

GENERAL TERMS AND CONDITIONS OF S5 NORTH EUROPE B.V. AND AFFILIATED COMPANIES

Article 1: Applicability General Conditions

1.1 These general conditions of S5 North Europe B.V. and its affiliated companies S5 NE B.V., S5 North Europe N.V., S5 North Europe GmbH, S5 North Europe Ltd, S5 Norway AS (hereinafter: "General Conditions of S5") apply to any form of services rendered by S5 North Europe B.V. and/or its affiliated companies S5 NE B.V. and/or S5 North Europe N.V. and/or S5 North Europe GmbH and/or S5 North Europe Ltd and/or S5 Norway AS (hereinafter individually, jointly or a combination of them referred to as: "S5") to the customer and to all assignments, offers and agreements of and/or between S5 and the customer.

1.2 Any (conflicting or additional) terms and conditions used by the customer are hereby expressly rejected by S5. S5 shall not be bound by any terms or conditions of the customer in any way.

1.3 S5 and the customer are hereinafter jointly also referred to as "Parties" and individually as "Party".

Article 2: Additional Applicable Terms and Conditions

2.1 In addition to these General Conditions of S5, the General Conditions and Rules for 'Cargadoors' (Dutch Shipbrokers and Agents) 2009 (hereinafter "General Conditions for Cargadoors") (see: [Hyperlink 1](#)) are applicable to all services rendered by S5 as a cargadoor and/or ship's agent and/or port agent to the customer.

2.2 In addition to the General Conditions for Cargadoors, the following customary conditions of the branch of industry shall (also) apply to and supplement all agreements of S5 with the customer:

a. for freight forwarding work: the "Dutch Forwarding Conditions" of the FENEX (Netherlands Association for Forwarding and Logistics) deposited at the registry of the District Courts at Amsterdam, Arnhem, Breda and Rotterdam on 1 July 2004 (see: [Hyperlink 2](#)).

b. for stevedoring work: the "Rotterdam Stevedoring Conditions" deposited at the registry of the District Court at Rotterdam on 12 August 1976 (see: [Hyperlink 3](#)).

c. for warehousing/storage work: the "Netherlands Warehousing Conditions" (Nederlandse Opslag Voorwaarden), deposited by the FENEX (Netherlands Association for Forwarding and Logistics) at the registry of the District Court at Rotterdam on 15 November 1995 (see: [Hyperlink 4](#)).

d. for tankstorage: the "General Conditions for Tankstorage in the Netherlands" 2014, registered at the registry of the District Courts of Amsterdam, Dordrecht and Rotterdam (see: [Hyperlink 5](#)).

2.3 In case of any contradiction between the General Conditions of S5, the General Conditions for Cargadoors and/or the general conditions mentioned in article 2.2, the following order of specifically agreed terms apply, whereby the first document prevails over the latter:

- a. the General Conditions of S5;
- b. the General Conditions and Rules for 'Cargadoors' (Dutch Shipbrokers and Agents) 2009;
- c. the General Conditions as mentioned in article 2.2.

Article 3: Offers and Orders

3.1 All offers of S5 are made without obligation, unless explicitly stated otherwise in writing. Orders of a customer are confirmed by S5 in writing or, failing that, the invoice.

Article 4: Remuneration and payment procedure

4.1 The customer shall pay to S5 the fees agreed in writing between S5 and the customer for the agreed services rendered by S5.

4.2 The customer shall be liable for, and shall pay to S5, all costs and expenses incurred by S5, including the fees referred to in article 4.1, in providing the agreed services at the request or on the instruction of the customer itself, the master of the vessel, the office of the customer or its agents, nominees, representatives or servants, howsoever communicated to S5 and notwithstanding the fact that any such persons may have exceeded their authority in requesting or instructing the provision of the agreed services.

4.3 The customer shall reimburse S5 for all costs and expenses incurred by S5 in respect of the receipt of currency from the customer, or the remittance of currency to, or on behalf of, the customer.

4.4 The customer shall pay to S5's bank account such sum as S5 may request as an advance on disbursements which S5 estimates will be incurred on the customer's behalf. If the customer should fail to comply with S5's request, S5 may:

- a. at any time give immediate notice of the termination of the agreement with the customer, and/or,
- b. take any necessary measures to detain the vessel in port until such funds are received by S5.

4.5 S5 is entitled to reimbursement for out-of-pocket expenses, including but not limited to communications, expenses, cellular phones, photocopying, forms, auto hire, transportation, staff and boarding clerk overtime, government charges and other expenses not usually assumed by an agent.

