

GENERAL PROVISIONS

1 APPLICABILITY

- 1.1 These general supply conditions (the “**Conditions**”) will apply to all provision of services and/or delivery of goods (by sale or otherwise) and all offers and/or agreements pertaining thereto by PSA Antwerp NV and all affiliated companies of PSA Antwerp NV that provide services and/or deliver goods in or out of Belgium including but not limited to Antwerp International Terminal NV (AIT), Antwerp Terminal Services NV (ATS), Computer Software, Management, Operations & Services NV (COSMOS), Container Handling Zeebrugge NV (CHZ), Coil Terminal NV, MSC PSA European Terminal NV (MPET), PSA Antwerp Balie NV, Norexa NV, PSA Zeebrugge NV, PSA Breakbulk NV and Schelde Container Terminal Noord NV (SCTN) (hereafter collectively “**PSA**”). Only the company issuing the offer and/or entering into the agreement or, in the absence of an offer or agreement, providing the goods and/or the services, is liable therefore, without any joint liability of any of its affiliated companies. The Conditions also apply to any non-contractual obligation or liability that PSA may incur as a result of the provision of services and/or the delivery of goods by it. The Conditions apply to provision of services and/or delivery of goods against payment or free of charge. The Conditions apply to any provision of services and/or delivery of goods and to any disputes as from May 25, 2018.
- 1.2 The Conditions apply to the exclusion of all other general or specific conditions which have been or will be communicated at any time by the party which orders or receives one of the goods or services referred to in clause 1.1 (hereafter the “**Customer**”), unless PSA has expressly accepted such provisions in writing. Unless expressly agreed otherwise in writing, any provision deviating from these Conditions will only apply to the relevant offer, agreement, assignment or delivery for which such deviation was mutually agreed. If there is any discrepancy, inconsistency or ambiguity between the Conditions and any specific terms agreed with the Customer, the specific terms agreed with the Customer will prevail to extent of the discrepancy, inconsistency or ambiguity.
- 1.3 These Conditions do not detract from the regulations and customs of the Port of Antwerp and/or Zeebrugge to the extent that the latter are applicable and in conformity with all applicable legal provisions.
- 1.4 By placing an order, the Customer expressly confirms to effectively have taken notice of the Conditions and irrevocably agrees with the applicability of these Conditions.

2 PRICE AND PAYMENT

- 2.1 Unless agreed otherwise, the invoices of PSA are payable immediately upon receipt and at the registered office of PSA. Notwithstanding anything to the contrary, all tariffs and any other amounts due to PSA will be charged in the currency determined by PSA. PSA reserves the right to convert such tariffs and other amounts into a different currency, applying the exchange rate at the time of the conversion. PSA reserves the right to check the Customer’s credit rating periodically and to modify the Customer’s payment terms (as set out in these Conditions or in any agreement, offer or any other document to which these Conditions are applicable) in the event that there is a material change in the Customer’s credit rating.
- 2.2 Unless otherwise specified, all tariffs, handling charges and other charges referred to in these Conditions or in all agreements, offers and any other document to which these Conditions are applicable, are net of taxes. If there is value-added tax or any tax of a similar nature levied on these tariffs or charges, the Customer will pay such tax in addition to the tariffs or charges. If a withholding tax is withheld from the payments made by the Customer (i.e. as opposed to being levied in addition to the Customer’s payments), the Customer will gross up the payments to PSA so that, after deduction of the withholding tax, PSA will receive, on a net basis, the amounts mentioned in these Conditions or in all agreements, offers or other documents to which these Conditions are applicable.
- 2.3 Rebates given to the Customer and any other amounts owed by PSA to the Customer (or to any affiliated companies of the Customer) may, at PSA’s discretion, be set off against any sums due from the Customer to PSA (or to any affiliated companies of PSA). All sums due from the Customer to PSA will be paid without deduction.
- 2.4 Any complaint in relation to invoices, in order to be valid, must be notified in detail by registered letter within five working days after receipt of the invoice. No cause, such as e.g. filing a complaint, exempts the Customer of its payment obligation.
- 2.5 If the Customer does not pay an invoice (or any other amount due under these Conditions or under or in connection with any agreement, offer or other document to which these Conditions are applicable) in whole or in part on its due date, or if the Customer owes PSA any damages on any basis whatsoever, the Customer will owe PSA monthly interest on the amount due, *ipso jure* and without notice, starting from the relevant due date or the date on which the damages occurred. The interest rate will be the interest rate provided in the Law of 2 August 2002 with respect to the suppression of late payments in commercial transactions. Each month commenced will be considered a whole month.
- 2.6 If the Customer does not pay an invoice (or any other amount due under these Conditions or under or in connection with any agreement, offer or other document to which these Conditions are applicable) in whole or in part on its due date, the Customer will owe PSA *ipso jure* and without notice, a lump sum equal to the higher of (i) 10% of the unpaid amount or (ii) 125 €, for administrative costs and notwithstanding the right of PSA to claim a higher amount upon proof of higher suffered costs.
- 2.7 If the Customer or any Affiliate of the Customer does not pay an invoice or any other amount due to PSA or any Affiliate of PSA, in whole or in part on its due date, all other claims of PSA or any Affiliate of PSA against the Customer that are not yet due will become due *ipso jure* and without prior notice. If PSA has multiple claims against the Customer and the Customer carries out a partial payment, PSA will have the right to decide, in its discretion, towards which claim the payment will be applied.
- 2.8 PSA reserves the right, in accordance with article 1948 of the Civil Code, and/or articles 73 and subsequent of the Pledge Law, to refuse the release of any goods and/or containers entrusted to PSA by the Customer, handled by PSA or transported by PSA, until full settlement of all sums due by the Customer to PSA, regardless of whether these amounts pertain directly to the goods and/or containers withheld. The Customer guarantees PSA that the Customer has the authority to dispose of the goods and/or containers, including but not limited to the authority to vest a mover’s lien (“*retentierecht*”) on the goods and containers. If PSA applies this clause 2.8, it will automatically and without notification to the Customer, obtain a preferential pledge as mentioned in clause 2.9, and in accordance with article 76 of the Pledge Law.
- 2.9 The Customer grants PSA an irrevocable, preferential pledge on any current or future goods and/or containers entrusted to PSA by the Customer, handled by PSA or transported by PSA, for all sums due by the Customer to PSA, including the authority to repledge the goods and/or containers, regardless of whether these amounts pertain directly to the pledged goods and/or containers, and including any interests, (liquidated or other) damages or other (enforcement) costs, up to a maximum amount of EUR 1,000,000. Furthermore, the Customer grants PSA a special power of attorney to register the pledge on certain current or future goods and/or containers that are currently or have been entrusted to PSA by the Customer, handled by PSA or transported by PSA, in the Belgian pledge register, If PSA deems this necessary, and will provide the necessary cooperation to PSA, including but not limited to the signature of the necessary documents, upon first request by PSA. Finally, the Customer guarantees PSA that the Customer has the authority to dispose of the goods and containers, in accordance with article 6 of the Pledge Law, including but not limited to the authority to vest a pledge (“*pandrecht*”) on the goods and containers.
- 2.10 If PSA’s tariffs are subject to an automatic tariff adjustment clause, this formula will never lead to the tariffs being lower after the adjustment than before.

