

## **GENERAL TERMS AND CONDITIONS OF ALLEGHANY WAREHOUSE EUROPE B.V.**

Lodged with the clerk of the court at Middelburg (NL) on April 8<sup>th</sup>, 2008 under number 7/2008.

### **Article 1 - Definitions**

1. The following shall be understood in these general terms and conditions:
  - a. Alleghany: Alleghany Warehouse Europe B.V. of Vlissingen , Netherlands;
  - b. customer: the party to whom Alleghany's quotation is addressed and/or the party with whom Alleghany signs an agreement and/or the party for whom Alleghany undertakes work;
  - c. the agreement: the agreement signed between Alleghany and the customer;
2. These general terms and conditions are applicable to all quotations made by Alleghany, all agreements that Alleghany signs with the customer and all work carried out by Alleghany for the customer. Any other general terms and conditions that the customer may refer to are expressly rejected by Alleghany. Where any quotations, agreements and activities were already ongoing on the date that these general terms and conditions were lodged, these general terms and conditions shall be applicable to them as of the day that they were lodged. The same applies for any changes to these general terms and conditions.

### **Article 2 - Quotation and the agreement**

1. All quotations by Alleghany are without obligation and are based on the work being carried out by Alleghany under normal conditions and during normal working hours, unless otherwise stated.
2. The agreement comes into existence either when the signed order confirmation is returned by the customer or if the order confirmation sent by Alleghany is retained by the customer for longer than five days without any written objection being made, or when Alleghany starts carrying out the work.
3. Verbal commitments or agreements made by Alleghany's subordinates are not binding on Alleghany until they have been confirmed by Alleghany in writing. If the parties agree to deviate from the above, then this must be confirmed in writing.
4. All characteristics of the goods to be handled plus all special requests relating to their handling must be included in the agreement. If this is not the case, Alleghany is always entitled to refuse to handle the goods, or to suspend handling them or interrupt or cease handling them and/or to take whatever measures it deems appropriate with respect to these goods, without Alleghany being liable in any way and entirely at the customer's expense.

### **Article 3 - Prices**

1. The prices stated in the quotation are based on the tariffs, wages, etc. that apply at the date on which the quotation is given. These prices only cover remuneration for the work to be carried out by Alleghany under the agreement, i.e. they are exclusive of subsidiary services, inspection activities, packaging, shipping, turnover tax (VAT), fines, taxes, levies, costs and charges. These costs are to be borne entirely by the customer, unless agreed otherwise in writing.
2. If one or more of the factors determining the cost price is increased by five per cent or more on an annual basis after the date of the quotation, or if the order is carried out outside normal working hours, Alleghany has the right to increase the agreed price retrospectively by a corresponding amount.
3. If the goods received by Alleghany differ from the description given by the customer and additional measures are required, then Alleghany can increase the prices correspondingly.
4. All prices stated in the agreement are in euros unless otherwise stated. If the prices are expressed in a different currency and the value of that currency drops by more than one per cent against the euro after the agreement is signed, then the prices will be increased so that the corresponding euro value is the same as the price at the time that the contract was signed.

### **Article 4 - Implementation of the agreement**

1. Alleghany is free to choose how the agreement will be implemented, unless otherwise agreed in writing.
2. When carrying out the work for the agreement, Alleghany may use third parties and/or employees of third parties and/or equipment of third parties. These general terms and conditions are also applicable to the work carried out by these third parties.
3. If the customer uses third parties, Alleghany must always be notified of this and either the customer or the third party must pay Alleghany reasonable remuneration for providing facilities to this third party and/or for other costs incurred by Alleghany in relation to this cooperation. The customer and the third party are

jointly and severally liable for the said payment. If the customer does not comply with this, Alleghany is not obliged to allow the third party in question access to its premises.

