



### I. GENERAL PROVISIONS/DEFINITIONS:

1. Definitions
- 1.1. The terms 'we' or 'us' as well as any inflections of these personal pronouns shall be understood to refer to Tenwolde Transport and Repair B.V. and/or any affiliated companies or organizations within the same group of companies.
- 1.2. The term 'client' shall be understood to mean:
- a. the natural or legal person who asks us for an offer and/or is sent an offer;
  - b. the natural or legal person with whom we reach an agreement of any nature whatsoever;
  - c. in as far as not covered by a or b, the owner or proprietor of the business or goods for the benefit of which we provide our services and/or perform any other activities, or to whom we deliver goods;
  - d. the natural or legal person who, with respect to an agreement concerning transport, becomes a party to the same transport agreement;
  - e. the authorized representatives or mandatories of the persons mentioned sub a through d.
2. Unless otherwise agreed in writing in advance, these Terms and Conditions shall apply to all of our offers and/or orders assigned to us and/or activities carried out by us and/or deliveries made by us and/or contracting of work and/or construction and/or any other type of service performed by us, as part of normal or exceptional operations, none excepted. The Terms and Conditions of our clients and/or any third parties shall not apply, nor shall this non-validity be subject to our express prior rejection or negation thereof. The Terms as mentioned on documents issued by us, including consignment notes, acknowledgements of receipt or any other type of documents, shall apply subject to observance of the provisions stipulated below.
3. We are entitled to invoke these Terms and Conditions and any other Terms further to be agreed on also in the event of extra-contractual claims against us, including any claims pertaining to product liability.
4. In all events, the General Terms and Conditions of the Federation of Netherlands Forwarding Agents shall apply (referred to as 'Dutch Forwarding Conditions' or 'Fenix Conditions'), filed at the Office of the District Court in Rotterdam on July 1, 2004, in as far as the provisions below do not expressly deviate from these Terms, and with due observance of the additions stated below. The term 'forwarding agent' used therein shall be understood, regardless of the inherent nature of the activities/services, to refer to our company or affiliated companies, all this with due observance of the provisions mentioned in Article 1 above.

### II. FURTHER STANDARD CONDITIONS:

5. With due observance of the provisions set out in Article 1, Paragraphs 1 and 2 of the Fenex Conditions, in the following cases the standard conditions mentioned next to them shall be in effect as well, according to the nature of the overall assignment, activity or any other type of service, or any part thereof that can in all reasonableness be considered a constituent or independent part thereof:

#### in towing, assisting et cetera:

- a. the 'General Towing Conditions' (filed at the Office of the District Court in Rotterdam on March 5, 1946) for towing, assisting and rendering services to floating objects including barges, derricks, cranes, elevators, etc.
- b. the 'Netherlands Towing Service Conditions 1951' (filed at the Office of the District Court in Rotterdam on November 15, 1951) for towing, assisting and rendering services to ships designed for frequent seafaring.
- c. the 'Towing Conditions 1965' (filed at the Office of the District Court in Amsterdam on December 15, 1965) for towing, assisting and rendering services to all other ships.

#### in moving and/or the performance of activities carried out by or by means of pusher tugs or their crew:

- the 'General Towing Conditions', whereby the term 'towing', or a conjugation thereof, wherever used, shall be understood to refer to pushing or a conjugation thereof, respectively.

#### in assisting in the sense of Article 8:551 of the Dutch Civil Code: the 'Salvage Conditions 1958' (filed at the Office of the District Court in Amsterdam on August 1, 1958).

#### in making available floating derricks plus crew:

- the 'Terms of Use concerning Derricks 1976' (filed at the Office of the District Court in Rotterdam on January 1, 1977).

#### in making available a flat-bottomed boat, barge, pontoon, raft et cetera, or an unmanned floating derrick:

- the 'Terms of Use concerning Flat-bottomed Boats 1961' (filed at the Office of the District Court in Amsterdam on December 31, 1969).

#### in leasing material other than small material or in the event of a so-called bareboat charter:

- the general terms and conditions which are derived from the standard Bimco Contracts.

#### in leasing small materials:

- the general lease conditions.

#### in (repair) activities in our workshop or on site, as well as in sales offers for existing or newly to be constructed or rebuilt or modified materials:

- the standard conditions issued by the 'Metaalunie' and referred to as the METAALUNIE CONDITIONS (filed at the Registry of the District Court in Rotterdam on January 1, 2001).