3 EXEMPTIONS

- 3.1 PSA is not liable for any delay in the performance of its obligations or failure to perform its obligations because of force majeure. For the purpose of these Conditions and any agreement, offer or any other document to which these Conditions are applicable, force majeure shall be defined as any event not caused by PSA’s fault and which prevents, complicates or delays the performance of PSA’s obligations, including but not limited to the following

circumstances: any act of God, war, civil war, mobilization, invasion, occupation, revolution, rebellion, hostilities, terrorism, piracy, fire, explosion, storm, fierce gusts of wind, flood, lightning, fog, strike, lock out, shortage of personnel, epidemic, theft and breakage of material). If, notwithstanding PSA's industry-standard efforts undertaken to safeguard and protect its information technology infrastructure, systems, services, applications and databases (collectively: "PSA ICT Environment"), PSA's failure to perform its obligations hereunder is directly or indirectly caused or contributed to by an external cause (including but not limited to: a virus, worm, DDoS attack, hacking, phishing, and similar events) that disrupts the PSA ICT Environment, such disruption will be considered a force majeure event. Consequently, PSA's obligations will be suspended until the root cause of such force majeure event has been detected, the consequences thereof have been fully resolved and the PSA ICT Environment has been fully restored.

3.2 If PSA relies on third parties for the execution of its obligations, the provisions mentioned in this clause 3 are also applicable if the force majeure event occurs to any of these third parties.

3.3 If PSA, as a consequence of the circumstances set out in clause 3.1, is prevented or delayed from performing or observing its obligations, PSA is entitled to suspend any agreement with the Customer to which these Conditions apply in whole or in part or, in the event that the suspension has lasted for 12 months, to terminate any such agreement by registered letter, both without prior court intervention. In that case, PSA will be exempt from its obligations without any liability to indemnify the Customer and without any entitlement of the Customer to demand specific performance. If, at the time of the suspension or termination, PSA has partially performed its obligations, the Customer will pay the pro rata amount of the total price.

4 HARDSHIP

4.1 In case of exceptional circumstances not within the control of PSA, which alter the relative rights and obligations of PSA and/or the Customer to the detriment of PSA by excessively increasing the contractual obligations of PSA (including but not limited to increases of the cost of labour, energy and/or materials), the parties, upon the request of PSA, will in mutual consultation seek to adjust the conditions that apply between them in order to re-establish the initial contractual equilibrium while protecting their respective interests.

4.2 In case parties do not reach an agreement with respect to the restoration of the balance of their respective interests within thirty (30) days following the date of PSA's request, PSA will have the right, at its sole discretion, to terminate the agreement to which these Conditions apply by registered letter without any liability. If, at the time of the termination, PSA has partially performed its obligations, the Customer will pay the pro rata amount of the total price.

