

# TRANSFENNICA LOGISTICS B.V.™

## Sub-contracting Conditions 2016.1

### 1. DEFINITIONS

"Company" - means Transfennica Logistics B.V. and/or subsidiaries and/or associated companies acting as forwarder for and on behalf of its principal(s), the latter to have separate rights under these sub-contracting conditions towards the Sub-Contractor hereunder.

"Sub-Contractor" - means any person, firm or company who enters into a contract with the Company for the carriage, transportation, forwarding or storage of goods including liquids, gases, solids and powders, whether loaded or unloaded.

"these Conditions" - means the Conditions of Sub-Contracting 2016.1 of the Company printed herein and as varied from time to time.

"CMR Convention" - means the provisions of the Geneva Convention concerning the International Carriage of Goods by Road, dated 19<sup>th</sup> May 1956 as amended by the Protocol amending the Convention, dated 5 July 1978.

"CIM" – means the provisions of Annex B to the Bern Convention concerning International Carriage by Rail (COTIF), dated 9<sup>th</sup> May 1980, as amended by the Vilnius Protocol for the modification of said Convention, dated 3<sup>rd</sup> June 1999.

"HAGUE VISBY RULES": shall mean the provisions of the International Convention for the Unification of Certain Rules of law relating to Bills of Lading, signed at Brussels on 25<sup>th</sup> August 1924 and includes the amendments to the Convention by the Protocol signed at Brussels on 23<sup>rd</sup> February 1968 as well as the amendments to the SDR Protocol signed at Brussels on 21<sup>st</sup> December 1979.

"Force Majeure" – means any act of God, earthquake, flood, terrorist attack, war or other circumstance that the party relying on Force Majeure was unable to avoid. Not regarded as Force Majeure shall be damage or delay caused by strikes, labour disputes and industrial actions that the parties could reasonably have prevented. Border blockades, road closures, road blockades and unauthorized persons gaining or trying to gain access to Transport Units can never be regarded as Force Majeure.

"Receipt note" - A document proving receipt of cargo by the delivery point; in the case of international transport by road (as defined in clause 13.1 hereunder), this shall be a consignment note as defined in CMR.

"Transport Unit" - means any device used for the carriage, transportation or storage of goods (whether loaded or unloaded) including any container, tanker, vehicle, trailer, vessel, aircraft or other equipment of any type.

The headings in these Conditions are for convenience only and shall not affect their interpretation.

## **2. APPLICATION**

- 2.1 These Conditions and any amendments thereto made pursuant to clause 16 hereof or by written agreement between the parties shall apply to all future (sub-)contracts between the Company and the Sub-Contractor (unless expressly otherwise agreed in writing by the Company as taking precedence over these Conditions in the particular circumstances).
- 2.2 No servant or agent of the Company has the power to, or is permitted to, alter or vary these Conditions in any way. No unauthorised alteration or variation of these Conditions shall be binding upon the Company unless subsequently expressly agreed by the Company in writing signed by a Director of the Company.
- 2.3 Any rights of the Company under these Conditions are in addition to and shall not in any way limit or reduce any defence, right, liberty, immunity, exemption or limitation of the Company under any applicable law, irrespective whether any action against the Company be founded in contract or in tort and even if the loss, damage or delay arose as a result of negligence or fundamental breach of contract. Insofar as any provision contained in these Conditions is inconsistent with mandatory law, the provisions of these Conditions shall to the extent of such inconsistency but no further be overridden.

## **3. FURTHER SUB-CONTRACTING**

The Sub-Contractor may not further sub-contract any service to be performed on behalf of the Company either in whole or in part without the prior written consent of the Company. In case sub-contracting is agreed, the Sub-Contractor shall be responsible for the acts or omissions of his agents, servants or sub-contractors or of any other- persons of whose services he makes use for the performance of the carriage, when such agents, servants or other persons are acting within the scope of their employment, as if such acts or omissions were his own.