#### in contracting, assembly and construction activities, so-called heavy transport et cetera:

- the 'Terms of Delivery Vertical Transport' (filed at the Offices of the District Courts in Amsterdam and Rotterdam on December 20, 1999), applying by analogy and regardless of whether the activities are carried out in water or on land, with the exception, however, of the obligation to insure for the benefit of the client.

The term 'heavy transport' shall be understood to refer to transport that takes place by means of the use of specialized materials, including derricks, cranes, pontoons, barges, rafts, flat-bottomed boats, flatbed trailers, carriages, fork-lift trucks and/or transport of large and/or heavy and/or difficultly manageable equipment; the former as well as the latter including loading and unloading in the broadest sense of the word.

#### in transport:

- (with the exception of so-called heavy transport (see above)):

##### 1. sea transport:

- both with respect to the transport of passengers and goods: the statutory or Treaty provisions, in as far as mandatory, and otherwise the stipulations of a bill of lading that may have been issued in the matter of the transport of the goods or a travel document issued in the matter of the transport of passengers and/or any other document drawn up with respect to the transport.

##### 2. all other types of transport:

###### a. of passengers in as far as not belonging to the crew:

- the 'Passenger Transport Conditions of the Netherlands Inland Shipping Office' (filed at the Office of the District Court in Amsterdam on December 1, 1969), irrespective, for that matter, of whether or not it concerns shipping transport;

###### b. of goods:

- in freighting: the 'Freighting Conditions 1991' (filed at the Offices of the District Court in Amsterdam and Rotterdam in 1992), irrespective, for that matter, of whether or not the same is included in the charter;

- in international transport over inland waterways: the 'Verlade- und Transportbedingungen (Konnossementsbedingungen)', amended on June 23, 1999.

- in all other types of transport, on land and/or over water: the 'General Transport Conditions 2002' (filed at the Offices of the District Courts in Amsterdam and Rotterdam on June 4, 2002), unless the CMR Treaty or any other Act or Treaty applies mandatorily, in which case the AVC 2002 shall apply supplementarily.

In all cases in which we do not carry out a transport or part thereof, we shall be entitled to invoke the provisions incorporated in the contract we signed with the carrier concerned.

#### in the matter of General Average:

in as far as general average at sea is concerned, the 'York-Antwerp Rules 1990', but in all other cases the 'Rhine Rules' IVR 1979, amended on November 17, 1995.

#### services which include the storage of goods:

the 'Physical Distribution Conditions 2000', (filed at the Offices of the District Court in Amsterdam and Rotterdam on September 1, 2000).

6. In the event that the conditions mentioned in Article 5 are or shall be amended, the new text shall apply as from the day of application of the amendment. At all times, however, we shall be entitled in advance to declare conditions other than the aforementioned Standard Conditions applicable to a certain assignment, activity or any other type of service.
7. The General Terms and Conditions as they may apply in any case, shall apply in full force, possibly even in derogation of the provisions of the present Terms and Conditions, all this on the understanding that in all cases, and with priority at all times, the provisions shall apply as laid down in Article 8, a through f; Article 9, a through e; Article 10, b through d; and in Articles 11 through 16 of these Terms and Conditions.

### III. PRICES, PAYMENT ET CETERA:

- 8.a. All offers are without prejudice and subject to contract. Our prices are based on the rates, remuneration, wages et cetera as they apply on the day the offer is made or the agreement is signed, or the actual service is performed. In the event that one or more of these factors are changed, the prices shall automatically change as well with binding effect, even with respect to current agreements.

- 8.b. Our prices comprise only the fee for the services we have undertaken to perform, including the normal corresponding expenses. Our prices therefore do not comprise any levies imposed by the government or any other authorities, such as BTW (Dutch VAT), import duties, penalties et cetera, nor any guarantees or securities furnished to anyone, nor any expenses incurred for police surveillance or any other obligations, of any nature whatsoever. These shall be charged separately.

We are entitled to demand payment in advance or on deposit, or to require security to be given. The term security is understood to include the meaning of the obligation of the client to assign to us as security, on our first demand, any possible rights he may have as against his principal, for whose ultimate benefit the order was assigned to us. We are entitled, without delay, to serve a writ and proceed to collection of the claims assigned to us, and to set off the proceeds thereof against our own claim against the client.

In time span-related prices or rates, such as in lease agreements or in making available manpower, goods or spaces, the agreed period of time shall commence on the moment the person or the object concerned is made available to the client in our company (or in any other location, to be specified by us), and shall continue to be effective until the moment he or it is returned to our full disposal in the same location, irrespective of whether or not the client benefited from the availability due to any cause whatsoever, unless his inability to benefit there from was attributable to a fault on our part. The period of time shall be extended, without delay, by the time needed to repair any damage that may have arisen during the period of availability, in the event that the client has to hold himself liable for the damage concerned by virtue of these Terms and Conditions. For activities carried out on Saturdays, Sundays and public holidays, we are entitled to raise our rates by 100%.

