

## **GENERAL TERMS AND CONDITIONS ANTWERP EUROTHERMINAL NV**

The present document contains the general terms and conditions (the "Terms and Conditions") of ANTWERP EUROTHERMINAL NV, with headquarters in Blikken, Kaai 1333, 9130 Beveren (Verrebroek), Belgium and are registered in the national companies register under the number 0474.283.874 (hereafter "AET").

Depending on the specific services and/or goods requested by the Customer respectively those delivered by AET, the following terms and conditions shall be applicable:

- A: GENERAL PROVISIONS
- B: TERMS AND CONDITIONS REGARDING FREIGHT HANDLING
- C: TERMS AND CONDITIONS REGARDING VEHICLE PROCESSING AND PRE-DELIVERY INSPECTION

The terms and conditions under A and B are applicable to all deliveries of services and/or goods by AET. The terms and conditions under C are also applicable if the delivered services concern vehicle processing and/or pre-delivery inspection.

### **A. GENERAL PROVISIONS**

#### **1. SCOPE**

- 1.1. These Terms and Conditions are applicable to all agreements, quotations and deliveries of services and/or goods (hereafter "Assignment"), whether it is paid or not, from AET to the customer (hereafter "Customer"). These terms and conditions are applicable to all of AET's contractual and all non-contractual obligations and responsibilities.
- 1.2. The Terms and Conditions apply with the exception of all other general or exceptional terms and conditions that may be communicated by the Customer at any moment, unless AET explicitly accepted possible divergent terms and conditions in writing and only for the specific Assignment which these divergent terms and conditions were approved.
- 1.3. These Terms and Conditions do not prejudice the regulations and the use of Antwerp Harbour and/or Zeebrugge insofar as they are applicable.
- 1.4. By placing an order, the Customer declares that they have read and accept these Terms and Conditions. By accepting these Terms and Conditions, the Customer agrees to the application of these Terms and Conditions on possible future business relationships or agreements between AET and the Customer.

#### **2. ORDER AND ACCEPTANCE**

- 2.1. All offers and quotations from AET are non-committal and are therefore not binding. Orders or order confirmations placed by the Customer are only binding for AET when this has been explicitly accepted by AET.
- 2.2. All orders or order confirmations placed by the Customer bind the Customer with respect to AET.

#### **3. PRICE AND PAYMENT**

- 3.1. Unless explicitly agreed otherwise between Parties, AET's invoices are payable in cash and in Euros at AET's headquarters. AET has the right to convert the prices and the amounts due into another currency, this is based on the exchange rate applicable at the time of the conversion.
- 3.2. Unless explicitly agreed otherwise between Parties, all prices, handling tariffs and other tariffs which are stated in these Terms and Conditions or any contractual or commercial document by AET do not include taxes, withholding taxes or other possible taxes. The Customer is responsible for paying these taxes or duty charges (depending on the case) to AET or to the competent authorities.
- 3.3. If there are any doubts on AET's behalf regarding the credit value of the Customer (among others) due to a court decision against the Customer, a non-payment or a late payment of one or more invoices or otherwise, AET shall have the right to demand prior payment, or (other) guarantees in order to (fully or partially) provide other goods or services. If the Customer refuses AET's demands, AET is authorised to immediately and unilaterally terminate the Assignment without being liable to any compensation. When applicable, by operation of law and without prior

Notice of default, a fixed compensation of ten (10) % of the price of (the part still to be provided) the Assignment is owed to AET.

