

## GENERAL CONDITIONS OF AGENCY AND FORWARDING

### COSCO CONTAINER LINES (NETHERLANDS) B.V.

Deposited with the Registry of the District court Rotterdam on 14<sup>th</sup> March 2007 under no. 30/2007

#### **1. Definitions**

Bill of Lading:	includes (merely for the purpose of these General Conditions) a Bill of Lading consigned in name, to order or to bearer, or any other document issued in relation to the contract of carriage involved (e.g. non-negotiable waybill, express release, etc.);
Carrier:	means the party that signed or on whose behalf the Bill of Lading has been signed, or who is defined in the Bill of Lading as Carrier;
Container:	includes any container, trailer, transportable tank, flat or pallet, cradle, sled or any similar article of transport used to transport or consolidate goods and any ancillary equipment;
Combined Transport:	arises if the Carrier under the Bill of Lading has agreed to carry the Goods from a Place of Receipt of the Goods to the Port of Loading and/or from the Port of Discharge to a Place of Delivery, all as indicated on the Bill of Lading;
Conditions of Carriage:	the conditions printed on the Bill of Lading, issued or to be issued by the Line;
General Conditions:	the General Conditions of Cosco Container Lines (Netherlands) B.V. deposited with the Registry of the District Court Rotterdam on 14 <sup>th</sup> March 2007 under no. 30/2007;
Goods:	means the whole or any part of the cargo received from the Merchant and includes the packing and/or any equipment or Container not supplied by or on behalf of the Carrier;
Line:	means the Carrier designated in the Bill of Lading;
Merchant:	includes any Person or entity who at any time has been or becomes party to or with whom any contract of carriage is concluded, including the shipper, consignee, consignor, endorsee, transferee, Holder of the Bill of Lading, receiver of the Goods, any Person or entity owning or entitled to the possession of the Goods or of the Bill of Lading and any Person or entity acting on behalf of any such Person;
COSCON:	means Cosco Container Lines (Netherlands) B.V., Rotterdam, Netherlands;
Person:	includes an individual, a group, a company or any other (legal) entity;
Place of Receipt:	means the place where the Carrier (in case of Combined Transport) takes receipt the Goods from the Merchant if a Place of Receipt has been filled out on the Bill of Lading;
Place of Delivery:	means the place where the Carrier (in case of Combined Transport) delivers the Goods to the Merchant if a Place of Delivery has been filled out on the Bill of Lading;
Port of Loading:	means the place where the goods are loaded on board the ocean vessel;

Port of Discharge: means the place where the Goods are to be discharged from the ocean vessel;

Port to Port Transport: arises if Carriage is not Combined Transport and shall be from a Port of Loading to a Port of Discharge as indicated on the Bill of Lading;

## **2. Applicability**

- 2.1 These General Conditions and the Conditions stipulated in article 4 of these General Conditions apply – depending on the nature of the services rendered – on all contacts concluded or existing between the Line and the Merchant, that were concluded or came into existence through COSCON as agents to the Line, and contracts concluded between the Merchant and COSCON. Where mention of these General Conditions is made in the above or the following, the Conditions stipulated in article 4 hereof shall always be included therein.
- 2.2 In case of any inconsistency between these General Conditions and the Bill of Lading, the bill of Lading prevail. In case of any inconsistency between these General Conditions and the Conditions stipulated in article 4 hereof, these General Conditions prevail.
- 2.3 These General Conditions shall be deemed to form part of all contracts between the Merchant and COSCON. By giving orders and instructions to COSCON the Merchant shall be deemed to have approved and accepted these General conditions, to be aware of the stipulations therein and to have received a copy in writing of these General Conditions.
- 2.4 General Conditions declared by the Merchant will not be applicable and shall always and in any way be superseded by these General Conditions. Deviations from these General Conditions and in particular the general conditions of the Merchant shall only apply if explicitly agreed to in writing by COSCON.

## **3. Nature of services provided by COSCON**

- 3.1 Whether expressly stipulated in letters, quotations, booking confirmations, arrival notices, invoices etc. or not, COSCON - in relation to Contracts of Carriage evidenced by a Bill of Lading issued or to be issued - shall always act as agents to the Line only, these Contracts of Carriage being concluded between the Merchant and the Line, COSCON not being the Carrier.
- 3.2 In arranging for carriage of the Goods from the Port of Loading stipulated or to be stipulated in the Bill of Lading to the actual place where the Goods shall be loaded on board of the ocean-going vessel, or in arranging for carriage of the Goods from the port where the Goods shall be discharged from the ocean-going vessel to the Port of Discharge stipulated in the Bill of Lading, COSCON shall act as agents to the Line only, in the performance by the Line of its obligations under the Bill of Lading.
- 3.3 If the Contract of Carriage evidenced by a Bill of Lading issued or to be issued is for Combined Transport, COSCON, in arranging transport from the Place of Receipt to the Port of Loading, and/or from the Port of Discharge to the Place of Delivery, does so as agent to the Line only, in the performance by the Line of its obligations under the Bill of Lading.
- 3.4 In the performance of services rendered by COSCON under the instruction of the Merchant and not as agents to the Line in the performance by the Line of its obligations under the Bill of Lading as defined in article 3.1-3.3, COSCON will at all times act as forwarding agent to the Merchant only.
- 3.5 Without prejudice to the generality of article 3.4, in the performance of services rendered by COSCON in making arrangements to have the Goods picked up at the Merchant's premises (being his own or those of any third party as per Merchant's instructions) and to bring the

