



**General Terms and Conditions of  
Verbrugge Terminals Zeebrugge N.V.  
for provision of logistic and other services**

**1. Applicability**

- 1.1 These General Terms and Conditions (“GTC”) apply to offers, tenders and quotations of, to all instructions and orders to and to all agreements concluded by Verbrugge Terminals Zeebrugge N.V., or by its legal successors or by their affiliated legal entities (hereinafter to be referred to as: “Verbrugge”) for provision of logistic and other related services, as well as to all other services performed by Verbrugge and to all legal relationships with Verbrugge.
- 1.2 To the extent that these GTC apply to any single agreement, they shall continue to apply without exception to any and all future services to be performed by Verbrugge and to future agreements concluded with Verbrugge.
- 1.3 Failure by Verbrugge on any occasion to invoke any of the provisions of the GTC shall not constitute a waiver by Verbrugge of its right to invoke the said provisions of the GTC in other circumstances.
- 1.4 The applicability of any general terms and conditions of the Client or of a party which becomes a party to an agreement concluded between Verbrugge and the client (hereinafter jointly referred to as “the Client”) and/or of the Client’s subcontractor(s), whether or not printed on the transport documents, is explicitly rejected by Verbrugge.

**2. Offers and agreement**

- 2.1 Offers made by Verbrugge and orders made to Verbrugge are non-binding until an agreement with Verbrugge has been concluded in writing. An agreement with Verbrugge is only concluded by written confirmation of Verbrugge or in the event that Verbrugge has started the performance of an order.
- 2.2 Any amendment to the agreement by Verbrugge shall be deemed accepted by the Client if the Client does not reject such amendment in writing within fourteen (14) days after notification of such amendment.

### **3. Rates and tariffs**

- 3.1 Unless specifically agreed in writing otherwise, all rates and tariffs are in Euro's and excluding costs for packaging, V.A.T., taxes and charges.
- 3.2 Where the prices charged by its suppliers or wages, social and/or other charges, freight and/or import duties and/or insurance premiums and other costs, under whatever title, are subject to increases or surcharges after the date on which the order is accepted, Verbrugge shall be entitled to apply such surcharges accordingly to the rates and tariffs of ongoing orders. Unless specifically agreed in writing otherwise, Verbrugge is entitled to yearly adjustments in rates and tariffs, pursuant to any increase of costs, such as but not limited to costs of labour, equipment and fuel.

### **4. Invoices and payment**

- 4.1 Unless agreed otherwise in writing, the Client shall pay the amount invoiced by Verbrugge to Client within thirty (30) days after the date of invoice. Payment to Verbrugge must be effected in the manner specified by Verbrugge. Payment to a(n) (alleged) representative(s) of Verbrugge shall not release the Client from its payment obligations towards Verbrugge.
- 4.2 If the Client does not dispute or return the invoice within the payment term, the said invoice shall be considered to be undisputed.
- 4.3 The Client shall not be entitled to invoke set off of the invoiced amount against any claim whatsoever it may on any ground whatsoever allege to have against Verbrugge and shall in no case suspend payment of the invoiced amount relying on such an alleged claim.
- 4.4 In the event of failure by the Client to pay the invoiced amount to Verbrugge within the period for payment provided for in Article 4.1 of these GTC, the Client shall be in default without any prior notice of default being required to that effect.
- 4.5 Any amount that remains unpaid after due date shall, by operation of law and without prior notice of default being required to that effect, be increased by an interest with a rate of 12% per year. In addition, any unpaid invoice shall be increased by a lump sum of 15% of the amount invoiced, with a minimum of 150 EUR, without prejudice to Verbrugge's right to compensation for damages shown to be higher and for (judicial) recovery expenses.
- 4.6 Payments by Verbrugge or its subcontractor made on behalf of and/or for the benefit of the Client, such as but not limited to disbursements, import duties, ocean freights and costs relating to additional services, may be invoiced separately and have to be paid promptly upon receipt of the relevant invoice.

- 4.7 All costs and/or any damage borne by Verbrugge on account of the non-availability of the means of transport used by or on behalf of the Client or on account of any defect of such means of transport have to be compensated promptly to Verbrugge. Verbrugge is allowed to suspend its services until such compensation has been paid.
- 4.8 Verbrugge is entitled at any time prior to, during and after performance of its services to require an advance payment, a prepayment, an interim payment or security from the Client for all claims Verbrugge may have or acquire against the Client now or in the future; in the event of failure to provide the aforesaid payment or security, Verbrugge shall be entitled to terminate the agreement with immediate effect without judicial intervention and without any obligation upon Verbrugge to pay any form of compensation.
- 4.9 All outstanding invoices and/or claims of Verbrugge shall become immediately payable if and as soon as the Client becomes insolvent or bankrupt, is placed into administration or liquidation, commences proceedings to be wound up, enters into any voluntary arrangement with its creditors, or on the occurrence of any similar event according to the laws of its domicile, undergoes any change in its ownership or disposes of all or a substantial part of its business or assets without Verbrugge's prior written consent.

