

# **Coolboxx - General Terms & Conditions**

## **Article 1 General Conditions**

1.1 These General Conditions apply to all offers and contracts made by Coolboxx C.V. – hereafter called: Coolboxx– and to all legal and factual acts performed in that connection. These general conditions are also applicable to all offers and contracts made by foreign branch offices of Coolboxx and/or agents acting on behalf of Coolboxx and to all legal and factual acts performed by such a branch office and/or agent in that connection, in which case hereafter instead of Coolboxx the name of the involved branch office or agent should be read.

1.2 Unless expressly otherwise agreed in writing, applicability of the general conditions used by the customer is excluded.

1.3 If any provision of these Conditions is void or voidable, such shall not affect the validity of the other provisions.

1.4 Regardless of the form in which they have been made, all offers of Coolboxx are non-binding and can be revoked without any formality, even after acceptance thereof by the customer. Revocation after acceptance by the customer shall be effected immediately.

1.5 Alteration of or addition to the instruction given to Coolboxx only binds Coolboxx after it has accepted such in writing.

1.6 Except where expressly indicated otherwise Coolboxx will act as a forwarder by organising on behalf of its customers the carriage of their goods.

## **Article 2 Performance of the contract**

2.1 Coolboxx is free in the method of performing the contractual services – which entails that with regard to carriage by sea it has the option of carriage on deck or below deck – unless Coolboxx has accepted specific instructions from the customer in this respect. Insofar as possible, account shall be taken of the wishes of the customer with regard to the time or duration of the performance, but Coolboxx does not give any guarantee in this respect.

2.2 If any document refers to notice of arrival of the goods to the customer or consignee, failure to give such notice shall not result in any liability on the part of Coolboxx, nor shall the customer or any other party involved be released from any obligation under the contract.

2.3 In the event of temporary force majeure as defined below, the contract shall remain in effect, but the obligations of Coolboxx shall be suspended for the term of the force majeure, without prejudice to the right of Coolboxx, to terminate the contract and to charge the customer for the work already executed. All costs arising as a result of force majeure are at the customer's expense.

Force majeure means in any event circumstances which a diligent contractor could not avoid and the consequences of which he could not prevent.

2.4 Unless otherwise agreed in writing, Coolboxx is under no obligation personally to perform the services under the contract and it is entitled to use agents and/or subcontractors in the performance of the whole or any part of the contractual services.

If servants, agents and/or subcontractors are held liable outside of a contract in respect of the work for which they were engaged by Coolboxx, it is hereby stipulated on their behalf that they can invoke all provisions in these conditions – and any Convention provisions to which reference is made – in respect of exclusion or limitation of liability.

2.5 If the party entitled to the goods fails to take receipt of the goods after arrival thereof, Coolboxx is entitled, without further notice, to unload (or have unloaded) the goods at the risk of the entitled party and/or to store them on the quay in the open air or under cover. Such storage shall be deemed proper delivery under the contract of carriage and complete fulfilment of Coolboxx's contractual obligations, in consequence of which and as of which time the responsibility of Coolboxx shall be cancelled in full. The costs of such storage are at the customer's expense.

### **Article 3 Obligations of the customer**

3.1 Without prejudice to any provisions laid down in law or Convention, the customer is in any event obligated:

- (a) to ensure that the goods in respect of which Coolboxx has some instruction, are available at the agreed place and time;
- (b) to give Coolboxx timely notice of the information which he must give Coolboxx in respect of the goods and in respect of the handling thereof which the customer knows or should know that such is important for Coolboxx, unless the customer may assume that Coolboxx is aware of such information; the customer guarantees the accuracy of the information provided by him;
- (c) to guarantee the proper presence of the documents required for the execution of the instruction, except insofar as it was agreed in writing that Coolboxx would take care of such documents;
- (d) with regard to dangerous goods to give timely written notice to Coolboxx of the rules which must be followed in accordance with the applicable legislation and/or other government schemes.

3.2 If the customer fails to perform the obligations set out in Paragraph 3.1, he is bound to compensate Coolboxx for any and all loss, damage, expense or liability which it suffers as a result thereof.

3.3 Coolboxx can at any time and any place unload, destroy or make harmless in some other way goods entrusted to Coolboxx for whatever reason, which Coolboxx, if it had known at the time of taking receipt thereof that they could be dangerous, it would not have wished to receive.