4. Dates and timeframes shall be determined by Alleghany by approximation. Alleghany will attempt to observe the agreed duration as accurately as possible. If the agreed duration is exceeded, this does not give the customer any right to claim damages and/or dissolution of the agreement. Any costs associated with the agreed duration being exceeded are to be borne by the customer.
5. If Alleghany carries out additional work, the costs associated with it are to be borne by the customer. Items to be regarded as additional work shall include everything done by Alleghany, whether on request by the customer or as can be reasonably deemed necessary during the implementation of the agreement, above and beyond that which is expressly defined in the agreement or order confirmation, and everything for which additional costs are incurred as a result of the activities being implemented differently from the manner stated in the agreement. These general terms and conditions are also applicable to the additional work.
6. All goods supplied by the customer must be packaged according to the instructions defined and must be marked in a manner that is comprehensible to Alleghany to show the makes, numbers, properties, method of packaging, quality, conditions, weight and any other indications that may be of importance for packaging and storage. If the customer does not comply with this, Alleghany is entitled to refuse the goods and charge for any additional work.
7. Alleghany is always entitled to open any packages and inspect the contents if Alleghany suspects that the contents have not been listed correctly. Should the content be different from what was stated, the costs of the inspection will be borne by the customer. Alleghany is never responsible for the description and/or indications of the items taken into storage.
8. The documentation that Alleghany provides shall provide complete evidence of the nature, the contents and the scope of the work carried out. Alleghany's documentation takes precedence over that of other parties.

#### **Article 5 - Cancellation of the agreement at an interim point**

1. Alleghany can cancel the agreement at any intermediate point if the customer does not meet its obligations or if it can be foreseen that it will be unwilling or unable to do so.
2. Alleghany can cancel the agreement at any intermediate point if Alleghany is in such a position that completion of the agreement cannot reasonably be expected.
3. If the customer wants to cancel a continuous order or reduce its scale by more than 25% per year, than a period of notice must be observed of one month for each year that the activities have been carried out, with a minimum period of notice of one year. A continuous order is the situation where Alleghany has been carrying out work on a regular basis for the customer for a period of at least four years.

#### **Article 6 - Payment**

1. Unless expressly agreed otherwise in writing, payment for the work shall be made within a period of thirty days counting from the date of the invoice, irrespective of whether there are any delays in the implementation of the agreement.
2. Costs, levies and taxes incurred by Alleghany with respect to third parties must be paid by the customer within eight days of the date of the invoice.
3. Alleghany has the right at all times to ask for an advance, a cash payment or other surety that it deems suitable for an invoice and/or payment for (ongoing) activities and/or for any other claims and – without prior warning notice, notification of default or judicial intervention and without any liability on Alleghany's part – to refuse work at any time or to suspend, interrupt or cancel it until any request as defined above has been complied with appropriately.
4. Alleghany is not obliged to stand surety from its own resources for payment for activities carried out by third parties and/or costs if this is requested. The risks and expenses of all consequences of not complying or not correctly complying with an obligation to provide surety are to be borne by the customer. If Alleghany has provided surety from its own resources, it is entitled to claim immediate payment by the customer of the amount for which it has provided surety.
5. All payments by the customer shall be made without any deductions or settlements into a bank or giro account to be indicated by Alleghany. If the customer does not pay within the agreed period, it will be deemed to be in default without any prior notification of default being required and Alleghany shall be

legally entitled to interest on the amount claimed, at a rate that shall be 4% higher than the legally defined interest rate in the Netherlands, such interest being calculated from the day that the amount becomes due through to payment in full.

6. All costs, both in and out of court, incurred by Alleghany as a result of the customer not meeting any of its obligations towards Alleghany shall be borne by the customer. In the event of late payment, the out-of-court costs shall be at least 15% of the sum owed, notwithstanding Alleghany's right to make additional claims including (but not limited to) suspension of the work, dissolution or partial dissolution of the agreement and/or damages.
7. Payments by the customer will first be settled against the interest and costs owed and then against the principal sum.
8. Alleghany is entitled at all times to balance its claims with respect to the customer against any monies that it may have or may acquire that belong to or are owed to the customer.
9. In the event of bankruptcy or suspension of payments (or requests for same) by the customer or if any property of the customer is sequestered, all claims that Alleghany may have against the customer become claimable with immediate effect.

