

## **GENERAL CONDITIONS OF JONKER & SCHUT B.V. (J&S)**

### **Article 1: Application**

1. These general conditions apply to all activities that J&S performs for its principals and otherwise, whether in the execution of any contract for professional services or otherwise, unless explicitly agreed otherwise in writing.
2. All instructions are exclusively considered to have been issued to and accepted and performed by J&S for its principal. Third parties cannot derive any rights from the work performed.
3. The applicability of any general conditions that are referred to in any documents from the principal, is hereby explicitly rejected.

### **Article 2: Applicable conditions for specific activities**

Depending on the nature of the activities to be performed by J&S for its principal, the most recent version of the following conditions apply:

A. for *storage, transfer, custody, handling and processing*: the Warehousing Conditions Amsterdam-Rotterdam, filed at the Registry of the District Courts of Amsterdam and Rotterdam. *Handling and processing* include a.o. blending, packaging, labelling and palletising;

B. for *loading, unloading and stowage*: the General Conditions of the Association of Rotterdam Stevedores (Rotterdam Stevedoring Conditions), filed at the Registry of the District Court at Rotterdam;

C. for *freight forwarding and tax representation*: the Dutch Forwarding Conditions ('Fenex Conditions') filed at the Registry of the District Courts of Amsterdam, Arnhem, Breda and Rotterdam;

D. for *carriage by road within the Netherlands*: the General Conditions of Transport 2002 ('AVC'), filed at the Registry of the District Courts of Amsterdam and Rotterdam;

E. for *international carriage by road*: the Convention on the Contract for the International Carriage of Goods by Road as amended by protocol of 1978 ('CMR Convention').

1. The conditions referred to in (A) to (E) above are available for inspection at J&S and can be viewed at [www.jonker-schut.nl](http://www.jonker-schut.nl). The conditions will be sent to the principal free of charge at its first request.

2. If the activities to be undertaken by J&S within the scope of an instruction are of a different nature, each of these activities will be subject to the conditions set out in (A) to (E) above in accordance with their nature, without irrespective of the nature and object of the instruction issued by the principal and irrespective of whether certain activities are subordinate to activities of a different nature.

3. If it is unclear whether activities to be undertaken by J&S fall within the scope of one or more of the conditions set out in (A) to (E) above, J&S will decide which conditions apply to those activities regardless of the nature and object of the instruction issued by the principal. This right of choice also applies when activities performed by J&S are subordinate to activities for which the above in (A) to (E) does provide which conditions apply.

4. All instructions related to carriage by road are considered to be instructions to have goods carried ('doen vervoeren') as described in article 8:60 and following of the Dutch Civil Code.

5. In case of contradiction between these General Conditions and any of the conditions mentioned above in (A) to (E), as well as in cases that the activities in terms of nature and object do not fall within the scope and object of the conditions mentioned above in (A) to (E), these General conditions apply.

### **Article 3: Liability and force majeure**

1. J&S' liability is governed by the conditions that apply to J&S' activities pursuant to article 2.

2. In cases where none of the conditions mentioned in article 2 apply, J&S' liability for damages attributable to J&S is limited to a maximum of 2 SDR per kilogramme of damaged or lost gross weight up to a maximum of the invoice value, unless the principal proves that the damage was caused by wilful misconduct or gross negligence by J&S itself, or by its executives.

3. In no event will J&S be liable for indirect damages, including a.o. trading loss, loss of profit, damages due to delays, consequential loss and/or non-property damage.

4. In no event will J&S be held to fulfil its obligations out of instruction and/or contract, and will not be held to pay compensation for damages in case of force majeure. 'Force majeure' includes a.o. the following circumstances:

A. acts performed by J&S with permission of the principal;

B. fire, smoke, explosion, fire-extinguishing water, theft, natural disasters, strike, war, the threat of war, import and export prohibitions, impeding measures by any government, industrial accidents and/or operational failure;

C. all other circumstances that J&S could not reasonably avoid or prevent, even if these circumstances could have been foreseen at the time of the formation of the contract. This includes such circumstances of auxiliaries and/or subcontractors as well as breach of contract by assistants and/or subcontractors.