- 3.4. All of AET's claims with respect to the Customer form one undivided compensation, this also includes claims from previous Assignments or for goods that are no longer being handled by AET. In this respect, AET reserves the right to, inter alia: (i) to use their right of retention on goods that they keep as a guarantee for payments of claims regarding the handling or efforts related to goods they no longer have and (ii) possible claims for compensation the Customer may have on AET with the claims that AET has on the Customer based on another Assignment.
- 3.5. The Customer is not allowed to compensate for their own claim on AET with an AET claim on the Customer, unless there is prior explicit approval from AET.
- 3.6. Our invoices are considered irrevocably accepted if they are not protested within fourteen (14) calendar days after the invoice date. This period is an expiry period. Protesting an invoice shall solely and only be taken into consideration if this is done in writing by registered letter to AET headquarters or by e-mail to the relevant department, whereby a confirmation of receipt of the e-mail shall be sent by the relevant department. All protests of the invoice should at least include the following data: (i) the invoice date and the invoice number, (ii) the part of the invoice that is being protested and (iii) an explicit reason for the protest.
- 3.7. In the case of a non-payment or a late payment of compensation or an invoice within the period stated, by operation of law and without notice of default, a penalty interest is owed at an interest rate conform with the Law to combat late payments in business transactions d.d. 2 August 2002. In addition, by operation of law and without notice of default, there is a fixed amount of compensation payable at a rate of 10% on top of the invoice amount still payable, with a minimum of 125.00 EUR for administration costs. This article does not prejudice AET's right to demand higher compensation provided that there was greater damage incurred.
- 3.8. AET has the right to, without prior notice of default, fully or partially cancel the provision of their services if the Customer does not comply with any of the obligations with respect to AET, which includes payment obligations, or any other reasons. The Customer also recognises that they are never allowed to suspend their payment obligations themselves.
- 3.9. In the case of a non-payment or late payment of an invoice all of the Customer's other debts that have not yet expired are, by operation of law and without notice of default, payable.

#### **4. RIGHT OF RETENTION AND PROPERTY**

- 4.1. AET is authorised to - as referred to in art. 1948 BW respectively art. 73 from the Property Law - issuing/returning all goods (which includes containers and similar items) which are entrusted to AET by the Customer or which were handled or transported by AET, until the moment the Customer has paid the amount payable to AET and regardless of whether or not the amount payable by the Customer concern the goods held by AET.
- 4.2. The Customer gives AET an irrevocable property right for the purpose of art. 1 et seq. from the property law on all present and future moveable goods that are entrusted to AET or which will be entrusted to them in the future for storage, transshipment, handling or any other services, this may be used as a guarantee for the full payment of all present and future contractual debts that the Customer may owe AET, based on invoices or other accountancy documents and regardless of whether or not this debt is being protested or not. The moveable goods provided in the property do not necessarily need to cover the guaranteed debts.

The debts the Customer owes AET are guaranteed by the 'property' referred to in this article up to a maximum of 1,500,000.00 EUR (including interest, damage and implementation costs).

The Customer therefore hereby gives AET explicit exceptional power of attorney to register the aforementioned property law on certain present or future goods in the National Property Register and where necessary shall therefore lend assistance or take the necessary action to make sure the registration of the property right takes place.

- 4.3. The Customer confirms that they have the authority to possess the goods entrusted to AET. The Customer shall safeguard AET for all claims from any third parties until the goods that were entrusted to AET by the Customer are returned so that AET is able exercise their right of retention or property right. If AET is faced with any claim for returns from a third party, the Customer shall voluntarily intervene in the procedure concerned and compensate AET for any compensation they may need to pay to the third party concerned.

## **5. LIABILITY**

- 5.1. Costs due to delays, e.g. due to weather conditions, unforeseen working conditions etc. independent of AET's desires, are still charged to the Customer. As a result, the prices agreed for AET's services may be increased with these costs.
- 5.2. The Customer should notify AET in writing of any of the goods' characteristics that could influence the way in which the assignment is carried out for the conservation of the goods and for the safety of those carrying out the assignment. In the absence of this, AET cannot be held liable within the framework of the Assignment.
- 5.3. AET is not liable:
- For damage which is not proven to be the direct consequence of concrete evidence of their own fault and/or that of their agent;
  - For indirect damage (which includes but is not limited to lost profit, economic loss, consequential damage, immaterial damage, lying or standing fees, duties, transport costs);
  - For damage that is fully or partially caused by a defect on the entrusted goods, the packaging, the containers and similar materials;
  - For damage that is a result of incomplete or incorrect instructions from the Customer. The Customer is responsible for providing specific instructions with all the entrusted goods, so that in the case of a defect, the goods can be deemed to be handled in the usual way;
  - For damage caused by a lack of workers, docks, parking spots, access options, raw materials, fuel or energy, etc.;
  - For serious or deliberate mistakes committed by their workers, employees, representatives or agents;
  - For damage resulting from their own small mistake.
- 5.4. AET's contractual and non-contractual liability is at all times limited to the total amount of 50,000.00 EUR for all results from the same fact, even if it is a serious mistake.
- 5.5. All claims from the Customer for compensation from AET expires by operation of law if this is not made pending by the authorised judge within the period of one (1) year after the facts which the claim is based on were known by the Customer or could be reasonably known.
- 5.6. In the case of incompatibility between the provision concerning liability under part A of the Terms and Conditions and the provision concerning liability under parts B and C of these Terms and Conditions, the terms and conditions provided under part B or part C (insofar as applicable) shall be prioritized. If a provision can be interpreted in two ways, the means of interpretation that does not go against other provisions in these Terms and Conditions shall take precedence.