5 TERMINATION

5.1 PSA has the right to terminate any agreement to which these Conditions apply without prior court intervention and without any prior notice, notice period or indemnity being due, in whole or in part, effective immediately, to the detriment of the Customer, by means of a registered letter to the Customer, in the following cases:

5.1.1 If the Customer fails to comply with any of its obligations (either its obligations under the agreement to which these Conditions apply or any other obligations towards PSA or PSA's affiliates);

5.1.2 if the Customer is declared bankrupt, is involved in a dissolution, applies for the cessation of payment or loses control over its assets or parts thereof (by seizure, by being put under legal restraint or otherwise) or applies for a judicial settlement ("*gerechtelijk akkoord* ") or if any other collective measure intended to protect the Customer from its creditors is applied for or taken; or

5.1.3 if there is a change in control over the Customer. For the purposes of these Conditions, control means, in relation to a party, where a person (or persons acting in concert) has, or has a right to acquire, by equity ownership, contract or otherwise, (i) control over the affairs of that party; (ii) 50% of more of the total issued shares and/or 50% of more of the voting rights of that party; and/or (iii) control of the appointment of 50% or more of the members of the board of directors or similar governing body of that party. A change in control occurs *inter alia* (i) when person(s) that held control previously, no longer hold control; (ii) when person(s) that did not hold control previously, acquire control; and (iii) when persons that previously held control acting in concert, no longer act in concert.

In any of the aforementioned cases, all sums payable by the Customer that are not yet due will become due *ipso jure* and without prior demand or notice.

In the aforementioned cases, PSA has also the right to suspend the performance of its obligations in whole or in part.

5.2 In case of termination or suspension in accordance with the previous clause, PSA will never be liable for any kind of damages. The Customer will indemnify PSA and hold PSA harmless for any damage resulting from or in connection with the termination or suspension.

6 CONFIDENTIALITY

6.1 The following information will be considered confidential: (i) the existence, subject matter and content of these Conditions and of any agreement, offer or other document to which these Conditions are applicable and (ii) any information (in whichever form; whether about PSA or about any other subject) that is obtained by the Customer as a result of these Conditions and of any agreement, offer or other document to which these Conditions are applicable.

6.2 The Customer will treat the information referred to in clause 6.1 as confidential and will not disclose this information or any part of it without the explicit prior written consent of PSA. The Customer will procure ("*maakt zich sterk*") that its affiliated companies and the directors, employees, officers and advisors of itself and of its affiliated companies will comply with this obligation.

6.3 The following actions will not constitute a breach of the obligation set out in clause 6.2: (i) the disclosure by the Customer in the event of a judicial and/or arbitral procedure initiated by one party against the other, to the extent that disclosure is strictly necessary for the procedure, and (ii) disclosure if and to the extent that it is strictly necessary for the Customer to comply with its legal or regulatory obligations. In the latter case, the Customer will consult with PSA, in so far as reasonably possible, prior to complying with this obligation.

7 LIABILITY

7.1 PSA is only liable for the proven damage and/or the loss that is the direct consequence of its proven fault. In no event (including gross negligence) can PSA be held liable for general or specific indirect damages or economic damage or consequential or punitive damages of any kind (including but not limited to lawyers' fees, experts' fees, demurrage, loss of income or profit, loss of contracts, harbour dues and fines and/or similar levies).

7.2 PSA is exempt from any liability in the following events: damage and/or loss occurring before or after the performance of the services by PSA, force majeure as set out in clause 3, defects of the cargo and/or the packing and/or the containers, flooding, collapse, acts or omissions (including intentional misconduct or gross negligence) of third parties (including third parties upon whom PSA relies for the execution of its obligations) and/or the Customer, failure to communicate or the incorrect communication of data or instructions by the Customer and/or by third parties, shortage of berthing space, labour, fuel or power or insufficient depth of water at any berth or the approaches thereto.

7.3 Any liability of PSA (under these Conditions or under or in connection with any agreement pertaining to the provision of services and/or delivery of goods by PSA) is subject to the condition being met that the Customer notifies PSA in writing of the event giving rise to the liability as soon as possible after its discovery, and in any event not later than the following deadlines:

7.3.1 with respect to loss of or damage to the vessel and its equipment: before the vessel has left the terminal of PSA and in any event allowing PSA sufficient time to reasonably verify the damage;

7.3.2 with respect to loss of or damage to a container or to uncontainerised cargo: one month after the container or the uncontainerised cargo have left the terminal of PSA;

7.3.3 with respect to loss of or damage to containerised cargo: the earlier of (i) one week after the Customer is notified of the loss or damage by its own customer and (ii) three months after the containerised cargo have left the terminal of PSA;

7.3.4 with respect to death or personal injury: immediately after the incident.

The notice must include at least the legal and factual basis of the claim in reasonable detail and an estimate of the amount of the damage.

7.4 Any liability of PSA (under these Conditions or under or in connection with any agreement pertaining to the provision of services and/or delivery of goods

by PSA) is subject to the condition being met that the Customer has initiated and served formal legal proceedings (in accordance with clause 10.2 or in accordance with the relevant clauses of the applicable agreement or in accordance with applicable law) within 15 months after the earlier of (i) the delivery of the cargo or providing of the services or (ii) occurrence of the event giving rise to the liability (including damage, death or injury), as the case may be.