Goods into the custody of the Line, or, as the case may be, in making arrangements to have the Goods or Containers conveyed from the place where the Contract of Carriage evidenced by the Bill of Lading ends to the drop off place as per Merchants' instructions, COSCON will at all times act as forwarding agent to the Merchant only, irrespective of the wording of the instructions provided by the Merchant.

- 3.6 Without prejudice to the generality of article 3.4, in the performance of services by COSCON under the instruction of the Merchant in relation to the issuance of custom documents for Goods carried or to be carried by the Line or otherwise, or in arranging for custom clearance of Goods carried or to be carried by the Line or otherwise, COSCON will at all times act as agent to the Merchant only.
- 3.7 In the performance of services by COSCON in storage of Goods, pursuant to instructions received by the Merchant and not being storage of Goods in the Port of Loading awaiting shipment under a Bill of Lading or awaiting delivery at the Port of Discharge under a Bill of Lading, COSCON will only act as agent to the Merchant in arranging storage with a storage facility.

#### **4. Conditions applicable on the services rendered by COSCON**

- 4.1 In performing services as agents to the Line as defined in article 3.1-3.3 of these General Conditions COSCON shall under no circumstance be under any liability to the Merchant for any loss or damage or delay of whatsoever kind arising out or resulting directly or indirectly from any act, omission, neglect or default on the part of COSCON while acting in the course of, or in connection with its employment as agents to the Line and without prejudice to the generality of the foregoing provisions every right, exemption, limitation of liability, provision, or defence contained in the Conditions of Carriage and every such right, exemption, limitation of liability, provision, or defence applicable to the Line or to which the Line is entitled under the Conditions of Carriage shall also be available and shall extend to protect COSCON.
- 4.2 The performance of services by COSCON as (forwarding) agent to the Merchant as defined in article 3.5-3.7 of these General Conditions, is subject to the Dutch Forwarding Conditions of the Netherlands Association for Forwarding and Logistics (Fenex) as deposited with the Courts of Amsterdam, Arnhem, Breda and Rotterdam on 1<sup>st</sup> July 2004. If these conditions are revised, the revised version of these Dutch Forwarding Conditions shall apply.
- 4.3 In the event of storage of goods as defined in article 3.7 of these General conditions, COSCON shall be entitled to invoke the storage contract concluded with the storage facility towards the Merchant, including general conditions applicable to such contract.
- 4.4 In performing services as (forwarding) agent to the Merchant, COSCON is at liberty to have orders and/or the work connected therewith subcontracted and carried out by third parties or the servants of such third parties at the sole discretion of COSCON.
- 4.5 When performing services as (forwarding) agent to the Merchant, COSCON may at any time also invoke towards the Merchant the conditions stipulated by subcontractors or third parties with whom COSCON has contracted the performance of these services.

#### **5. Prices and quotations**

- 5.1 Quotations made by COSCON are without engagement. All prices quoted and agreed shall be based on the costs, (freight) rates, taxes, wages, etc., and exchanges rates at the time of quotation. In case of any change in the rates applicable to the service quoted or agreed, COSCON is entitled to likewise amend the rates quoted or agreed retroactively to the time such change occurred.

- 5.2 Quotations of COSCON in respect of services as referred to in article 3.5-3.7 shall always be deemed to include forwarding fees or commissions. In respect of services as referred to in article 3.5-3.7, whether lump sum or fixed quotations or prices shall, unless expressly agreed otherwise, always be exclusive of any duties, taxes, levies, consular and attestations fees, VAT, (custom) fines or costs in relation to security or insurance premiums.
- 5.3 For services of a special nature, or services requiring extra efforts and/or time, an additional but reasonable surcharge will be levied.

## **6. Collection of Freight and Charges**

- 6.1 With respect to freight and charges indebted by the Merchant to the Line pursuant to the Contract of Carriage between the Merchant and the Line, COSCON is empowered by the Line to collect payment of same from the Merchant, in its own name but for the account of the Line.

