Code, as security for the payment of any amounts that the client currently owes or will owe it in the future, on any grounds whatsoever. Van der Vlist is entitled to have the collateral security sold in the manner provided for by law or privately if agreement is reached in that regard.

### VII. Delivery of goods

The goods that Van der Vlist delivers will remain the property of Van der Vlist as long as the amount owed for those goods has not been paid in full. Any complaints must be submitted at the time of delivery at the latest; otherwise, the goods will be deemed to have been found acceptable. In the event of a timely complaint Van der Vlist's obligation will be limited to paying the costs of repair, and thus Van der Vlist shall not be liable for any damage or other costs.

### VIII. Insurance

Insurance for goods with respect to which Van der Vlist concludes an agreement with the client will be taken out only at the client's risk and expense and only after an explicit written order has been given. The order must specifically describe the risks to be insured; otherwise the order will be deemed not to have been given or accepted. However, Van der Vlist is always entitled to refuse to accept an order to insure for reasons of its own.

### IX. Execution

- a. Van der Vlist is free to choose the manner in which the order will be executed and the work will be performed unless the parties have

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explicitly agreed otherwise. All orders will be executed in the order determined by Van der Vlist, in which context the capacity of the equipment available to Van der Vlist and the capacity utilisation of that equipment will be taken into consideration in determining when the work will commence and end.

Dates and/or terms are not guaranteed. Any information that is provided in advance or in the interim will not lead to any obligation or liability on the part of Van der Vlist.

- b. The client must ensure that all the information that it provides, in particular with respect to sizes and weights and documents, is in our possession in a timely manner and that any auxiliary materials that it must provide are available in a timely manner and with sufficient capacity and equipment. The client warrants the correctness, exactness, clarity and completeness of all the statements, notifications, directions and instructions, of any kind whatsoever, that it gives. The client is responsible for indicating and marking proper fastening locations on the cargo and the hoist suspension and centre of gravity. If hazardous substances are used, the client must also ensure that Van der Vlist is explicitly notified in writing in advance, in particular in respect of the information that applies under the law and/or government regulations and provisions that apply in respect of the assignment granted to Van der Vlist and/or work to be performed by Van der Vlist.

The client is liable for any and all defaults and/or errors and for any and all damage that ensues for Van der Vlist as a result, and it must indemnify Van der Vlist in respect of third parties' claims if necessary.

- c. In the event of a temporary situation involving force majeure, the order will continue to apply but Van der Vlist's obligations will be suspended for the duration of the situation involving force majeure, subject to Van der Vlist's right in such cases to – solely at Van der Vlist's discretion – cancel the order if it has not been executed or insofar as it has not yet been executed, and to charge for the work that Van der Vlist has already performed. Any extra costs that ensue from the situation involving force majeure will be paid by the client.

Force majeure includes any circumstances that are beyond the influence of Van der Vlist and that reasonably impede it from complying with the Agreement in a timely manner. Force majeure includes but is not limited to:

- emergencies;
- strikes, industrial conflicts, lack of manpower, workers' illness and/or accidents, lockouts;
- war (whether or not declared), threat of war, riots, sabotage, wilful damage;
- epidemics, quarantine, government measures;
- road closures, blockades and other traffic impediments;
- storms, fog, lightning, floods, high and low water, frost, freezing, defrosting, floating ice;
- fires, smoke, explosions, fire-extinguishing water, subsidence, collapse, water damage;
- lack of necessary cooperation by government agencies, such as a refusal to grant or revocation of permits, exemptions, etc., police surveillance, etc.; and
- inaccessibility of the working location.

- d. Unless the parties agree otherwise in writing, Van der Vlist is at all times entitled to have the order executed by third parties in whole or in part, in which case these General Terms and Conditions will also apply in favour of such third parties.

### X. Liability and indemnification

- a. In respect of all work, our liability will be determined on the basis of the standard conditions referred to in Article II, insofar as they are not superseded by any applicable mandatory provisions/regulations, on the understanding that in such cases only the mandatory provisions of law will apply. Van der Vlist stipulates, also in favour of any personnel and/or third parties that are engaged by or through van der Vlist, including such parties' other auxiliary agents and/or materials, every exclusion or limitation of liability in accordance with these General Terms and Conditions and the standard conditions declared applicable herein, including the indemnity clause contained in subsection f of this Article.
- b. Van der Vlist is not liable for loss, theft, destruction and/or damage of any kind whatsoever, explicitly including any loss of profit, loss of use, loss of contracting parties and/or any other consequential damage and/or indirect loss or damage and/or any other financial loss, unless the client is able to

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prove an intentional act or omission or gross negligence on the part of Van der Vlist.

- c. Van der Vlist is not liable for any event, loss, costs or damage that fall or should fall outside the scope of the client's insurance coverage.
- d. Any persons who are present on/in Van der Vlist's sites, buildings, vehicles, etc. or at the location where the work is performed will be present there, together with anything that such persons have with them, at their own risk and will be required to strictly comply with the rules and/or instructions stipulated by government agencies and by Van der Vlist. Van der Vlist does not accept any liability whatsoever for bodily injury, material damage or any other type of damage.
- e. Any liability on the part of Van der Vlist will lapse in the event that Van der Vlist is not notified in writing, before the work is finished or the site or the location where the work is performed or where Van der Vlist is required to perform in any way is left, of the alleged damage and/or loss that has been caused.
- f. The client indemnifies Van der Vlist – as well as its personnel and/or third parties in accordance with subsection a of this Article – against any claims brought by third parties, including Dutch and foreign government (and semi-governmental) agencies, in respect of which Van der Vlist, its personnel and/or third parties cannot invoke the provisions contained in these General Terms and Conditions and the standard conditions that have been declared applicable herein.

### XI. Client's liability

- a. The client is liable towards Van der Vlist for any instructions that are incorrect, inaccurate or untimely and for any failure to make goods available at the agreed time.
- b. The client is liable for any and all damage, however it may be caused by the client itself or its goods or staff members or by third parties that it engages and their staff members and/or goods and materials to Van der Vlist, to Van der Vlist's personnel or to third parties that are engaged by or through Van der Vlist, including their personnel or auxiliary agents.
- c. The client is liable for any and all damage caused by its failure to comply or to properly comply in a timely manner with any obligation(s) that it has pursuant to these General Terms and Conditions or any separate agreement

insofar as these General Terms and Conditions and/or the applicable standard conditions does not already contain provisions in that respect.

- d. The client is liable for any and all damage caused by unsafe and/or unsuitable loading and unloading locations or other locations where we perform our work.

### XII. Prescription; lapsing of rights

Any right (including any right of claim) against Van der Vlist will become time barred and will lapse after a term of 12 months has lapsed since the claim arose, insofar as the applicable standard conditions do not provide for another time bar.

### XIII. Applicable law; competent court

- a. All offers, orders, work or other types of performance within the meaning of Article I are governed exclusively by Dutch law insofar as it is not set aside pursuant to the applicable mandatory provisions of law/regulations, on the understanding that in such cases only the provisions of mandatory law will apply.
- b. The District Court of Rotterdam has exclusive jurisdiction to render a decision in respect of any and all disputes that ensue from or are related to any offer, order, work or other type of performance within the meaning of Article I, if necessary to the exclusion of any provision that provides otherwise in any standard conditions that have been declared applicable on the ground of these General Terms and Conditions.

The Dutch version of these Terms and Conditions will prevail over any translations.