- 7.5 All costs arising from government decisions will be borne by the Customer. If as a result of (i) the passing of, or any change in, any law or regulation, or (ii) a material change in the interpretation or application of any law or regulation, PSA has to carry out additional tasks that are not part of the tasks contractually agreed, then PSA will carry out such tasks against payment by the Customer of an appropriate compensation, which may be determined in accordance with Clause 4.
- 7.6 The Customer who is entitled to invoke exemptions or limitation of liability clauses towards the person holding an interest in the cargo or towards any other third party will provide these to the benefit of PSA.
- 7.7 PSA will not be required to pay any indemnification if the amount which would otherwise be recoverable from PSA (taking into account *inter alia* these Conditions and any agreement, offer or other document to which these Conditions apply) is less than the following amounts :
- in the event of loss of or damage to any container : EUR 500;
 - in the event of loss of or damage to any cargo : EUR 250.
- To the extent that a claim exceeds these amounts, PSA will be liable only for the excess.
- 7.8 If any person other than the Customer makes any claim against PSA in respect of loss or damage resulting directly or indirectly from services provided and/or goods delivered by PSA to the Customer pursuant to these Conditions (or any agreement to which these Conditions apply), the Customer will fully indemnify PSA in respect of any liability, loss or damage that PSA may incur even where such liability, loss or damage exceeds the limitations of liability imposed under these Conditions (or any agreement to which these Conditions apply). PSA will not be liable for, and the Customer will indemnify PSA for, any liability, claim, proceeding, loss, delay, detention, cost or expense in connection with or arising out of (i) PSA applying any provision of, or exercising any rights under, these Conditions (or any agreement to which these Conditions apply), or (ii) the Customer breaching any provision of these Conditions (or any agreement to which these Conditions apply).
- 7.9 Nothing in these Conditions will limit the right of PSA to recover any sum from the Customer on account of the Customer's contributory negligence or breach of these Conditions or any agreement to which these Conditions apply.
- 7.10 The Customer will take all reasonable steps to mitigate the effect of PSA's negligence or breach of obligations (if any) and to minimise the charges to be borne by PSA.
- 7.11 The Customer will ensure that any exemptions or defences of PSA against the Customer, and any limitations of or conditions to PSA's liability towards the Customer under these Conditions (or under any agreement to which these Conditions apply) will also be opposable by, and apply to the benefit of, PSA against any third parties contracting with the Customer (and in particular against the Customer's customer).
- 7.12 The agreed provisions with respect to PSA's liability (either in these Conditions or, as the case may be, in any agreement to which these Conditions apply) will constitute the Customer's sole remedy in connection with the services and/or goods provided by PSA and will apply to any claims by the Customer against PSA under contract or at law.
- 7.13 PSA will make an effort to take the necessary measures in order to limit the risk that stowaways or other unwanted persons gain access to the Customer's vessel. If nevertheless stowaways or other unwanted persons are discovered in the Customer's vessel, PSA will not be liable for the resulting damage, expenses or fines (if any).
- 7.14 In the event of damage suffered by the Customer as a result of services and/or goods provided by PSA, PSA's liability for each incident (or each series of incidents arising from a common cause) is limited (including in the event of gross negligence) to the lower of:
- 7.14.1 (in the event of physical damage to cargo) 1,050 € per package and 125 € per ton for bulk cargo with a maximum liability of 2,500 € regardless of the number of packages and/or tonnes, and (in the event of damage other than physical damage to cargo caused by errors or omissions pertaining to the cargo and/or containers) 2,500 € per incident; or
 - 7.14.2 the amount that the Customer is obliged to pay to its customer/principal (as limited pursuant to any law, contract or otherwise); or
 - 7.14.3 the amount that the Customer has effectively paid to its customer/principal (as proven with supporting documents).
- The Customer will provide PSA with all information and/or documents required to ascertain the amounts referred to under clauses 7.14.1, 7.14.2 and 7.14.3 above. The Customer confirms that the cargo that are the object of PSA's assignment are either the Customer's property or that the Customer, acting as attorney-in-fact of the party holding the interest in the cargo, is entitled to contract with respect to the cargo, so that the Customer not only accepts these Conditions on behalf of itself but also on behalf of its own customer and/or any other party holding an interest in the cargo.
- 7.15 In the event of damage caused to the vessel or vehicle, PSA's liability per incident (or series of incidents arising from a common cause) is limited (including in the event of gross negligence) to the lower of (i) 27,500 €, (ii) the depreciated book value of the vessel or vehicle or (iii) the reasonable cost to repair the vessel or vehicle in accordance with the Customer's reasonable specifications. The depreciated book value of the vessel will be calculated on the basis of the construction cost with a straight line depreciation over a period of 20 years per annum from the date of delivery until the date of the incident.
- 7.16 In the event of convergence of several claims pertaining to damage caused to the vessel or vehicle, damage to or loss of cargo or materials made available by the Customer or by third parties, the total liability per incident will not exceed 37,500 € regardless of the number of claimants.
- 7.17 The Customer will bear all freight, port charges, taxes, duties (including but not limited to customs duties, excise duties and VAT), contributions, fines and any other costs relating to the cargo and/or containers transported by the Customer, provided that PSA has acted in accordance with the Customer's instructions. The Customer will indemnify PSA and hold PSA harmless from any claims against PSA or its servants or agents arising in respect of such costs.