- 8.c. Our prices are furthermore based on normal performance, as within normal working hours and within a normal period of time. For special performances, unusual activities, extremely time-consuming activities or activities requiring special efforts, as well as in the event of interfering influences, whether with respect to the performance or with respect to the period of time involved or the timing, we shall have the right to charge a reward, to be calculated in all fairness, or to charge the client for the additional expenses incurred as a result, respectively.

Our prices are furthermore calculated based on the assumption that the roads or waterways concerned allow proper transport. Should it appear later on that in fact, this condition is not complied with, we shall be entitled to raise the prices by all additional costs resulting from this non-compliance plus a reasonable profit margin on this amount.

Should it appear that the assignment cannot, due to any cause whatsoever, be carried out or completed other than at a considerable risk for the staff and/or the materials involved, which is exclusively at our discretion, we shall be entitled to cancel the agreement and charge the client for the part that is possibly already carried out, proportionate to the whole.

- 8.d. All our prices are net cash and payable within 14 days after the invoice date. After expiry of the term of payment, we are entitled to claim an interest rate of 3% per annum in addition to the statutory rate as effective on the day of payment. However, we shall have the right, at all times, even before commencement or before completion of the assignment, respectively, to require security for payment in full, and to suspend the performance of our obligations pending the furnishing of this security. In the event of failure to comply with the term of payment, all collection costs, costs incurred by the prosecution, and legal fees, both in and out of court, shall be charged to the client in full.

- 8.e. By virtue of all claims against the client, we possess a pledge on all matters belonging to the client which are in our possession. At the same time, we are entitled to exercise a right of retention on these matters.

- 8.f. Requests for insurance of any nature whatsoever shall only be dealt with for the account and risk of the client, and only upon his express written instructions to this effect as well as our written acceptance thereof. Such a request should contain accurate mention of the risks the insurance is to cover; if this condition is not complied with, the request shall be deemed not to have been submitted or not to have been accepted, respectively. However, we are entitled at all times to reject any request for insurance for reasons of our own. Acceptance or rejection of an insurance, however, is reserved to the Insurers. All costs incurred in arranging an insurance for the benefit of the client shall, even in the event of rejection by the Insurers, be for the account of the client. Rejection by the Insurers to effect an insurance for the benefit of the client, shall fully release us from any further obligation to arrange an insurance, without the client being entitled to invoke any rights to performance or indemnity.

#### IV. EXECUTION OF THE AGREEMENT:

- 9.a. All assignments are carried out in a manner and order to be defined by us, the capacity of the materials and/or the staff at our disposal as well as the staffing level being partly determinative factors for the commencement and completion of the activities.

Dates and/or time-limits shall not be guaranteed by us. The provision of information prior to or during the course of the activities shall take place without any obligation or liability on our part arising from this.

- 9.b. We are at liberty to have the order or the agreement, or part thereof, performed by third parties.

- 9.c. The client is under the obligation to ensure that all data and documents to be provided or furnished by him shall be in our possession in due time, and that all tools and auxiliary materials he is to place at our disposal, shall be present on time and with sufficient capacity and equipment.

The client shall be liable for all failures to comply of any nature whatsoever, none excluded, on the part of the client and/or the person for whom he is responsible, and all damage resulting therefrom for us, and if necessary, he shall indemnify us against claims from third parties.

- 9.d. In the event of temporary force majeure, the order or agreement shall remain effective, while our obligations shall be suspended for as long as the state of force majeure shall continue, all this without prejudice to our right in such an event, at our sole option, to cancel the order if and in as far as not yet completed, and to charge the client for the part already performed, proportionate to the whole. All additional costs incurred as a result of the state of force majeure, shall be charged to our client.

Force majeure shall be understood to include, but not be limited to:

- a. war, danger of war, measures imposed by the authorities, quarantine, riots, sabotage, strikes, exclusion, traffic disturbances, lack of manpower;
- b. storm, fog, lightning stroke, flooding, high and low water, frost, freezing, floating ice;
- c. fire, explosions, subsidence, collapse, inundation.

- 9.e. In the event that in leasing or making available, et cetera, things, spaces, et cetera, the client fails to lodge a complaint in writing without delay concerning any possible defects or deficiencies, all rights to do so shall cease to be effective, and all defects shall be considered to have arisen during the period of lease et cetera, for which the client shall be liable.