## **7. Custom formalities**

- 7.1 COSCON may act as custom agent to the Merchant and perform custom formalities. For the correct execution of her duties under the local custom rules, regulations and law COSCON is dependent on the correct and timely provision of instructions and material facts and details concerning the Goods by the Merchant.
- 7.2 The Merchant is obliged - and liable when in default - to timely and correctly provide COSCON with all instructions and material facts and details required for the correct execution of the custom formalities. Under reference to article 8 COSCON shall not be liable for any acts or omissions, errors or mistakes when acting as customs agent to the Merchant.
- 7.3 The performance by COSCON of services as customs agents to the Merchant shall be for the sole cost, risk and liability of the Merchant, regardless whether the custom formalities are performed as part of the obligation of the Line under the Bill of Lading or at the request of the Merchant. The Merchant has a duty to hold COSCON harmless for all costs and consequences resulting from the execution of custom formalities by COSCON. Payment demands or demands for security from COSCON must be immediately met by the Merchant. In case these demands are not or not timely met COSCON shall have the right to suspend all her activities, without incurring any liability and COSCON shall be entitled to a lien on the Goods as described below.

## **8. Payment**

- 8.1 The Merchant shall pay to COSCON in cash or by bank transfer all costs, freights, duties and remunerations within the term of payment and in the currency mentioned on the invoice issued by COSCON. The risk of fluctuations in the exchange rate between the invoice amount currency and the payment currency being for account of the Merchant. If the invoice does not make reference to a deadline for payment, the invoice is due and payable 30 (thirty) calendar days from the invoice date.
- 8.2 The Merchant shall at all times be obliged to indemnify COSCON for any amounts to be levied or additionally demanded by any authority in connection with the order, as well as any related fines imposed upon COSCON in connection with the order given. Any sums indebted by the Merchant on the basis of this article to COSCON shall be immediately due and payable to COSCON upon receipt by COSCON of the demand for payment from such authorities. The same applies if a third party engaged by COSCON demands payment from COSCON of any such amounts or fines.

- 8.3 The Merchant shall always pay in full and is not entitled to set-off, compensate, counterclaim or deduct any amounts in respect of sums charged by COSCON to the Merchant under any contract existing or having existed between parties.
- 8.4 In case the Merchant fails to timely arrange payment of any invoice COSCON is entitled to charge interest on the basis of EU Regulation 2000/35 (art. 6:119a BW).
- 8.5 Payments will first be deducted from the accrued interest over the debts, then from the accrued possible costs and finally from the accrued debts, whereby the oldest debts will be paid off before the younger debts.
- 8.6 COSCON shall at all times have the right to demand security from the Merchant in the form of a bank guarantee from a reputable Dutch merchant bank or any other form of security COSCON deems adequate for any amount for which the Merchant is or may be indebted to COSCON.
- 8.7 In case of non-payment of outstanding amounts or in case where the Merchant does not provide adequate security COSCON shall have the right to suspend her activities until such time as payments have been made or security is provided. No liability shall attach to COSCON for any consequences of such suspension of activity.
- 8.8 In case the Merchant is declared bankrupt or granted a suspension of payment or if a debt rescheduling scheme has been implemented regarding the Merchant or in case the agreement is terminated all debts become immediately payable by the Merchant.
- 8.9 All persons coming with the definition of Merchant shall be and remain jointly and severally responsible and liable for the payment of all costs and charges due to COSCON under the present or any previous agreement, including costs for debt collection and including the actual attorney and court fees and interest.

## **9. Liability and indemnity**

- 9.1 In respect of damages of whatever nature claimed by the Merchant, COSCON shall not be liable, unless the Merchant proves that these damages were caused by the wilful intent or gross negligence of COSCON itself or its management. COSCON shall not be liable for wilful intent or gross negligence of its employees, including servants, subcontractors or third parties engaged by COSCON.
- 9.2 In respect of services rendered by COSCON as (forwarding) agent to the Merchant, any liability of COSCON shall be limited to SDR 10,000 per occurrence or series of occurrences with one and the same cause of damage, on the understanding that in the event of damage, loss of value or loss of the Goods, the liability shall be limited to SDR 4 per kilogram of damaged or lost gross weight, the maximum being SDR 4,000 per consignment.
- 9.3 COSCON shall never be liable for damages exceeding the invoice value of the Goods, damages resulting from loss of profit, consequential damages or indirect loss or damages, duties or fines imposed by any authority or pain and suffering of people or animals.
- 9.4 COSCON stipulates for the benefit of its employees, servants and (independent) subcontractors that every right, exemption, limitation of liability or defence contained in these General Conditions and every right, exemption, limitation of liability, defence and immunity of whatever nature available to COSCON under these General Conditions, shall also be available and extend to protect every such employee, servant and (independent) subcontractor. Within the scope of these provisions COSCON shall be deemed to be acting as agent or trustee for and on behalf of and for the benefit of all those entitled to avail themselves of these provisions.