8 DATA PROTECTION

- 8.1 Parties recognize and accept that if a party processes personal data as defined in Regulation EU 2016/679 of the European Parliament and 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 (the "GDPR") relating to any of the other party's directors, employees, independent contractors or agents of the other party, it shall do so in strict adherence to the GDPR.
- 8.2 Furthermore, both Parties warrant and undertake that they will duly observe all relevant obligations imposed upon it by applicable data protection laws, regulations and best practices in this respect, whereby the GDPR shall be considered the lowest standard.
- 8.3 Any such processing activities will be limited to the performance of the services or delivering the goods under the agreement to which these Conditions apply, or as specifically authorized by PSA in writing. In this respect, Customer expressly represents and warrants that: (i) it shall take suitable technical and organizational measures to protect and secure personal data. More specifically, Customer shall protect personal data against destruction, whether inattentive or deliberate, loss, forgery, unauthorized disclosure or access and against any form of unlawful processing. Customer shall provide PSA with a description of the security measures taken; (ii) the systems used by Customer for automatic processing of, *inter alia*, personal data are in accordance with the requirements for consultation and updates of the personal data by the subject as defined in the applicable data protection law(s) and, more in particular, the GDPR; (iii) in case personal data is processed by Customer, such processing shall be done in accordance with the provisions of the agreement to which these Conditions apply. Customer confirms that the processing of such personal data by Customer shall be fully in accordance with the applicable data protection laws in the countries where personal data is being processed; and (iv) it shall restrict data access to persons requiring such access to perform the tasks allotted to them by Customer in performance of the agreement to which these Conditions apply. Customer shall explicitly inform its staff, and any persons working under its control, of the provisions of the applicable data protection laws on privacy protection in relation to the processing of personal data.
- 8.4 The disclosure by Customer of personal data to third parties, by whatever means, shall be prohibited, except where it is imposed by, or by virtue of, the law,

or in case the prior written and informed approval has been obtained from PSA. Customer shall ensure that all its staff and persons authorised to process personal data have committed themselves to obligations of confidentiality no less onerous than those set out in Clause 6, or are under an appropriate statutory obligation of confidentiality.

- 8.5 Customer shall, unless and to the extent prohibited by applicable law, give PSA written notice as soon as possible upon becoming aware of any breach of this article or of any applicable data protection law, and in no event later than twenty-four (24) hours after the occurrence of such event. Customer shall take all steps necessary to investigate and prevent its recurrence. PSA, at its sole discretion, shall determine (in accordance with applicable data protection law) whether and when to notify any data subjects or data protection authorities regarding a breach. In such case, PSA may, without prejudice to its other rights and remedies, immediately suspend the transfer of any personal data to Customer, require Customer to immediately return all personal data at no cost to PSA and perform a root cause analysis of the breach and its direct and indirect consequences. Customer shall, at its own initiative but in close consultation with PSA, take any and all appropriate measures in order to minimize the impact such a breach may have upon PSA.
- 8.6 Customer acknowledges that the obligations of this article are essential and that any violation thereof could seriously harm PSA's interests and reputation, and may moreover have a significant (financial) impact on PSA and its subsidiaries and affiliates. Therefore, Customer shall be liable for any damages attributable to any failure on its part to comply with the provisions of this article and/or applicable law (including in particular the GDPR), irrespective of the limitations of liability set forth in the agreement to which these Conditions apply.
- 8.7 The PSA Group Data Policy and the PSA Group Data Governance Standards concerning the processing of or the access to any data of PSA by the Customer, apply to and form an integral part of these General Conditions and any agreement between PSA and the Customer.