## **5. Information to be provided by Client**

- 5.1 The Client is held to provide Verbrugge in due time with all information and documentation that Verbrugge may at any time require for a correct execution of the services. Such information includes but is not limited to information with regard to:
- The nature, type, quality, composition, temperature, weight, dimensions, volume, source, origin, physical and/or chemical properties of the goods;
  - Hazardous properties and/or substances (whether or not generally known or recognized as such) of or within the goods;
  - Legally relevant facts (ownership, storage banned elsewhere, custom formalities, in- and/or export sanctions, etc.);
  - Whether a special method of storage is required or necessary due to the nature of the goods;
  - Special directions regarding the method of loading, stowing, fastening and/or unloading.
- 5.2 The Client is furthermore obliged to provide Verbrugge with all information and documentation, which the Client knows or should reasonably know to be necessary or useful for a correct execution of the services.
- 5.3 In case the Client should not or should not timely provide the relevant information and documentation, Verbrugge shall be entitled to suspend the

(further) execution of the services until all necessary information and documentation has been provided to Verbrugge.

- 5.4 The Client warrants that the information and documentation provided to Verbrugge shall be accurate, complete and reliable, even if such information or documentation originates from third parties. The Client is held to indemnify Verbrugge for all damage arising from providing incorrect or incomplete information or documentation.
- 5.5 In case the execution of the services is delayed due to the Client's breach of one or more of its obligations under this Article, any and all (additional) costs arising as a result thereof shall be for the Client's account and the Client shall be held to indemnify Verbrugge by paying an additional fee on the basis of the applicable tariff for any (extra) activities that will become necessary as a result of such breach.
- 5.6 The Client is obliged to immediately notify Verbrugge in writing of transfer or passing of ownership of goods or transfer or passing of the right to take delivery of the goods, as the case may be.

## **6. Performance of the agreement**

- 6.1 Save where specific agreements in writing provide otherwise, Verbrugge shall be free to determine the manner of executing the agreement. The Client shall comply with all general directives and specific instructions given by Verbrugge, relating to the execution of the agreement.
- 6.2 Verbrugge is entitled to have the services carried out in whole or in part by using staff and/or equipment of third parties.
- 6.3 The Client shall see to it that all necessary permits are obtained and maintained and that all the applicable regulations with regard to the goods and/or services are complied with.
- 6.4 Verbrugge determines the order of sequence in which vessels, trucks, barges or any other means of transport will be loaded or unloaded and determines time and place for berthing or parking. The non-availability of a berthing or parking place upon arrival of floating or rolling means of transport is considered to be a circumstance beyond Verbrugge's control.
- 6.5 Verbrugge has the right to refuse the goods at the Client's risk and expense in case the Client does not fulfil its obligations pursuant to the agreement and/or these GTC and/or in case the goods arrive in a damaged or defective condition.
- 6.6 Should the vessel, container and/or goods have been fumigated, then the Client is obliged to inform Verbrugge well in advance, at the latest seven (7) days prior to arrival in the harbour, of the fumigant used and in which

container(s), barge(s), hold(s) and/or packing it was applied. Degassing and/or aerating the vessel, container and/or goods to safety concentrations will be at Client's risk and expense.

- 6.7 If the Client sells or otherwise disposes of (part of) the goods, this does not release the Client of its previously assumed obligations to Verbrugge until Verbrugge has confirmed in writing to the Client that Verbrugge has accepted both such transfer and the release of the goods.

## **7. Risk, insurance**

- 7.1 The Client is obliged to take out adequate insurance at its own expense, including but not limited to liability insurance, cargo insurance and insurance covering damage caused by the goods. Verbrugge does not insure the goods under the agreement.

- 7.2 Anyone who enters Verbrugge's premises, buildings, vessels or other locations, and/or moors its vessel or barge at a quay of Verbrugge and/or its subcontractor shall do so – including any vehicles, materials, etc. – at its own risk and Verbrugge expressly excludes any and all liability for any kind of loss or damage caused in any event to Client and/or its subcontractor at Verbrugge's premises, buildings, vessels or other locations. Client shall be obliged to indemnify and hold harmless Verbrugge against all third party claims related to such loss or damage. The Client shall see to it that this is communicated beforehand to all the persons concerned who act for, on behalf of and/or by order of the Client. Furthermore, the aforementioned persons must follow the requirements and/or instructions which apply and possibly may be given by the competent authorities and/or by Verbrugge and/or by Verbrugge's subcontractor.