4.6 One hundred per cent (100%) of funds to cover requirements for cash advanced to the master of the vessel and the estimated disbursements and/or other cost as determined by S5 must be in S5's hands prior to the vessel's arrival in the harbor, unless Parties agree otherwise.

4.7 Unless Parties agree otherwise, S5 shall not be obliged to make any disbursement whatsoever on behalf of the customer until such time as:

a. S5 has been paid all amounts then due by the customer to S5 in respect of the provision of the agreed services by S5; and

b. S5 has received sufficient funds for purposes of paying the particular disbursement, and shall not be in default of its obligations by failing to make such payment.

4.8 Any objection and/or complaint to an invoice must be submitted in writing within fifteen (15) calendar days, to be counted as of the invoice date. After this period the right of the customer to complain lapses. The burden of proof regarding the timely filing of an objection and/or complaint to an invoice rests with the customer.

4.9 The services fees are exclusive of VAT. The customer agrees that it shall pay all taxes that are applicable to the services fees due under these General Conditions of S5.

4.10 The customer's payment obligations pursuant to these General Conditions of S5 shall not be compensated with any payment obligations of S5.

4.11 The customer is not allowed to suspend its payment obligations under any agreement with S5.

Article 5: Termination

5.1 S5 shall be entitled to suspend partially or fully the execution of all agreements between S5 and the customer, or to terminate these agreements immediately (without court intervention) by means of a written notice thereto and without observance of a notice period, in the event:

a. the customer breaches or fails to perform any of its material obligations under the agreement, and such breach is not remedied within 21 days after written notice is received from S5 stating that such a breach has occurred, identifying the breach or failure in question in reasonable detail and demanding the remedy thereof; or

b. a resolution is passed for the bankruptcy, insolvency, winding up, liquidation of, or other similar proceeding of the customer; or

c. the customer is unable to pay its debts as they fall due in all events of insolvency and bankruptcy, however defined, or admits inability to pay its debts as they fall due; or

d. the customer suspends making payments on all or any class of its debts or announces an intention to do so, or files for or is granted a moratorium of payments ("surséance van betaling"); or

e. the customer makes a proposal to one or more of its creditors with a view to the readjustment or rescheduling of any of its indebtedness; or

f. the customer is involved in legal proceedings (or formal steps have been taken to that extent) for its liquidation, dissolution or winding-up (mandatory, voluntary or otherwise), or

g. the customer ceases to conduct its business as presently conducted.

Article 6: Liability

6.1 S5's liability will be governed by article 5 of the General Conditions for Cargadoors.

6.2 The customer explicitly recognises and accepts that insofar as a subcontractor of S5 can invoke the general terms and conditions as customary in the relevant sector, national legislation or international treaties, which would give cause for a more limited liability or more limited compensation than according to article 6.1 of the General Conditions of S5, S5 can likewise invoke against the customer such terms and conditions/legalisation/treaties.

6.3 S5's liability is limited to a maximum amount equal to the remuneration that S5 would be entitled to in the event the S5 had properly executed the instruction of the Principal in question.

6.4 S5 shall never be liable to the customer for loss of profit, production loss, delay or any other kind of consequential damage.

Article 7: Miscellaneous

7.1 The customer is not entitled to assign or transfer or pledge any of its rights and obligations under any agreement between S5 and the customer without the prior written consent of S5, which shall not be unreasonably withheld or delayed.

7.2 A waiver of any term, condition, or provision of, or consent granted under, an agreement between S5 and the customer shall be effective only if given in writing and signed by the waiving or consenting Party and only in the instance and for the purpose for which it is given.

7.3 The invalidity, illegality or unenforceability in whole or in part of any of the provisions of the agreement shall not affect the validity, legality and enforceability of the remaining part or provisions of the agreement.

Article 8: Applicable law and jurisdiction

8.1 All disputes arising between S5 and the customer under and/or relating to the agreement between S5 and the customer shall be governed by Dutch law.

8.2 All disputes arising between S5 and the customer under and/or relating to the agreement between S5 and the customer shall be subject to arbitration in Rotterdam as per the TAMARA Rules as mentioned in clause 8.1 of the General Conditions for Cargadoors, which shall be supplied by S5 upon request.

8.3 Notwithstanding the provisions in the preceding paragraph S5 shall be at liberty but not obligated to bring all disputes arising between S5 and the customer under and/or relating to the agreement between S5 and the customer before the competent courts in Rotterdam, The Netherlands.