9 MISCELLANEOUS

- 9.1 If one or more of the provisions of these Conditions and/or of any agreement pertaining to the provision of services and/or delivery of goods by PSA is declared to be invalid, illegal or unenforceable under any applicable law, such invalidity, illegality of unenforceability will not in any way affect the remaining provisions. In this event, the Customer and PSA will use their best efforts to immediately and in good faith negotiate a provision that replaces the invalid, illegal or unenforceable provision and which is legally valid and is consistent with the purpose and intent of the Conditions and/or the agreement.
- 9.2 The Customer may not assign its rights or obligations under these Conditions and/or any agreement to which these Conditions apply (by merger, split-up, contribution of a universality or a branch of activities, transfer of a universality or a branch of activities or any similar corporate restructuring, either under Belgian law or under any other law, or otherwise) without PSA's prior written consent. PSA reserves the right to assign its rights or obligations under these Conditions and/or any agreement to which these Conditions apply to any affiliated company or third party, and to appoint sub-contractors to perform all or any part of its duties.
- 9.3 If:
- 9.3.1 the Customer or any party controlling the Customer is or has been involved in any mergers & acquisitions activity with a third party (i.e. (i) the Customer or any party controlling the Customer merges or enters into an amalgamation with a third party, (ii) the Customer, solely or jointly, directly or indirectly, acquires control over the management and/or operations of a third party, or (iii) control over the management and/or operations of the Customer is acquired by a third party, solely or jointly, directly or indirectly, or (iv) the Customer or any party controlling the Customer enters into any other transaction with a third party of which the purpose and/or the consequence is the combination of two or more formerly independent legal entities and/or groups); or
- 9.3.2 the Customer or any party controlling the Customer is or has been involved in any partnership, consortium, liner conference or strategic alliance with a third party, or any other transaction with a third party of which the purpose and/or the consequence is the pooling of resources and/or the integration of operations
- then:
- 9.3.3 the terms of these Conditions and/or of any agreement to which these Conditions apply will not in any way be invoked or applied to the benefit of such third party without the prior written consent of PSA; and
- 9.3.4 the terms of these Conditions and/or of any agreement to which these Conditions apply, will prevail over any conflicting terms and/or conditions agreed by such third party
- 9.4 The relationship between the parties will in no event be considered a partnership, a joint venture or any other association between the parties, nor will one party be considered the agent or employee of the other.
- 9.5 PSA's rights under these Conditions and/or of agreement to which these Conditions apply are cumulative with its rights under law except as agreed otherwise.
- 9.6 Failure by PSA to insist upon the strict performance by the Customer of any provisions of these Conditions and/or of agreement to which these Conditions apply will not be construed to be a waiver by PSA of any right to insist upon strict performance at all times.
- 9.7 PSA reserves the right to change the Conditions unilaterally at all times in accordance with any changes in its commercial policy and the economic and legal necessities. The new Conditions will enter into force immediately upon being notified to the Customer. Changes will apply to offers already made and agreements already concluded.
- 9.8 The Customer will at all times be responsible to comply with all relevant legal and regulatory obligations, including the obligations related to the movements of the goods resulting from carrying out instructions as given by the Customers.
- 9.9 All offers made by PSA are noncommittal, unless explicitly indicated otherwise. PSA is only bound by an order after such order has been confirmed in writing by PSA.
- 9.10 The Customer represents and warrants that (i) it is a corporation duly incorporated and validly existing under the laws of its country of incorporation and has full power, authority and legal right to carry on its business and to enter into any agreement, offer or other document to which these Conditions are applicable and (ii) any provision of services and/or delivery of goods to which these Conditions are applicable does not and will not conflict with any law, regulation, judgement, order, authorisation, agreement or obligation applicable to it or with any agreement to which it is a party (such as exclusivity commitments).
- 9.11 The Customer acknowledges that in entering into its agreement with PSA, it has not relied on any express or implied representation, warranty or other assurance (except those specifically set out in writing in the agreement) made by or on behalf of PSA before the entering into of the agreement.
- 9.12 Save as otherwise agreed, PSA is entitled to make reference to the Customer in its marketing materials and disclose reasonable details about the nature of PSA's cooperation with the Customer.
- ## **10 APPLICABLE LAW - JURISDICTION**
- 10.1 These Conditions and any agreement to which these Conditions apply will be governed by and construed in accordance with Belgian law.
- 10.2 Any litigation between the parties will be submitted to the exclusive jurisdiction of the courts of Antwerp, Belgium. As a sole exception to the exclusive jurisdiction of the courts of Antwerp, PSA has the option to elect another court at its discretion.

PROVIDING OF SERVICES

11 GENERAL

- 11.1 Clauses 11 up to 15 apply to the extent that the agreement between PSA and the Customer pertains to the provision of services by PSA to the Customer, including but not limited to all activities that are manual or intellectual in nature pertaining inter alia to loading, unloading, handling, controlling, tallying, delivery of cargo and warehousing, including all related and supplemental assignments.