### **Article 4: Liability of auxiliaries and/or subcontractors instructed by J&S**

1. J&S will exercise due diligence in instructing auxiliaries and/or subcontractors. J&S will however not be liable for errors and shortcomings of these auxiliaries and/or subcontractors.

2. Auxiliaries and/or subcontractors will in any case individually enjoy the same protection and are entitled to the same protections, exclusions, exemptions and limitations of liability that apply for J&S pursuant to these General Conditions.

#### **Article 5: Limitation and expiry period**

1. The limitation period and/or expiry period of claims of principals and third parties is determined by the conditions that apply to the activities performed by J&S pursuant to article 2.
2. In the event that none of the conditions mentioned in article 2 apply, or if the limitation period and/or expiry period determined by those conditions proves invalid for any reason, all claims by principals and third parties will expire if they have not been pursued in court within one year following the day after that on which the principal respectively the third party became aware or could reasonably have become aware of the facts on which it bases its claim. In any event such claims will expire after three years have passed since the day on which J&S was instructed, or in the absence of such date, since the activities were performed by J&S.

#### **Article 6: Indemnity**

The principal is obliged to indemnify J&S from all claims of third parties and assistants instructed by J&S, as well as to reimburse reasonable costs J&S incurs in its defence against such claims.

#### **Article 7: Prices**

The agreed prices are based on the rates that apply at the time of the formation of the contract. The risk of price rises as a consequence of increases in costs, (employment) conditions, insurance premiums, exchange rates, freight tariffs, (new) tax rates and/or levies as well as all cases in which circumstances cause prices to rise, will be for account of the principal.

#### **Article 8: Payment**

1. If the principal fails to effect payment within fourteen days of the invoice date, the principal will in addition to the total amount then due, also be obliged to pay the entire prejudicial and judicial costs in addition to the invoiced amount. These costs are set at 15 % of the total amount, with a minimum of Euro 1,000.00
2. Payments effected by the principal will first be deducted from the prejudicial and judicial (collection) fees, the interest due by the principal and then the main sum. Amounts will be deducted from old claims before newer ones.

#### **Article 9: Right of pledge and lien / right of retention**

1. All property, monies, monetary values, insurance proceeds and/or documents that J&S holds and/or will obtain for or by reason of the principal or owes or will come to owe to the principal whatever the reason and the reason thereof may be, serve as possessory pledge for all claims that J&S has and/or may acquire against the principal.
2. J&S has in respect of all persons a lien / right of retention on all property, monies, monetary values, insurance proceeds and/or documents that J&S holds and/or will obtain for or by reason of the principal whatever the reason and the purpose thereof may be, as security for all claims that J&S has and/or may acquire against the principal.
3. If the principal fails to effect payment of its claim, J&S is entitled to sell (by public auction or otherwise) the property, monies, etc. taken in pledge or whatever J&S is holding pursuant to its pledge or lien in accordance with statutory stipulations.

#### **Article 10: Right of suspension**

If the principal defaults in the correct and/or timely performance of one or more of its obligations in relation to any instruction and/or agreement or if damage occurs, J&S is entitled to with immediate effect refuse, suspend, interrupt or break off performance of its obligations out of the instruction and/or under the agreement until such time as the principal has fully paid that which it owes J&S.

#### **Article 12: Applicable law and jurisdiction**

The legal relationship between J&S and the principal is governed by Dutch law. Any disputes will be decided by the competent court of Arnhem to the exclusion of any other court.

#### **Article 11: Decisive text**

These General Terms and Conditions have been drawn up in Dutch and translated into English. In the event of any difference between the Dutch text and the English translation of it, the Dutch text will be decisive.

These General Conditions have been filed at the Registry of the District Court of Arnhem on [date] under number [number] and can be consulted at [www.jonker-schut.nl](http://www.jonker-schut.nl).