## **8. Customs formalities**

- 8.1 Unless expressly agreed otherwise in writing, Verbrugge shall not be responsible for any customs formalities. Verbrugge is not liable for any claims arising out of or in connection with any customs formalities and the Client shall be obliged to indemnify and hold harmless Verbrugge against all third party claims related to such customs formalities.

## **9. Pledge and retention**

- 9.1 Verbrugge has a pledge and/or a right of retention and/or a lien on all goods, documents and funds it has received from and is holding for the Client now or in the future regardless on which grounds and for whose benefit, for all and

any claims Verbrugge may have or acquire against the Client now or in the future. Verbrugge is also entitled to exercise such pledge and/or a right of retention and/or a lien in respect of any amount or amounts the Client still owes to Verbrugge in connection with previous legal relationships or previous assignments. In the event of non-payment of the claim(s) for which such rights are exercised, Verbrugge shall be entitled to sell the goods, documents and funds in the manner prescribed by law.

## **10. Force Majeure**

- 10.1 Should Verbrugge not be able or only partially and/or inadequately be able to fulfil its obligations due to a cause for which Verbrugge is not accountable, which was unforeseen and which Verbrugge could reasonably not avoid ("Force Majeure"), the obligations of Verbrugge shall be suspended until Verbrugge shall be able to fulfil its obligations in the agreed way without Verbrugge being in any breach and without any obligation on Verbrugge to indemnify the Client in respect of any loss or damage it may suffer as a result of such suspension.
- 10.2 In the event of Force Majeure, Verbrugge has the right to terminate the agreement and to charge for any services already performed in proportion to the agreement as a whole.

## **11. Complaints and time bar**

- 11.1 The Client shall be obliged to notify Verbrugge in writing of any claim of the Client and/or of a third party who acted on behalf of the Client, for damage to and/or loss of the means of transport of the Client and/or of such third party prior to the departure of the means of transport from the premises of Verbrugge or its subcontractor failing which Verbrugge shall be discharged from all liability.
- 11.2 With regard to all claims other than the claims set out in Article 11.1 of these GTC, Verbrugge shall be discharged from all liability unless the Client notifies Verbrugge in writing of any damage or loss, within seven (7) days after the Client has become aware of such damage or loss.
- 11.3 All and any claims against Verbrugge shall expire ("vervallen") after twelve (12) months since the day the Client has become aware of such damage or loss and of the identity of the party liable for such damage or loss unless, prior to the timebar having lapsed, either suit has been brought by the Client against Verbrugge before the competent court or the parties have agreed upon a time extension.

## 12. Liability

- 12.1 If any mandatory legal provision(s) apply to the services rendered by Verbrugge in relation to which a claim for loss of and/or damage to the goods and/or delay in delivery of the goods has arisen, Verbrugge's liability (if any) shall be determined pursuant to such mandatory legal provision(s) and, in addition to such mandatory legal provision(s), by these GTC. If no mandatory legal provision(s) apply to the services rendered by Verbrugge due to which a claim for loss and/or damage has arisen, Verbrugge's liability (if any) is determined as follows.
- 12.2 Verbrugge shall not be liable for any loss of and/or damage to the goods unless and to the extent that the Client proves that the loss and/or damage was caused by a negligent act or omission on the part of Verbrugge, its employees or subcontractors. Any liability of Verbrugge for loss of and/or damage to the goods shall be limited to 4 SDR per kilogram gross weight of the goods lost or damaged and with a maximum of 100,000 SDR for each occurrence or series of occurrences with the same cause, unless and to the extent that the Client proves that the damage and/or loss was caused as a result of an act or omission on the part of the board of directors of Verbrugge, done either with the intent to cause that damage and/or loss or recklessly and with the knowledge that such damage and/or loss would probably result therefrom.  
Verbrugge shall in no case whatsoever be liable for any loss due to delay in delivery of the goods.
- 12.3 In case of warehousing services, including storage of bulk or liquid, Verbrugge is only liable in accordance with Article 12.2 of these GTC for stock discrepancies if and in so far as, taking into account the calculation used in the registration of the stock, the shortfall (missing items or weight or volume) surpasses by at least 1% of the total number of items or the total weight or the total volume handled under the agreement during the year when the discrepancy was established.
- 12.4 Verbrugge shall not be liable for any loss and/or damage caused by death or injury, unless and to the extent that the Client proves that the loss and/or damage was caused by a negligent act or omission on the part of Verbrugge, its employees or subcontractors. Any liability of Verbrugge for loss and/or damage caused by death or injury is limited to an all-in maximum of € 150,000, unless and to the extent that the Client proves that the damage and/or loss was caused as a result of an act or omission on the part of the board of directors of Verbrugge, done either with the intent to cause that loss and/or damage or recklessly and with the knowledge that such loss and/or damage would probably result therefrom.
- 12.5 Verbrugge shall never be liable for loss or damage other than set out in Article 12.1, 12.2, 12.3 and 12.4, such as but not limited to immaterial damage, loss of profit and/or consequential damage (including but not limited

to costs for demurrage of any means of transport (floating or rolling) or dispatch money).