#### **Article 7 - Right of retention**

1. Alleghany has a right of retention of goods and documents that it has custody of under the agreement against anyone who requests that these be surrendered. Alleghany can also exercise this right for anything that the customer owes, in relation to prior and subsequent agreements.
2. Alleghany is never responsible for damages consequential to execution of the right of retention.

#### **Article 8 - Pledges**

1. All goods, documents and monies that Alleghany has or shall be given custody of for whatever reason and for whatever purpose serve as a pledge for Alleghany against all claims that it may have or may acquire against the customer or any other party with rights to these goods and monies.

#### **Article 9 - Customer's liability**

1. The risks and expenses for all handling and activities shall be borne by the customer.
2. The customer is responsible for all losses and/or damages resulting from incorrect, inaccurate and insufficient or delayed deliveries, particularly (but not exclusively) with regard to the numbers, weight, nature or quality of the goods or their packaging. This liability applies with respect to Alleghany, other customers whose goods are stored at Alleghany, and third parties. This liability also covers the costs or any measures taken to restrict damages.
3. The customer is obliged to inform Alleghany about all the characteristics of the goods covered by the agreement. If damages arise as a result of these characteristics, the customer is liable with respect to Alleghany, to the other customers whose goods are stored at Alleghany and to third parties for such damages, irrespective of whether Alleghany was informed of the characteristics. This liability also covers the costs or any measures taken to restrict damages.
4. The customer must provide Alleghany with sufficient instructions and information about how the goods are to be stowed and must inform Alleghany in writing of any objections to the way they are to be stowed. If the customer fails to do this, the customer is responsible for any damages arising from the incorrect stowing of the goods.
5. The customer must ensure that Alleghany has all the details and documents to be provided by the customer in good time. The customer is liable for any omissions and any damages incurred by Alleghany as a result, and must also indemnify Alleghany against claims from third parties if necessary. Alleghany is not obliged to investigate whether the details and documentation provided to it is complete and correct.
6. The customer must ensure that its business resources are fully suitable for the goods and the working methods employed by Alleghany and that they can be used straight away, so that the implementation of the agreement can be continued with no delay. If this is not done, the customer is liable for any resulting damages and costs.
7. If it is so agreed, the customer must removed the stored goods (or have them removed) by no later than the last day of the agreed period, or (in the event of storage for an unlimited period) no later than the last day of a period to be set by Alleghany that shall be at least 15 days. If the goods have not been removed by the said time, Alleghany is entitled to remove the goods at the risk and expense of the customer and

store them (or have them stored) elsewhere, again at the risk and expense of the customer. In such a case, the customer is liable for all resulting costs and damages.

8. If the goods are sold or the title to them is (partially) transferred during the implementation period of the agreement, the customer remains liable in full for the transferred goods, unless the new owner has acknowledged the same obligations and liabilities with respect to Alleghany as the customer, and has done so in writing to Alleghany.
9. The customer will inform any third parties that are involved from the customer's side in implementing the agreement about these general terms and conditions and shall sign a contract to that effect; the penalty for not doing so will be the exclusion of all Alleghany's liabilities. If this obligation is not met, the customer shall indemnify Alleghany against all claims by third parties.
10. The customer must take out sufficient insurance for the risks and liabilities arising from the implementation of the agreement. In the event of damages, the customer must in the first instance register the claim with the insurer before holding Alleghany liable for the damages concerned.