### V. LIABILITY:

- 10.a. With respect to activities, et cetera, subject to the General Terms and Conditions in accordance with Article 2 above, however with the exception of activities subject to the Metaalunie Conditions and except in the event of lease of small and other materials and in the event of a so-called bareboat charter, our liability shall be defined by these General Terms and Conditions. In the event, however, that in a certain case the extent of the liability is not defined, as well as in the event of activities subject to the Metaalunie Conditions and in the event of lease of materials and in the event of a so-called bareboat charter, the provision as set forth in Article 10.b, second and third sentences (see below) shall apply.

- 10.b. With respect to all other types of activities et cetera, as not covered by the provisions set forth in Article 10.a, the following provision applies: The performance takes place for the account and risk of the client. We accept no liability for any damage and/or loss of any nature whatsoever, unless in the event that and in as far as it is proven that this damage and/or loss is the result of gross negligence or intention on our part. For negligence and/or loss of any nature whatsoever as a result of gross negligence or intention that can be imputed to our staff, which term is understood also to include executive staff and supervisors, and/or non-subordinates and/or assistants, we accept no liability whatsoever.

- 10.c. Any person who loiters around our premises, our ships, et cetera, or at or near a location where the activities are being carried out, finds himself, and everything he has with him at the time, there for his own risk and is under the obligation to adhere rigidly to all rules, regulations and instructions imposed or provided by public authorities or by us. We accept no liability whatsoever for any personal and/or material damage and/or loss of any nature whatsoever.

- 10.d. Every possible liability on our part shall cease to be effective in the event that we are not informed in writing of the allegedly inflicted damage or the allegedly sustained loss before completion of the activities or before leaving the premises or the location where the activities were carried out, or the site where we were to perform a service of any kind.

### VI. LIABILITY OF THE CLIENT:

11. In the event that in the execution of an order, or the performance of an activity or any other kind of service, damage is inflicted on us, on our staff or any third parties engaged by or through us, including their staff or assistants, the client shall be liable for this damage, unless he presents evidence to the effect that the same damage was caused entirely by us, our staff or the third parties referred to. The client is under the obligation – to our sole option – to repair the damage for which he is liable on the basis of this stipulation, immediately and for his own account, or to pay compensation for the same repairs.

### VII. PERSONNEL AND OTHER ASSISTANTS AND THIRD PARTIES INVOLVED ON OUR SIDE; INDEMNITY AND PRESCRIPTION

12. Any right, defence, exclusion, limitation or immunity of any nature whatsoever that can be invoked by us based on these Terms and Conditions, shall equally be available to or be extended to protect each and every one of our employees, non-subordinates engaged by us, assistants and/or other third parties involved. Stipulations defining, restricting or excluding the liability towards us with respect to the things and/or services delivered by our suppliers or assistants and/or third parties engaged by us, can equally be invoked by us vis-à-vis our client. However, employees and/or non-subordinates engaged by us, assistants and/or other third parties involved, against whom a claim is lodged, cannot invoke the present Terms and Conditions unless through our express authorization.

13. Our client indemnifies us – and, on the condition as based on Article 12, also our staff and/or non-subordinates engaged by us, assistants and/or other third parties involved – against claims from third parties, in respect of whom we would not be able to invoke these Terms and Conditions, in as far as under these Terms and Conditions the same liability would have been limited and/or excluded if the third party concerned were bound to these Terms and Conditions as party to the agreement.

14. All claims for damages of any nature whatsoever are prescribed by nine months following the arising of the claim, and shall be barred by prescription by the mere lapse of one year following the arising of the claim.

### VIII. BINDING TEXT: GOVERNING LAW AND COURT OF COMPETENT JURISDICTION:

15. In the event that there are differences between the filed text of these Terms and Conditions on the one hand, and texts that are otherwise printed, translated and/or distributed on the other hand, the filed text shall apply exclusively.

16. Only Netherlands law is applicable to our offers and quotations, the agreements and further activities and services, as well as any ensuing rights and obligations.

17. Barring, if necessary, any stipulation to the contrary in any – in accordance with Article 2 above – co-applying other system of terms and conditions, all disputes arising from or related to any offer, quotation, activity or any other kind of performance shall be tried exclusively by the ordinary public court, at first instance by the District Court in Rotterdam, unless we, for reasons of our own, prefer a court elsewhere, in the Netherlands or abroad.

18. This is a translation from a Dutch original. Should there be any doubts about the meaning of the text, the Dutch version text shall prevail.