- 9.5 In so far as third parties referred to in article 4.4 of these General Conditions bear statutory liability towards the Merchant, it is stipulated on their behalf that in doing the work for which COSCON employs them they shall be regarded as solely under the employment of COSCON. All the provisions (inter alia) regarding liability and limitation of liability and also regarding indemnification of COSCON as described herein shall apply to such third parties.
- 9.6 The Merchant agrees and is obliged to indemnify COSCON in the event COSCON's liability towards third parties would exceed the limits of liability as set out in these General Conditions.

## **10. Lien**

- 10.1 COSCON shall have a lien on the Goods and/or any documents relating thereto and/or any other assets of the Merchant or otherwise in the hands or under the control of COSCON, for all sums earned or due or payable to COSCON under the present or any other agreement with the Merchant.
- 10.2 COSCON may exercise its lien at any time and at any place at its sole discretion, whether the services contracted have been completed or not.
- 10.3 In any event the lien shall extend to cover the cost of recovering any sums due, and for that purpose COSCON shall have the right to sell the Goods by public auction or private treaty, at any time and at any place, without notice to the Merchant and at the sole discretion of COSCON. If on sale of the Goods the proceeds fail to cover the amount due and costs connected with recovering same, COSCON shall be entitled to recover the difference from the Merchant. In case the proceeds leave a surplus this will be refunded to the Merchant. In cases where it is unclear as to who has title to this surplus of the proceeds COSCON shall either keep the funds at the disposal of the rightful owner or shall – at her sole discretion - deposit said surplus of the proceeds with the regional Court.

## **11. Execution and cancellation of the agreement**

- 11.1 All agreements shall be executed in a way and in the sequence as determined by COSCON taking into account the availability of resources at the disposal of COSCON. Due to the nature of transport and in cases of hindrances to or difficulties affecting shipping (or any other modes of transport) COSCON nor the Line shall at any time be liable if goods can not be shipped or will not arrive at certain dates or places, even if these dates and places have been pre-arranged.
- 11.2 COSCON and the Line are at all times at liberty to subcontract the contracted services.
- 11.3 The Merchant shall at all times be liable for the consequences and costs of not correctly or timely providing COSCON or the Line with the goods, auxiliary materials, information, documentation, permits, certificates, governmental or custom permissions, etc., etc, or anything else needed for the correct execution of the contracted services.
- 11.4 COSCON is allowed to cancel the contract without judicial interference and/or without prior warning and/or notice of default to the Merchant and without attachment of any liability to COSCON when: a) the Merchant acts in violation of the contract and/or these General Conditions, b) the Merchant does not comply with his payment obligations; c) the Merchant wholly or partially ceases to trade, is under strike, is being wholly or partially liquidated, taken over, merges with third parties, changes its legal structure, moves from or vacates her business premises, loses or gets revoked permits or permissions necessary for the exercise of her business; d) one or more of the associates of the Merchant die, retire from the business or are declared to be incapable of full legal capacity or placed under tutelage, the Merchant files for bankruptcy or is declared bankrupt, requests suspension of payment or if a debt

rescheduling scheme is implemented; d) arrests are made on any of the assets of the Merchant.

- 11.5 Cancellation of the contract as per article 11.4 will leave unimpeded all rights COSCON might have under the agreement with the Merchant or under these General Conditions. In case of cancellation of the agreement according to article 11.4 COSCON shall be entitled to a full recovery of the costs and freight due.
- 11.6 In case any of the circumstances as described in article 11.5 occur the entire indebtedness of the Merchant towards COSCON and the Line will become immediately payable.

## **12. Applicable law**

- 12.1 Any contract concluded between the Merchant and COSCON (the latter acting not as agent to the Line) shall be governed and construed by the Law of the Netherlands.
- 12.2 Without prejudice to the foregoing, the law applicable to the Bill of Lading issued or to be issued by the Line shall be the law stipulated in the standard Bill of Lading form used by the Line.

## **13. Disputes**

- 13.1 All disputes that may arise between COSCON and the Merchant shall be decided by the Court in Rotterdam, Netherlands. In respect of a claim for payment of any amount due to COSCON, it shall be entitled to commence legal proceedings before the court at the place of domicile of the Merchant. No other court shall have jurisdiction.

## **14. Time bar**

- 14.1 Any and all claims against COSCON shall be completely extinguished by the mere expiration of 9 (nine) months since the claim originated.

## **15. General provisions**

- 15.1 In case one or more articles of these General Conditions are set aside or deemed null and void through or by a judicial decision or ruling, all other articles shall continue to remain valid and unimpaired and COSCON retains all rights to invoke the remaining articles.
- 15.2 In case of textual differences between the text that has been deposited with the registrar of the District Court of Rotterdam and any other text in any other language solely the deposited text with the District Court of Rotterdam shall be binding.