## **4. PERFORMANCE OF SUB-CONTRACTOR**

- 4.1 The Sub-Contractor shall:
- 4.1.1 ensure that his employees, servants, agents, sub-contractors (if permitted) and other- persons employed or authorised by him are competent and are in possession of all necessary licenses and permits to carry out the contract between the Company and the Sub-Contractor;
  - 4.1.2 without prejudice to the generality of the foregoing, ensure that every such employee, servant, agent or sub-contractor (if permitted) is fully aware that they shall not, and have no authority to, accept for transportation: (a) any goods other than those properly and lawfully consigned, (b) any persons other than those required for the transportation of the consigned goods, (c) carry out all duties on behalf of the Company in accordance with any specific instruction issued by the Company to the Sub-Contractor and to ensure that all relevant personnel have full knowledge of such information and strictly comply with it.
  - 4.1.3 collect and deliver the goods to be carried at the time specified by the Company or, if no time has been so specified, within a reasonable time and within normal working hours;

- 4.1.4 inform the Company immediately by telephone, telex, e-mail or facsimile transmission of any unusual delay and provide the Company with an explanation in writing on the cause of the delay;
  - 4.1.5 inform the Company immediately in the event of loss, damage or mis-delivery and supply - at its own expense - a full independent survey report - if the Company so requires - of the cause and circumstances together with any further information which the Company may require;
  - 4.1.6 if any loss is, or is suspected to be, due to theft or pilferage, in addition to action under sub-clause 4.1,6, immediately inform the Police and take all reasonable steps to identify the guilty person and to trace and recover the goods;
  - 4.1.7 where goods are consigned "carriage forward", unless otherwise directed by the Company, collect the charges due before parting with the goods and account daily for all monies so received. It is expressly agreed that in the event of breach by the Sub-Contractor of the provisions of this sub-clause the Sub-Contractor shall upon demand pay to the Company a sum equivalent to all charges which should have been collected from the consignee;
  - 4.1.8 subject to the limitations referred to in clause 13 hereof, in the event of any loss or damage to the goods or any delay in delivery, indemnify the Company against any possible liability of the Company and the amount of all costs and expenses incurred by the Company in connection with such liability except where such loss, damage or delay has arisen out of the proven negligence of the Company. In that event the Company shall be liable in proportion to its liability, but no further.
- 4.2 If a vehicle breaks down or for any other reason the Sub-Contractor fails to or is unable to collect the goods or complete delivery in accordance with this clause, the Company may, either itself or by another sub-contractor, without prejudice to any other right it may have, recover the goods and carry them to their destination and the Sub-Contractor shall pay all the Company's charge incurred thereby.

## **5. EMPLOYEES AND AGENTS**

- 5.1 The Sub-Contractor hereby acknowledges that the Company has no day-to-day operational control (in the performance by the Sub-Contractor of the contract with the Company) over employees, servants, sub-contractors and agents of the Sub-Contractor who shall at all times remain under the complete control (and be the sole responsibility) of the Sub-Contractor in all respects. This contract does not create any agency or other relationship apart from a sub-contract between the Company and the Sub-Contractor.
- 5.2 The Company shall not be liable to the Sub-Contractor (or any employee, servant, agent or sub-contractor of the Sub-Contractor) for any loss, damage or personal injury (whether suffered by any employee, servant, agent or subcontractor of the Subcontractor or by any other person) arising out of the performance by the Sub-Contractor of the contract with the Company except where such loss damage or personal injury has been caused directly by the proven negligence of the Company, in which case the Company shall be liable in proportion to its liability, but no further.
- 5.3 The Sub-Contractor shall indemnify the Company against all claims, liabilities, penalties, fines and demands caused by or arising out of the act, default, negligence

of the Sub-Contractor or caused or arising out of the act, default or negligence of any of the Sub-Contractor's employees, agents or sub-contractors or of any third-party operator engaged by the Sub-Contractor in the performance of the Sub-Contractor's contract with the Company.