## **6. TERMINATION**

- 6.1. AET can (without prejudice to their right to cancel their efforts) terminate the Assignment by registered letter without legal intervention with immediate effect and without owing any compensation.
- (i) If the Customer neglects their commitments with respect to AET and this negligence, having been provided with a notice of default, is not fixed within fourteen (14) calendar days;
  - (ii) In the case of fraud, misappropriation, defamation or any offence committed by the Customer;
  - (iii) If the customer is declared bankrupt, in a state of liquidation or ends up in any other condition of insolvency or discontinuity;
  - (iv) If, after a period of more than three (3) months, the Customer is faced with the impossibility of completing their obligations towards AET due to a situation of force majeure;
  - (v) If an administrator is appointed to the Customer;
  - (vi) An important change occurs in the shareholder structure of the Customer which could in any way have a negative impact on AET or the business relationship between AET and the Customer.
- 6.2. In the case of a termination, in accordance with article 6.1 of these Terms and Conditions, the amount payable to AET from the Customer which has not yet expired are claimable by operation of law and without notice of default.

## **7. CONFIDENTIALITY**

- 7.1. If "Confidential Information" is considered all information, in all forms, that is explicitly qualified as confidential by AET or which, depending on the content thereof or the way in which this shall be transferred, should be considered reasonably confidential.
- 7.2. The Customer commits to taking all reasonable efforts to protect the confidential nature of AET's Confidential Information, this confidential information is, inter alia:
- Only for use as part of their relationship with AET;
  - Not to be shared or made publicly available, fully or partially, orally or in writing, unless the representatives involved in the executing their obligations towards AET. These representatives shall be informed regarding the confidentiality obligations in these Terms and Conditions. The Customer remains liable to AET for any breach of these obligations by any of their representatives;
  - Not to be shared or made available to third parties unless there is prior consent in writing from AET.
- 7.3. Information that is not explicitly considered Confidential Information is information:
- That is made public without an infringement on the provisions of these Terms and Conditions;
  - That is legally obtained from a third party that is not bound by an obligation to confidentiality;
  - That should be released as part of a dispute settlement, from an arbitration or legal procedure, or in accordance with legislation;
  - That is developed or discovered by the Customer in a completely independent way, provided that this can be clearly proven by the Customer.

## **8. FORCE MAJEURE AND UNPREDICTABILITY**

- 8.1. "Force Majeure" is considered all incidents that are not attributable to AET that make the execution of their commitments impossible, hindered or delayed, incidents include but are not limited to: war, terrorism, pirates, fire, explosions, storms, strong gusts of wind, flooding, lightning, mist, strikes (including an announced strike), lock out, lack of personnel, epidemic, an infringement by AET's suppliers of their obligations with respect to AET, theft and material damage.

If, despite the efforts made by AET to protect and secure their IT infrastructure, systems, applications, databases (collectively: "AET ICT Environment"), if AET cannot fulfil their commitments due to a disruption of the AET ICT Environment caused directly or indirectly by an external cause (including but not limited to: a virus, hacking, phishing or a similar event), is considered as a case of force majeure. As a result, AET's obligations are suspended until the cause of such an incident of force majeure can be determined, the consequences can be completely resolved and the AET ICT Environment is repaired.

- 8.2. If, due to Force Majeure and circumstances outside their control, AET is prevented from executing their commitments towards the Customer, either fully or partially, the execution of these commitments shall be suspended until the Force Majeure situation has ceased, all of this is without having to pay any compensation to the Customer.

If the suspension lasts longer than three (3) months or as soon as it is kept still for at least three (3) months, all Parties can fully or partially terminate the Agreement by registered letter with immediate effect, this is without having to owe any compensation to the other Parties. If AET, at the time of the termination, has partially executed their obligations, a pro rata part of the total price shall be payable by the Customer.