3.4 Without prejudice to the above, the customer is liable to Coolboxx for all damage caused by goods or materials which the customer made available to Coolboxx, unless such damage is the fault of Coolboxx.

3.5 The customer is bound to indemnify Coolboxx or its servants, agents and/or subcontractors upon first request in the event Coolboxx or said servants, agents and/or

subcontractors are held liable by third parties, outside of a contract, for damage or some other financial loss, connected with the performance of the agreement.

3.6 The customer is at all times obligated to compensate Coolboxx for amounts claimed and penalties imposed on Coolboxx or any agent and/or subcontractor engaged by it by any government or other authority in connection with the performance of the contractual services, regardless of whether such claim is the result of an imputable fault in the performance on the part of Coolboxx of its obligations under the contract.

The customer is obligated to give security on Coolboxx's first request for the amounts that Coolboxx is or will be owed.

3.7 The customer is responsible for the loading and stowing of the goods into the container or any other unit, unless Coolboxx has expressly confirmed in writing otherwise in advance. Assistance given by the driver in loading, unloading and/or stowing does not in any way affect the fact that the customer has exclusive responsibility in this respect. Coolboxx does not accept any responsibility for the accuracy of the quantity indicated by the customer and all other statements regarding the goods.

In the event of receipt of a pre-loaded and sealed container, neither Coolboxx nor its sub-carrier shall be deemed to have received the goods contained therein in a good and complete condition, even if no reservation has been made in this respect.

3.8 The customer shall be liable towards Coolboxx at all times for damages which are caused by it or by third parties to chassis, trailers and/or containers which have been made available at the request of the customer or the receiver, respectively, to these parties for loading or unloading.

3.9 If, upon receipt of a container which has been transported by Coolboxx on a "quay-quay" basis ("feeder-container"), a reservation is made by the receiver with regard to damages to this container, the customer or the receiver, respectively, must submit a claim form to Coolboxx within seven days at the latest after the receipt, which must enclose a copy of the interchange report drawn up in respect of those damages, failing which all claims against Coolboxx shall lapse.

3.10 The customer is aware that all goods transported must be palletized, and that in order to keep air circulation at a sufficient level, the pallet itself should be free of packing material.

## **Article 4 Liability of Coolboxx**

4.1 Where Coolboxx acts as a forwarder the FENEX Conditions (General Forwarding Conditions) shall apply, as registered with the District Court at Rotterdam on 1 July 2004 or any later version thereof instead.

4.2 If Coolboxx undertakes to carry goods by road, the provisions of the CMR Convention shall apply, as if set out herein.

4.3 If Coolboxx undertakes to carry goods by sea alone (quay-quay), the Hague-Visby Rules (including the 1979 Protocol) shall apply, as if set out herein, but with the following amendments:

- (a) the liability of Coolboxx is in any event limited to 666.67 SDRs per package or unit, with the exclusion of the right of the entitled party to claim compensation of 2 SDRs per gross kilo of lost or damaged goods;
- (b) in derogation from Article IV, Section 5(c) of the Hague-Visby Rules, every container or other transportation equipment together with the eventual contents thereof is deemed to form one package or unit;
- (c) any liability of Coolboxx is excluded in respect of damage to or loss of goods arising before loading or after discharge from the ship;
- (d) Coolboxx shall never be liable for damage resulting from late delivery;
- (e) Article III, Sections 3, 4, 5, 7 and 8 of the Hague-Visby Rules do not apply.

4.4 If it is agreed or it ensues from the nature of the carriage route that the carriage shall take place partly by road and partly by sea, the provisions of the CMR Convention or the Hague-Visby Rules (as amended) as incorporated herein shall apply, depending on the stage of the carriage where the loss, damage or delay arose.

If it cannot be established on what stage of the carriage the loss, damage or delay arose, the liability of Coolboxx shall be determined in accordance with the rules of law which apply to carriage by road or sea and from which the highest amount in compensation shall ensue.

The foregoing does not affect the fact that the CMR applies if the conditions of Article 2 of the CMR have been met.

4.5 If Coolboxx undertakes to carry goods by rail or, without having so undertaken, opts for such carriage, whether or not it forms part of combined transport, the provisions of the CMR shall nevertheless apply, on the understanding that the liability for any damage as a result of delay is excluded and that the provisions of Articles 31 and 32 of the CMR shall not apply.

4.6 In whatever capacity Coolboxx acts or operates its liability towards customers will always be limited to the amount Coolboxx can effectively recover from the carriers or other (sub)contractors it has used.