## **6. TRANSPORT UNITS**

- 6.1 As regards Transport Units whether belonging to the Sub-Contractor or the Company and/or to its customers or to other third parties, the Sub-Contractor shall keep such Transport Units in good safe and workable condition whilst any such units are in his possession or control (or that of any of his servants, agents or sub-contractors). The Sub-Contractor shall be responsible for the loss of, theft or any damage to, any such unit sustained while in such possession or control (or that of his servants, agents or sub-contractors). The Sub-Contractor shall indemnify the Company against the cost of making good such loss, theft or damage to the Owner of the Transport Unit to the Company's entire satisfaction. The Company has the right to require the Sub-Contractor to deliver equipment (at the Sub-Contractor's expense) to a location determined by the Company for inspection and repair (where necessary).
- 6.2 If a Transport Unit (belonging to the Company and/or its customer and/or other third parties) appears to be or becomes damaged or deficient or is stolen, at any time during which it is in the possession or control of the Sub-Contractor or of any of his servants, agents or sub-contractors, the Sub-Contractor shall notify the Company immediately when the damage occurs or a deficiency is discovered and shall furnish written details to the Company as soon as practicable.
- 6.3 A Transport Unit supplied by the Company is to be used only by the Sub-Contractor (or its permitted sub-contractor) and only for the purpose of performing the contract with the Company unless otherwise authorised by a Director of the Company in writing. A Transport Unit shall remain at all times the unencumbered property of the Company or its customers or any other third party (as the case may be) and where the Sub-Contractor employs - in turn - a subcontractor, neither the Sub-Contractor nor its sub-contractor shall sell, charge or encumber it in any way or lease it or allow any lien to be created or exercise any lien over it.

## **7. INDEMNITY**

- 7.1 The Sub-contractor shall indemnify the Company against any and all claims, liabilities, fines, penalties, customs debts (incl. VAT debts) and/or any sums paid in avoiding prosecution, made against or incurred by the Company:
- 7.1.1 arising from the unlawful or unauthorised use of any Transport Unit whilst it is in the possession, custody or control of the Sub-Contractor or his, servants, agents or sub-contractors; or
  - 7.1.2 arising from the death or injury to any person or damage to the property of any person, firm or company; or
  - 7.1.3 arising directly or indirectly:
    - 7.1.3.1 out of the presence, use or condition of any Transport Unit (including the Company's equipment) whilst it is in the possession, custody or control of the Sub-Contractor or his servants, agents or sub-contractors;

- 7.1.3.2 out of the performance, failure of performance, by the Sub-contractor of the contract with the Company (including any special requirements to the particular contract) or any breach thereof or of these Conditions; and
- 7.1.3.3 out of any other act, neglect or default of the Sub-Contractor or any of his servants, agents or sub-contractors.

The indemnity referred to in clause 7.1 above shall not apply to the extent that (and only to the extent that) such claims have resulted from the proven negligence of the Company, in that event the Company shall be liable in proportion to its liability, but no further.

- 7.2 The Sub-Contractor shall be fully responsible for ensuring that the requirements of every statute, regulation (including but not limited to Regulation (EC) No 1072/2009 on common rules for access to the international road haulage market and legislation related hereto) and order from time to time in force (in any relevant country) relating in any way to drivers, motor vehicles, Transport Units and other vehicles and equipment used for carrying, loading and/or unloading goods shall at all times be strictly observed including but not limited to the obligations as set out in the Wet Wegvervoer Goederen and the Regeling Wegvervoer Goederen.
- 7.3 The Sub-Contractor guarantees that Sub-Contractor and its servants, agents and/or sub-contractors comply with all the requirements of all applicable social law (including but not limited to the German "Mindestlohngesetz", the Dutch "Wet minimumloon en minimumvakantiebijslag" and the Dutch "Wet arbeid vreemdelingen") and/or other local law that applies to the services. Sub-Contractor will defend, indemnify, and hold the Company and its customers harmless from and against all third party claims and/or fines, taxes or duties incurred or levied upon the Company and its customers based on a failure to meet the obligations under the aforementioned law and legislation.
- 7.4 Without in any way limiting the obligations of the Sub-Contractor under clause 7.2, it shall be the Sub-Contractor's duty to ensure that any vehicles and Transport Units used by him display in the manner required by law, all the necessary licence discs, permits, tax discs and other notices appropriate to the vehicle and to the country/countries of registration and of passage.
- 7.5 The Sub-Contractor shall indemnify, defend and hold the Company harmless from and against all claims, demands, loss, penalties, fines (incl. VAT debts), any sums paid in avoiding prosecution, costs, expenses, actions and liabilities arising out of or in connection with Sub-Contractor's, its servants, agents and (if permitted) sub-contractor(s) failure to perform its obligations under these Conditions. For the avoidance of doubt, it shall be a breach of this indemnity whether or not the Sub-Contractor or its agents, employees or servants is/are knowingly or innocently in breach of its/their obligations. This statement, whilst of general application, is particularly relevant in the event of any breach in relation to the carriage of unlawful or unauthorised persons or cargoes.