- 8.3. If exceptional circumstances outside the control of AET influence the scope or gravity of AET and the Customer's respective rights and obligations in a disproportionate way to AET's disadvantage (including, but not limited to, increasing the cost for work, energy, material and/or material), the Parties shall adapt the Terms and Conditions shared between them at the request of AET in mutual consultation, in order to restore the original balance of rights and obligations, taking into account the respective interests of both Parties.

If Parties do not succeed in achieving the agreement, within a period of thirty (30) days after the date of AET's request, with regards to the recovery of the contractual balance, AET shall be authorised to immediately terminate the Assignment by registered letter, without owing the Customer any compensation. If AET, at the time of the termination, has partially executed their obligations, a pro rata part of the total price shall be payable by the Customer to AET.

## 9. VARIA

- 9.1. If any provisions (or a part of) these Terms and Conditions are unenforceable or inconsistent with mandatory legislative provisions or public order, then the validity and enforceability of the other provisions in these Terms and Conditions remain unaffected (as well as the part of the relevant provision that is unenforceable or inconsistent with a mandatory legislative provision).

In this case, the Parties shall negotiate in good faith to replace the unenforceable or inconsistent provision with an enforceable and legal provision that affiliates with the goal and the scope of the original provision as closely as possible.

If AET does not exercise a right or a legal remedy under these Terms and Conditions, or the exercise thereof is postponed, this may not be considered a waving of or a renunciation of this right or legal remedy.

None of the provisions in these Terms and Conditions nor the behaviour of Parties, shall give rise to or be supposed to give rise to establishing a company, an association, temporary company, joint venture or any other kind of collaboration between Parties.

## 10. Appropriate law and jurisdiction

These Terms and Conditions and all agreements and relationships for which these Terms and Conditions apply, are exclusively governed by and should be interpreted in accordance with Belgian law.

All disputes fall exclusively under the authority of the courts of Antwerp, department Antwerp.

## B. TERMS AND CONDITIONS REGARDING FREIGHT HANDLING

1. Part B ("*General provisions regarding freight handling*") is applicable to all situations whereby AET's assignment (fully or partially) consists of activities of a manual or intellectual nature that, inter alia, concerns loading, offloading, handling, receiving, controlling, highlighting, delivering goods, storing, transport in the harbour (R.D. 12.8.1974 art. 2 § 4) including all related and additional assignments. This list is not limiting.

All of AET's Assignments that fully or partially concern one or more of the aforementioned activities are subject to the ABAS-KVBG general terms and conditions for the freight handling and related activities of Antwerp Harbour, as included below.

In the case of conflicts between the provisions under part A of these Terms and Conditions and those under part B of these Terms and Conditions, the provisions under part B (as far as applicable) take precedence.

2. All Assignments entrusted to AET are tied to the following terms and conditions that manage the business relationship between AET and the Customer and whereby the Customer is the client and AET is the contractor who accepts the aforementioned Assignment and carries it out or ensures it is carried out.
3. AET is only liable for material damage and/or loss that is a direct result of a clearly proven mistake on their part. Under no circumstances shall more than the actual damage be compensated, whereby AET's liability is limited to 2 EURO per kg of gross weight that is damaged or lost. For steal products (like, inter alia, coils, sheets, plates, slabs, pipes, tubes, beams, bars, blooms, billets, wire rods and cast iron pipes) a liability limit of 1000 euro per item is applied.

Irrespective of the number of items or the weight, the maximum liability shall never be more than 25,000.00 EURO per incident or series of incidents that started from the same single cause. For damage caused to the ship or means of transport, the liability shall never be more than 25,000.00 EURO.

In the confluence of various claims with regards to damage to the ship or mode of transport, damage of loss of goods or material, made available by the client or through third parties, the complete responsibility shall not be more than 50,000.00 EURO regardless the number of injured parties.