4.7 Coolboxx shall never be liable for lost profit, consequential damage (inter alia as a result of delay) and immaterial damage.

Any liability in respect of import duties, excise duty, turnover tax, restitutions and/or other levies or related fines which are imposed by any government or any other authority charged with such duties, which are demanded in connection with the performance of the contractual services, is excluded.

4.8 Any party who enters any premises of Coolboxx or of its agent and/or subcontractor, in sheds, transport vehicles or any other place where work is executed, shall be there, with all goods he has with him, at his own risk, and he must strictly adhere to any regulations and/or instructions established by the government and by Coolboxx. The customer shall indemnify Coolboxx in this respect against claims of third parties which are on site in connection with the performance of the contractual services.

4.8 Insofar as such is not contrary to provisions of mandatory law and subject to the liability rules set out above in this article, in all other cases Coolboxx shall only be liable to the extent set out below for damage or injury, loss or expense howsoever arising in so far as such is proved by the claimant to have arisen from an act or omission, committed with the intent to cause such damage or injury, loss or expense, or recklessly and with the knowledge that such would probably ensue.

In all such cases Coolboxx shall never be liable for an amount greater than 7,500 SDRs per event or series of events with the same cause of damage, on the understanding that in the event of damage, reduction in value or loss of the goods included in the contractual services, the liability is limited to 4 SDRs per kilo of damaged or lost weight with a maximum of 2,000 SDRs per shipment, except insofar as the damage arose from acts or omissions of Coolboxx itself – which means the management or supervisory personnel within the Coolboxx business – which actions or omissions were intended to cause such damage or were carried out recklessly with the knowledge that such damage would probably ensue there from.

## **Article 5 Prices**

The prices of Coolboxx are based on the rates, wages and the like which apply at the time the contract is made. In the event of a subsequent increase in one or more cost price factors, Coolboxx is entitled to increase the original price accordingly. The offer is based on flexible loading and unloading times. It does not encompass completion of customs documents and assumes that the goods are not held or carried under customs seal, unless Coolboxx has expressly accepted such in writing.

## **Article 6 Payment**

6.1 Payment must be made within 28 days after the invoice date in currency by deposit on a bank account designated by Coolboxx.

6.2 In the event of late payment the customer is legally in default without any need for notice of default on behalf of Coolboxx. As of the day following the due date the customer owes on the outstanding amount owed by him interest of 1% per month, including part of a month.

6.3 If the customer is in default, after written notice of default, he shall be taken to have accepted liability for all losses and costs, both judicial and extra judicial, relating to the claim. The extra judicial collection costs on the amount owing are fixed at 15% of the principal, with a minimum of EUR 150,--.

6.4 Coolboxx is at all times entitled to demand payment in advance from the customer or satisfactory security for the performance of his obligations. If the customer does not immediately comply with a request to this effect, Coolboxx is entitled to terminate or suspend its work.

6.5 The customer is not permitted to set off or make any deduction in relation to invoices submitted by Coolboxx.

## **Article 7 Right of retention or pledge**

7.1 Coolboxx is entitled to retain goods, documents and monies of the customer at his expense and risk until Coolboxx's claims on the Customer, for whatever reason, have been paid in full.

7.2 All goods, documents and monies which Coolboxx has or will have in its possession, for whatever reason shall serve as pledge for its claims which Coolboxx has and/or will have on the customer.

7.3 Coolboxx is entitled to exercise the aforementioned pledge and/or right of retention with regard to any monies the customer may still owe Coolboxx in relation to preceding assignments.

## **Article 8 Time limits and lapsing of rights**

Without prejudice to the relevant provisions of the Hague-Visby Rules and CMR Convention, if applicable, the right to make a claim against Coolboxx on the basis of this agreement or wrongful act shall be extinguished after the expiry of one year, which term commences on the day following that on which the claim arose.

## **Article 9 Applicable law and competent court**

9.1 The contract and all other contracts which might ensue there from are governed by Dutch law, insofar as there has been no derogation there from in these General Conditions.

9.2 Any and all disputes between the customer and Coolboxx, howsoever arising under, in relation to, or in connection with the contract or the services performed by Coolboxx, shall, except for appeal, exclusively be brought before the competent Court in Rotterdam.

## **Article 10 English wording**

In case the Dutch text of the General Conditions differs from the English text which is merely a free translation, the Dutch text will prevail.