## **8. RECEIPTS, INVOICES AND STATEMENTS**

- 8.1 All prices or quotations or estimates given by the Sub-Contractor to the Company shall include all VAT, TVA (or other taxes levied by any tax authority at the point of sale, receipt and delivery of goods) unless otherwise agreed in writing between the Sub-Contractor and the Company prior to the services being provided by the Sub-Contractor.

- 8.2 All receipt notes shall be the property of the Company and must be returned duly signed to the office from which the order for the work was issued within seven days of the delivery date together with the Sub-Contractor's invoice for the carriage.
- 8.3 Statements of account for work done during a month must be rendered to the Company in the first week of the following month and shall identify the work done, the corresponding invoice, and the office from which the order for the work was issued.
- 8.4 The Company shall be under no liability to the Sub-Contractor for any work (performance) in respect of which a duly signed receipt note has not been returned.
- 8.5 The Company may set off against any sum due, or becoming due, to the Sub-Contractor (in respect of any contract between the Company and the Sub-Contractor) any sum including claims or fine due, or becoming due, to the Company from the Sub-Contractor on any account.

## **9. THE COMPANY'S LIABILITY**

- 9.1 The Company shall have no obligation to ensure, or provide for, the safety, custody or condition of any of the Sub-Contractor's vehicles, employees, personnel, equipment or property and no claims shall be brought against the Company for any loss, damage or injury to such vehicles, equipment or property.
- 9.2 Unless expressly agreed otherwise in writing between the parties each contract for the carriage, transportation or storage of goods by the Sub-Contractor shall constitute a separate contract subject to these Conditions and nothing herein shall be construed as a contract for multiple sub-contracts or as a guarantee to the Sub-Contractor of any future sub-contract work.

## **10. INSURANCE**

- 10.1 The Sub-Contractor shall take out in his own name adequate insurance to cover its liabilities under these Conditions and under any contract with the Company as the Company may require and shall produce to the Company upon demand such policies and the receipts for the current premiums thereon. In the event of the Sub-Contractor failing so to adequately insure, or failing to pay any premium, the Company shall, at its sole discretion, be at liberty to terminate the contract with the Sub-Contractor with immediate effect or to insure the Sub-Contractor, in which case the Company shall:
  - 10.1.1 recover on demand the full cost from the Sub-Contractor; or
  - 10.1.2 deduct the full cost from any money due, or thereafter becoming due, to the Sub-Contractor from the Company; or
  - 10.1.3 pay the Sub-Contractor's invoices at a reasonable discount to allow for the cost of the Company effecting such insurance or of carrying the risk of the Sub-Contractor's default itself.
- 10.2 Inspection by the Company of any insurance policies submitted to it by the Sub-Contractor shall not be considered as an admission or acceptance by the Company of the validity or sufficiency of such policies. Such validity and sufficiency shall at all times remain the absolute responsibility of the Sub-Contractor.

## **11. SEVERABILITY**

If any of the provisions of these Conditions is found by a Court of competent jurisdiction to be void or unenforceable in whole or in part, such (part of the) provision shall be deemed to be deleted from these Conditions and the remaining (parts of the) provisions of these Conditions shall continue in full force and effect.

## **12. LAW AND JURISDICTION**

- 12.1 In so far as anything has not been dealt with in these Conditions, all legal relationships, whether contractual or non-contractual between the Company and the Sub-Contractor shall be governed by and construed according to the laws of the Netherlands.
- 12.2 Disputes between the Company and the Sub-Contractor howsoever arising under, in relation to, or in connection with the services, may be brought before the Court in Rotterdam, the Netherlands.
- 12.3 The Company may, at its exclusive option, also bring any claim or action against the Sub-Contractor before the Court of Düsseldorf, Germany, or the Courts of the place where the Sub-Contractor has its registered office or a branch office, or where the Sub-Contractor has tangible assets.