4. All costs resulting from decisions made by the government and all claims that the government has or believes they have against AET, as well as all costs that AET shall need to make in order to defend themselves against these liabilities will be charged to the Customer.
5. The client who can invoke discharge clauses and/or limitations shall stipulate these in favour of the contractor. The client confirms that the goods that are the object of the assignment, either their property, or that they as an authorized agent of the owner of these goods they have the right to have these goods, so that they not only accept the following Terms and Conditions for themselves but they also explicitly accept on behalf of their client and/or any other rights holder of the goods.
6. With regards to payment of payable compensation to the contractor, the following rules apply:

- a) Advance payments should be paid back in cash on submission of the supporting documents.
  - b) All amounts charged by the contractor are payable in cash, unless another payment term is agreed upon between the contractor and the client.
  - c) Any protests against an invoice should be received by the contractor in writing within the 14 days after the date of invoice. A partial protest does not suspend the payment of the non-protested part of the invoice.
  - d) In the case of a late payment there is automatically a late payment interest that is equal to the interest base of the Law to combat late payments in business transactions d.d. 2 August 2002.
  - e) In addition, as of one notice of default, there is a fixed amount of compensation payable at a rate of 10 % on top of the invoice amount, which is a minimum of 125.00 EURO for administration costs.
7. The contractor is exempt from liability in each of the following cases:
- All immaterial, indirect and/or consequential damage such as waiting times, lying and standing fees, business damage, fines and/or similar taxes; this list is not limiting;
  - All damage and loss that arises before or after the actual completion of the assignment for the contractor;
  - Force majeure;
  - Lack of personnel;
  - Theft;
  - An inherent defect in the goods and/or the packaging.
  - Flooding, whirlwinds, collapses, explosions and fire, who or what in all of the incidents named could have been the cause.
  - Mistakes by third parties and/or the client;
  - Not sharing or sharing incorrect data or instructions or sharing incorrect or incomplete data or instructions by the client and/or third parties;
  - All damage due to an unpredictable defect of the contractor's company assets.
8. The client should adhere to the following practical rules:
- a) By passing on the instructions, in plenty of time before starting the work activities, the client shall share the following with the contractor.
    - The correct and accurate description of the goods, inter alia, type, amount, weight, condition and hazard class.
    - All instructions and all limitations linked to protection, the handling or the storage of the goods and the completion of the assignment in general.
    - All instructions regarding the protection of the agents.
  - b) The goods should have all the necessary markings in relation to their characteristics. Unless the usual is to not package the goods, the client must package the goods in order to carry out the assignment.
  - c) The allotted means of transport should be offered so that the assignment can be completed immediately and this is in accordance with the usual working methods and the legal provisions. The contractor does not guarantee securing the load, unless agreed otherwise in writing. The carrier is obliged to verify the vehicle to see -if applicable - if the stowage and securing of the load has happened in accordance with the technical requirements specific to the vehicle and in accordance with the applicable legal provisions.
  - d) The installations, warehouses and company assets can be checked by the client for its adequacy for the commissioning. In the case of the absence of such checks or of any substantiated reservation, they are deemed to have been found suitable.
 

The client indemnifies the contractor for claims and deems them as indemnified for the damage they suffered and the losses and costs that stem from a breach of the aforementioned obligations even if the breach is due to third parties.
9. Unless explicitly agreed otherwise with the client, the contractor shall under no circumstance take care of insuring the goods. Parties and respective insurers mutually waive the narrative for all damage that is a result of fire, explosions, lightning strikes and impacts by aircrafts. The client shall assume responsibility for the removal and disposal of the goods damaged by fire.
10. The contractor shall carry out the assignment to the best of their ability, and in accordance with the customs, uses and regulations at the harbour.

11. As security for the payment of client owes to the contractor for the handling, storage and additional activities for these and previous goods, they shall be granted a right of retention and property, in accordance with art. 1948 of the Civil Code and the provisions of the law from 5 May 1872, even when the bearer's warrants or storage certificates are delayed.

If the client continues to default, the contractor, after a notice of default, is authorised to sell the goods in accordance with the procedure as provided in the law of 5 May 1872. In terms of property, (when necessary) refer to article 4 of part A of these Terms and Conditions ("*right of retention and property*").

12. If the client has not protested in writing and with reason by the end of the work activities at the latest, all the contractor's liability expires.
13. Without prejudice to the aforementioned provisions, all claims against the contractor expire one year after noticing the damage and/or defects, or in the case of a dispute one year after the date of invoice, unless the law provides a shorter term.
14. All legal relationships between the client and contractor are settled in accordance with these general terms and conditions and according to the Belgian law unless agreed otherwise between both Parties.