#### **Article 10 - Alleghany's liability**

1. Alleghany is only liable for damage and/or loss if and insofar as it is proven by the customer that the damage and/or loss is the result of deliberate acts or gross negligence on the part of Alleghany's subordinates. Alleghany is not liable for loss and/or damage as a result of deliberate actions or gross negligence by those who are not Alleghany's subordinates.
2. Except in the case of deliberate acts or gross negligence on the part of its subordinates, Alleghany shall under no circumstances be liable for (the consequences of) not meeting its obligations or failing to do so in time as a result of *force majeure*. The following is a non-exhaustive list of *force majeure* events: war or the threat of war, mobilisation, civil unrest, state of siege, sabotage, war risk, vandalism, rioting, terrorism, hostage-taking, quarantine, traffic disruptions, storms, fog, lightning strikes, flooding, high and low tides, frost, freezing, floating ice, strikes or lockouts, fire, labour unrest, break-ins, explosions, nuclear reactions, failure of water and/or energy supplies, other serious disruptions to Alleghany's operations, repairs required to the equipment used for the implementation of this agreement, disruptions due to legal stipulations, governmental restrictions and any other hindering circumstances that are not purely due to Alleghany's actions, even if this could already be foreseen at the time the agreement came into existence.
3. In the event of *force majeure*, Alleghany shall be entitled either to extend the agreed period for the execution of the work by the duration of the *force majeure* situation, or to cancel the agreement or such part of it as was not executed, without owing any damages.
4. The financial and other obligations of the customer that had arisen before the *force majeure* situation nevertheless remain in effect. The costs that arise as a result of the *force majeure* situation shall be borne by the customer. This also covers the costs of any measures taken to limit damages.
5. The presence of everyone who is located on Alleghany's premises, in or on Alleghany's vehicles or at the place where the work is being carried out, plus everything they have with them, is at their own risk and they must strictly follow the regulations and/or instructions given by governmental bodies and by Alleghany, at the first time of asking. Where this is not done, Alleghany has the right to take whatever measures it deems desirable, with the costs and risks being borne entirely by the customer. Alleghany does not accept any liability for physical injury or material damage if the regulations and/or instructions are not followed.
6. Alleghany is authorised at all times to refuse access to its premises to persons it does not wish to have present, or to have them removed.
7. The customer is responsible for damages incurred during the implementation of the agreement by Alleghany, Alleghany's staff or third parties employed by Alleghany. This applies irrespective of whether the customer itself and/or others have also suffered damages.
8. Where Alleghany is responsible for loss or damages, other than loss of or damage to goods, Alleghany's obligation to recompense such damages shall always be restricted to a maximum of €50,000 for each event that causes damage.
9. The compensation that Alleghany shall owe as a result of loss or damages to goods shall always be limited to a maximum of €50,000. The damages to be recompensed by Alleghany shall never exceed the invoiced value of the goods as provable by the customer; if there is no such proof, the market value as provable by the customer at the moment the damage occurred will be used.
10. Alleghany shall never be liable for any consequential or immaterial damages or damage to equity.

11. Alleghany has no responsibility or liability towards the customer for differences in measurement, weight, quantity and/or quality.
12. The customer indemnifies Alleghany against all claims by third parties who are directly or indirectly involved in the implementation of this agreement.
13. The above-mentioned stipulations restricting the liability are applicable to all damage claims, including claims for compensation as a result of criminal actions.
14. Any liability on the part of Alleghany lapses if it is not notified in writing of the alleged damage and/or loss within thirty days of the completion of the work.
15. Payment of compensation for damages by Alleghany to the customer only implies any guilt and liability on the part of Alleghany if Alleghany has expressly acknowledged this.
16. Where damage arises or can arise or where any regulation or instruction is not followed, Alleghany is entitled to refuse to do the work or to suspend, interrupt or cancel it, as well as to take further measures that it deems desirable without any liability arising on Alleghany's part.

#### **Article 11 - Time limit**

1. Every claim for damages against Alleghany relating to loss or damage of goods will expire after the passage of two months after the goods left Alleghany's terminal.
2. Claims against Alleghany other than the above-mentioned claims for compensation for damages expire when two months have passed since the claimed situation arose.
3. The above-mentioned time limits are applicable to all contractual and non-contractual claims for compensation for damages.

#### **Article 12 - Applicable laws and competent jurisdiction**

1. This agreement and other agreements subsequent to it shall be subject to Dutch law.
2. The court at Middelburg (NL) shall be deemed exclusively competent to handle disputes relating to the agreement or other agreements associated with it.

#### **Article 13 - Explanation of conditions**

1. These general terms and conditions have been drawn up in both Dutch and English and have been lodged with the court. In the event of differences of content or intent, the Dutch text shall take precedence.
2. If the opinion of the competent judge is that any stipulation of these general terms and conditions are in anyway invalid, contradictory to law or otherwise unenforceable, then this will not affect the remaining stipulations of this document in any way.