## **13. THE SUB-CONTRACTOR'S LIABILITY**

The Sub-Contractor shall be liable to the Company for loss or damage to or delay to or mis-delivery of goods transported by the Sub-Contractor or the Sub-Contractor's employees, servants, agents or sub-contractors in accordance with the following:

- 13.1 For international transport by road (to include movements which include both rail and road transport - rail/road - whether or not intermodal containers are used), CMR will apply by Convention in all respects including the limit of liability of 8.33 SDR per kilogram of lost or damaged goods, or in excess of that if agreed. The Sub-Contractor accepts that intermodal containers used on road/rail movements are "vehicles" for the purpose of Article 1.2 of CMR. For domestic transport (i.e. transport wholly within the boundaries of any territory) by road or rail/road, the Sub-Contractor's liability shall be determined by these Conditions of Sub-Contracting and shall be limited as follows:
  - 13.2.1 in the case of claims for loss or damage to goods, the value of any goods lost or damaged; or
  - 13.2.2 in the case of a failure to deliver or arrange delivery of goods within 5 days or to adhere to agreed departure or arrival dates: a sum equal to twice the amount of the Company's charges to its Customers for the relevant transport undertaken being for this purpose the whole of the Company's charges and not merely the charges for any part undertaken by the Sub-Contractor;
- 13.2 for international carriage of goods by air, in accordance with the Warsaw Convention 1929 as amended by all subsequent protocols;
- 13.3 for international carriage of goods by sea, in accordance with the Hague Visby Rules;

- 13.4 The international carriage of goods by rail, in accordance with the CIM convention.
- 13.5 Unless otherwise agreed in writing (or mandatory otherwise required by any national or Convention legislation), the Company shall file with the Sub-Contractor any claim for loss or damage or delay within the time limits specified in the CMR Convention.

#### **14. FORCE MAJEURE**

- 2.1 Parties shall not be liable for any shortcoming in the performance of the obligations under these Conditions if the performance is hindered or substantially delayed by a circumstance that may be regarded as Force Majeure.
- 2.2 The party that is affected by Force Majeure shall notify the other party of this immediately and at the latest within 2 (two) working days after the start of the force majeure event, on which occasion the nature and extent of the force majeure event is described. In the same way within 2 (two) working days after the end of the force majeure event it must notify the other party of this.
- 2.3 If the affected party is hindered or considerably delayed in the fulfilment of its obligations by the force majeure event(s) and this continues for more than 1 (one) month, each party may terminate the contract for the services with immediate effect by informing the other party of this in writing. In that case the parties shall have no further obligations in respect of each other except for the obligations already existing and liabilities that continue or of which it has been indicated that they will continue after the termination.
- 2.4 The party affected by Force Majeure must always make all reasonably required efforts to end the force majeure event.

#### **15. BANKRUPTCY**

If the Sub-Contractor is made bankrupt or winding up proceedings are commenced or if he makes any arrangement with creditors or if a receiver or an administrative receiver is appointed in respect of the whole or any part of the assets or undertaking of the Sub-Contractor (or any equivalent legal or judicial steps are taken in any jurisdiction to which the Sub-Contractor is subject), the Company may by written notice (and without payment) require the Sub-Contractor to assign any sub-contract entered into by the Sub-Contractor and all rights arising thereunder to the Company and the Sub-Contractor shall comply with such notice immediately it is given. This right shall be in addition to, and not in substitution for, the right of the Company to bring to an end forthwith this contract between the Company and the Sub-Contractor.

#### **16. CONFIDENTIALITY**

The Sub-contractor will treat as strictly confidential all information received or obtained as a result of entering into any contract with the Company and may not disclose any information which would otherwise be confidential unless and to the extent: (i) required by law; (ii) the Company has given prior written consent to disclose; (iii) necessary in the provision of the Services, (iv) the information had already come into the public domain through no fault of the Subcontractor at the time of disclosure.