In the case of disputes, the courts of the legal district of Antwerp, the department of Antwerp have exclusive authorisation. In the case of disputes, the Dutch text shall be decisive.

### **C. TERMS AND CONDITIONS REGARDING VEHICLE PROCESSING AND PRE-DELIVERY INSPECTION**

Part C of these Terms and Conditions is, cumulative with parts A and B, applicable when AET's Assignment consists of acting as *Vehicle Processing Centre* (VPC) or services with regards to *Pre Delivery Inspection* (PDI). The activities concerning VPC and PDI encompass, inter alia: the inspection of vehicles, wax, cleaning products and applying a protective film, the installation of accessories and carrying out factory reworks, adjusting and repairing vehicles, upgrading vehicles, refurbishing vehicles, etc.

In the case of contradiction between a provision under part C of the Terms and Conditions and the provisions under part A or B of the Terms and Conditions, the most advantageous provision for AET shall take precedence.

#### **1. DELIVERY AND ACCEPTANCE**

- 1.1 The deadlines communicated by AET are more of an indication and never give rise to any right to compensation of any kind on the part of the Customer.

The delivery and deadline depend on the compliant and timely delivery of the goods ordered by AET (whether or not by the Customer) that need to be delivered to AET;

- 1.2 Unless explicitly agreed otherwise, the delivery shall be made by EX WORKS at AET's business premises located in Blikken, Kaai 1333, 9130 Beveren (Verrebroek), Belgium.
- 1.3 The Customer is obliged to collect the goods at the agreed time. AET is authorised to do partial deliveries. If the Customer does not collect the goods from at the agreed time, AET shall charge the Customer in full for the further storage and retention costs.
- 1.4 The Customer commits investigate and check the goods immediately on the date of delivery for possible issues in the service provision of and in AET's handling. Possible visible defects, damage or consequences of errors in the service provision should be reported immediately and in all cases to AET within 48 hours after the delivery took place, in the absence of this, all complaints shall be considered inadmissible. Possible complaints do not override the Customer's payment obligations.
- 1.5 AET's liability for possible invisible consequences of alleged errors in the service provision is limited to consequences that manifest within 12 months after the delivery to the Customer, and this is only insofar as AET is informed within five (5) working days after the discovery thereof.
- 1.6 Complaints due to visible defects, damage or consequences of errors in the service provision are only admissible if the Customer has not used the goods yet. If the Customer is of the opinion that the delivered good is damaged as a consequence of the alleged error in the service provision, they should leave the good properly untouched for further investigation.

Unless explicitly agreed otherwise, the transport of the Customer's goods in relation to a specific order takes place at the Customer's risk and expense. Returning goods to AET is only possible if AET agrees in writing.

## **2. WORK'S CONFORMITY AND LIABILITY**

- 2.1. The works with regards to VPC and PDI shall be carried out in accordance with the technical specifications and instructions from the Customer. The Customer is responsible for the chosen work methods and materials. AET carries out their works according to the instructions and procedures recommended by the Customer, who is therefore exclusively liable for the consequences thereof. Therefore, AET is, as the mere executor of these instructions, not in any responsible for the consequences of the Customer's instructions.
- 2.2. The costs for returns from the vehicle to AET, as well as the journey and labour costs are still charged to the Customer.
- 2.3. The Customer is responsible for complying with possible applicable regulations with regards to the Conformity of Production (COP) and the Agreement Certificate (AC) and shall take on all of the accompanying ongoing costs and shall also safeguard AET in this respect.
- 2.4. The Customer's decision to recall one or more products is a commercial decision specific to the Customer for which the Customer also has to carry all the practical and financial consequences.

The Customer shall only be able to establish a claim for compensation with regards to a recall against AET if there is proof of a serious error on AET's behalf, whereby AET's liability shall be limited to (i) the amount AET invoiced the Customer for the product being recalled or (ii), in the case of a recall of a series/batch of products, the amount per product recalled as intended under (i) with a maximum of 15,000.00 EUR in total.

The liability limit stated in this article 2.4 of part C of the Terms and Conditions takes (as far as applicable) precedence over the liability limit stated under article 5.4 of part A of these Terms and Conditions.