12 EXECUTION

- 12.1 When communicating instructions and at the latest at the time of commencement of the task, the Customer will communicate in writing to PSA: (i) a correct and accurate description of the cargo, including type, number, weight, condition and risk category, and (ii) all instructions and all limitations connected with the protection, handling and storage of the cargo and the performance of the services in general. PSA may rely on any information or documents pertaining to the cargo as provided by the Customer. PSA has no obligation to verify the correctness, authenticity and/or validity of any such documents and/or information. PSA may enter into agreements with the Customer's agent in order to agree on the practical modalities with respect to the release and delivery of cargo from PSA's terminal
- 12.2 The cargo will carry all necessary markings indicating their characteristics. The Customer will pack the cargo as required for the performance of the services, unless it is customary not to pack the cargo.
- 12.3 The means of transport made available will be supplied so that the services to be performed can be started immediately in accordance with the usual way of working. The means of transport made available must comply with the legal provisions for the transport of the cargo to be loaded and the drivers must hold all legally required permits.
- 12.4 The installations, warehouses and equipment may be checked as to their suitability by the Customer before being put to use. If the Customer has not made such a check or has not made any objections (such objections having to include the reasons for them), they will be deemed to have been found suitable.
- 12.5 The services provided by PSA will never include the satisfaction of any VAT and/or customs requirements on behalf of the Customer, nor services of inventory management, unless explicitly agreed otherwise.
- 12.6 If the cargo and/or containers transported by the Customer are under temporary storage (as defined by applicable customs legislation) on the premises of PSA, the Customer will ensure that such temporary storage has lawfully ended before such cargo and/or containers are removed from the premises of PSA. Any liability with respect to or any claim from the authorities or third party as a result of a breach of this obligation is a cost as defined in article 7.17.
- 13 DANGEROUS GOODS - SAFETY**
- 13.1 By the fact of entering any terminal of PSA, the Customer expressly accepts and agrees to - in its own name and on behalf of its employees, agents, suppliers and subcontractors - the regulations, guidelines and notices applicable at the terminal.
- 13.2 The Customer warrants that any cargo, equipment, container or vessel which it delivers, directs to or causes to be upon PSA's terminals:
- 13.2.1 are not dangerous (including hazardous, flammable, toxic, verminous, rotten, subject to fungal attack, over-heated, under-heated or liable to give off any emission such as dust, gas, fumes, liquid or radiation) or liable to become dangerous while on PSA's terminals;
- 13.2.2 will not contaminate PSA's terminals or the water or air adjacent thereto or any person any cargo, equipment or ship at the terminals or cause danger, injury, pollution or damage thereto;
- 13.2.3 contain no unauthorised controlled drugs, contraband, other illegal matter;
- 13.2.4 are properly and sufficiently packed and labelled in accordance with all applicable laws, regulations and codes of practice.
- PSA reserves the right to refuse to accept any cargo, equipment, container or vessel which is not (or which PSA reasonably believes is not) in compliance with the above.
- 13.3 The Customer must notify PSA not less than 48 hours prior to the arrival of any dangerous goods, equipment, container or vessel. The Customer will be fully responsible (including for all expenses and penalties) for the proper and lawful transportation thereof.
- 13.4 The Customer will immediately inform PSA of any emergency (including any injurious emission, danger, injury, pollution, adverse environmental impact or any other event which might affect the safe and efficient operation at PSA's terminal)) and will take, at its own cost, any actions as may be required by PSA to remedy or mitigate the emergency. PSA will also be entitled to take any such actions at the Customer's expense.
- 14 CONTAINER MASS**
- 14.1 The Customer will ensure that PSA is informed satisfactorily in time of the verified gross mass ('VGM') as determined in the International Convention for the Safety of Life at Sea, as amended, and its implementing provisions (collectively, "**SOLAS**") of any full container that the Customer wants PSA to load onto any vessel, or, if such information is not available from the shipper, the lack thereof. PSA will be entitled to fully rely on the VGM information as provided by the Customer without having to carry out any independent verification or investigation. The Customer will ensure that the gross mass has been verified, and that the relevant information provided to PSA, is in full compliance with all appropriate regulations, including in particular with "**SOLAS**". The Customer will provide this information promptly and sufficiently in advance at all times, but in any case no later than the arrival of the container at the terminal of PSA.
- 14.2 PSA will only accept the VGM received from its Customer. Notwithstanding anything else in these Conditions, PSA is entitled in its absolute discretion to rely on and accept:
- 14.2.1 for the loading of any container on a ship, any shipping document received by the Customer and communicated to PSA through Electronic Data Interchange ("EDI") or any other means which provides a *prima facie* indication of the verified gross mass of the container; and
- 14.2.2 for the unloading of any transshipment container from a ship, any shipping document received by the prior carrier and communicated to PSA through EDI or any other means which provides a *prima facie* indication of the verified gross mass of such container as fully complying with the SOLAS requirements regarding verified gross mass and as having been signed by a duly authorised person.
- 14.3 PSA is entitled to:
- 14.3.1 not load onto a ship any container which does not satisfy the SOLAS requirements, including any container (i) in respect of which no declared verified gross mass has been provided in accordance with clause 14.1 and 14.2; or (ii) of which the verified gross mass exceeds the maximum permitted gross mass indicated on the container's Safety Approval Plate under the International Convention for Safe Containers 1972, as amended ("CSC"); and
- 14.3.2 not discharge or allow the discharge from a ship any transshipment container which does not already have a verified gross mass,
- If a container is not loaded in accordance with clause 14.3, PSA may in its sole discretion choose to (i) determine the manner and place of storage of the container; and/or (ii) instruct the Customer to provide for the return of the container to the tendering shipper; and/or (iii) provide for such return itself, at the expense of the Customer. Any additional expenses associated with the container not being loaded (including but not limited to storage, demurrage, handling or the return of the container to the tendering shipper, as the case may be) will never be borne by PSA and the Customer will pay an appropriate compensation to PSA in this respect. Any additional expenses resulting from the Customer not providing the required information timely (in accordance with clause 14.1), including but not limited to the cost of additional shifting, will never be borne by PSA and the Customer will pay an appropriate compensation to PSA in this respect.
- 14.4 If (i) a container has been delivered to PSA in respect of which no declared verified gross mass has been provided in accordance with clause 14.1 and 14.2, or (ii) PSA has reason to believe that such verified gross mass is incorrect, or (iii) the Customer so requests, PSA has the right (but for the avoidance of doubt not the obligation), in its discretion, to determine the verified gross mass itself by weighing the container in accordance with the SOLAS requirements. Also, if PSA carries out stuffing and/or stripping of a container for the Customer, PSA has the right (but for the avoidance of doubt not the obligation), in its discretion to determine the verified gross mass itself, either by (i) weighing the container itself or by (ii) weighing every package which is not individual, original sealed and having the accurate mass clearly and permanently marked on its surface, both in accordance with the SOLAS requirements. If there is any discrepancy between the verified gross mass of the container obtained prior to delivery to the terminal and the verified gross mass determined by PSA itself, the latter will be taken as prevailing and definitive. Further, if the verified gross mass of the container declared by the shipper or determined by PSA itself exceeds the maximum permitted gross mass indicated on the container's Safety Approval Plate under the CSC, PSA may in its discretion strip and restuff the container so that it complies with the SOLAS requirements. The Customer will pay an appropriate compensation to PSA for any such stripping/restuffing of a container and/or determining its verified gross mass (which compensation may be in line with PSA's list prices if any).
- 14.5 In the event that calibrated and certified weighing is possible on the terminal of PSA and the Customer requests PSA to weigh a container, PSA can never guarantee that the weighing will be done in time for a cut-off for loading as the capacity of weighing is limited and the weighing is done on an exceptional

basis and subject to availability of resources. All extra costs resulting from the fact that no VGM is available as mentioned before will be invoiced to the Customer.