- 12.6 The Client shall be obliged to compensate Verbrugge for any damage caused to Verbrugge or to any third party as meant in the second sentence of this paragraph 12.6 by (the handling of) material or goods provided by the Client to Verbrugge for the purpose of being handled in performance of the agreement, subject to the condition that the damage was caused as a result of an act or omission on the part of the Client. Damage shall also be understood to include damage to third parties which Verbrugge is obliged to compensate; damage shall also be understood to include damage caused by death or injury, any form of financial loss and costs for destruction of the goods or other property.

### **13. Indemnification and Himalaya clause**

- 13.1 The Client shall indemnify and hold harmless Verbrugge for all claims for damages from third parties arising out of or related to the performance of the services under the agreement to the extent that the Client is liable in accordance with the provisions of the agreement and the GTC for such damage; damage includes death and injury and any other type of damage or loss.
- 13.2 Should employees of Verbrugge and/or subcontractors whose services Verbrugge employs for the performance of the services be held liable, such persons shall be entitled to invoke any limitation of and/or exemption from liability included in these GTC against the Client and any party other than Verbrugge.

### **14. Transfer of rights/obligations**

- 14.1 The Client cannot assign or transfer any of its rights under the agreement to third parties or create security interests over such rights in favour of a third party, unless Verbrugge has given prior written permission to do so.

### **15. Termination**

- 15.1 In case the Client fails to fulfil any of its obligations under the agreement, Verbrugge may, after having granted the Client by written notice stating the nature of the Client's breach an ultimate period of not less than fourteen (14) days in which the Client will be allowed to remedy his breach and the Client has failed to remedy his breach within the period so granted, terminate the agreement with immediate effect.

15.2 Verbrugge is in any event entitled to terminate the agreement in writing and/or to suspend the services with immediate effect without prejudice to the right of Verbrugge to claim damages and without any obligation of Verbrugge to pay any form of compensation in case:

- the Client fails to fulfil any of its obligations under the agreement which cannot be remedied;
- the Client fails to fulfil any of its obligations under the agreement within thirty (30) days after the Client failed to fulfil a similar obligation which was cured within the time limit set out in Article 15.1 of these GTC;
- the Client discontinues its business entirely or to a major extent;
- the Client loses its corporate capacity, its company is dissolved, wound up or (formally or informally) liquidated;
- the Client loses the power to dispose of its capital or part thereof;
- the Client offers a settlement of debt to its creditors or applies to the court for or has been granted suspension of payment;
- the Client's assets are seized;
- the Client seizes or threatens to seize any of Verbrugge's or Verbrugge's subcontractor's assets;
- application for the Client's bankruptcy has been filed or the Client is declared bankrupt.

The Client is obliged to immediately inform Verbrugge in writing if any of the circumstances as mentioned in this Article occurs or is imminent.

15.3 Any right of the Client to terminate ("ontbinden") the agreement is hereby explicitly excluded.

## **16. Miscellaneous**

### 16.1 Invalidity

In case any of the terms, conditions and provisions of these GTC are invalid or partially invalid, the remainder of these GTC shall remain unaffected and valid.

### 16.2 Amendments

Any amendment to these GTC must be made in writing.

### 16.3 Authentic text

These GTC are drafted in the English language. In case of any discrepancy between the English text and a translation, the English wording shall prevail.

## **17. Applicable law and competent court**

- 17.1 All tenders and/or order confirmations issued by Verbrugge, all agreements entered into by Verbrugge, and all actual and legal acts performed by Verbrugge in the implementation thereof as well as these GTC shall be governed by the law of Belgium. No effect shall be given to any other choice of law or to any conflict-of-laws rules or provisions (Belgian, foreign or international) that would result in the application of the laws of any country other than Belgium.
- 17.2 All claims (whether based on agreement or on tort) relating to tenders and/or order confirmations issued by Verbrugge, all agreements entered into by Verbrugge, and all actual and legal acts performed by Verbrugge in the implementation thereof as well as these GTC shall be settled exclusively by the competent court in Brugge, Belgium.