- 14.6 If PSA loads a container onto a truck, PSA can never be held liable for additional expenses and/or fines associated with the (excess) weight of the container/truck combination. Any such additional expenses and/or fines will never be borne by PSA and the Customer will pay an appropriate compensation to PSA for any such additional expenses and/or fines incurred by it and/or for determining the weight of the container/truck combination.

15 INDEMNITY

- 15.1 The Customer will indemnify PSA and hold PSA harmless against all claims that could arise from (i) a breach of the obligations set out in Clauses 11 up to 15, even if such breach is attributable to a third party; and (ii) the negligence of the Customer.

- 15.2 The Customer will hold PSA harmless and indemnify PSA against any delay, claims, damages, losses, expenses and costs suffered by PSA as a result of (i) any act, omission, negligence or breach of the terms of these Conditions (or any agreement to which these Conditions apply) by the Customer, its agent, or its or their servants or agents, (ii) submission by the Customer to PSA of incorrect or incomplete information relating to the containers or cargo; (iii) the inability to commence or complete operations promptly and efficiently due to delay in the customer vessel's arrival or due to reasons related to customer vessel's operations; (iv) any other damage caused by the Customer or its agent (or its or their servants or agents); and (v) any damage caused by the vessel owned, chartered, managed, operated or otherwise used by or on behalf of the Customer (or an affiliated company of the Customer) and in general any vessel carrying the cargo handled by PSA. For the purpose of quantifying such damage, the following will apply:

15.2.1 In the event of physical damage (other than total loss) to PSA's equipment or other assets, the Customer will indemnify PSA for the cost of repairing such equipment or asset in accordance with PSA's specifications.

15.2.2 In the event of total loss of PSA's equipment or other assets, the Customer will indemnify PSA for the higher of (i) the insured value of the equipment or asset, (ii) the acquisition cost of the equipment or asset (if the equipment or asset is four years old or less at the time of the incident), or (iii) the depreciated book value of the equipment or asset at the time of the incident (if the equipment or asset is more than four years old at the time of the incident). The depreciated book value will be calculated on the basis of the acquisition cost with a straight line depreciation over 25 years as from the date when PSA starts operating the equipment or asset. This clause 15.2.2 is without prejudice to the right of PSA to claim that the actual depreciated book value is higher, e.g. if the actual depreciation period is more than 25 years.

15.2.3 In the event of economic damage, the Customer will indemnify PSA for (among others) PSA's estimated loss of profit. PSA can establish such loss of profit on a lump sum basis, using reasonable benchmark estimates for (i) lost volumes, (ii) revenue per unit of volume and (iii) contribution margin per unit of volume.

PSA can apply the aforementioned lump sum quantifying rules (and any other lump sum quantifying rules set out in these Conditions or in any agreement, offer or any other document to which these Conditions are applicable, and in general any rules governing any liability of the Customer towards PSA) both during the lifetime of the agreement and after its termination. Any such rules are without prejudice to the right of PSA to claim a higher amount if it can prove that its actual damages are higher than the lump sum amount. The aforementioned provisions apply regardless of any legal or contractual provision to the contrary, including article 47 of the Belgian Maritime Law.

- 15.3 The Customer will obtain all required permissions, approvals and consents from the competent authorities that may be required in connection with its operations at the terminal, and will compensate PSA on demand against any fines, penalties, losses, costs and/or expenses incurred by PSA in respect of any non-compliance.

SUPPLY OF GOODS

16 GENERAL

- 16.1 Clauses 16 up to 18 apply to the extent that the agreement between PSA and the Customer pertains to the supply (pursuant to a sale or otherwise) of goods by PSA to the Customer.

17 SUPPLY

- 17.1 Unless agreed otherwise, the goods will be supplied Ex Works (Incoterms 2010).
- 17.2 The terms for delivery are indicative only and are not binding. No delay in the delivery can give rise to the termination of the agreement for the benefit of the Customer, except in the event of deliberate delay. PSA is entitled to make partial deliveries. In the event of non-delivery of the goods, the advance payments made by the Customer (if any) will be reimbursed by PSA without interest or without any other compensation.
- 17.3 The goods supplied by PSA will remain its property until the Customer will have paid the entire price, including late payment interest, expenses or late payment compensation. The Customer is obliged to mark clearly the goods of PSA, subject to this property retention ("eigendomsvoorbehoud") as such. The risk of the goods will be transferred to the Customer as of the date of the agreement. Without PSA's prior written consent, the Customer may not transfer, pledge or encumber in any other way the goods to third parties. In the event of non-payment of the entire price on the due date, PSA is entitled to take back the goods, as of law and at the expense of the Customer. In that event, PSA will also be entitled (by sending a registered letter and without any other formality or judicial review) to terminate the agreement as of law, at the expense of the Customer, without prejudice to PSA's right to claim damages. The advance payment will be considered as a flat rate indemnity for the suffered damages. However PSA retains the right to prove a higher compensation for damages.

18 WARRANTY

- 18.1 PSA's warranty will be limited to the replacement of the goods and, if this would not be possible, reimbursement of the price paid. PSA will not be liable for any visible and/or hidden defects of the supplied goods. If PSA supplies goods provided by a third party, PSA's warranty and liability will not exceed the warranty provided for by such third party.