

## STANDARD CONDITIONS FOR LOGISTICS SERVICES

### JF Hillebrand Group AG

#### 1. Definitions

- 1.1 "Bulk Goods" shall include any beverages or other liquids which are not bottled or in cartons or otherwise packaged for retail sale and which are carried or stored in a flexitank, Isotank or similar transport container.
- 1.2 "Charges" shall mean all and any monies of whatever nature payable by the Customer to the Company.
- 1.3 "Consignee" shall mean the person to whom the Goods are to be delivered.
- 1.4 "Customer" shall mean any Person at whose request the Company provides Services.
- 1.5 "Company" shall mean J F Hillebrand Group AG of Carl-Zeiss-Strasse 6, Postfach 100254, 55129 Mainz Hechtsheim, Germany and any subsidiary, affiliate or associate company by whom or on whose behalf Services are supplied hereunder.
- 1.6 "Company Equipment" shall mean any equipment (such as, but not limited to flexitanks, Isotanks or other containers, bulkheads, heater pads and other such equipment) lent, leased, sold or otherwise supplied by the Company to the Customer for the purposes of the Services.
- 1.7 "Goods" shall mean any goods (including the packaging thereof) in relation to which the Company provides the Services.
- 1.8 "Person" shall mean any person, whether a natural person, body corporate, partnership, limited liability partnership, unincorporated association, similar undertaking or otherwise.
- 1.9 "Services" shall mean any services provided by the Company to the Customer at the Customer's request whether such Services be gratuitous or not.

#### 2. Application

- 2.1 All Services provided by the Company shall be subject to these conditions.
- 2.2 These conditions shall prevail over any conditions specified in the Customer's purchase order. There shall be no variation to these conditions unless it is agreed in writing and signed by an Executive Board Member of the Company and the Customer.
- 2.3 The Customer warrants that it is either the owner of the Goods or that it is authorised by such owner to accept these conditions as agent on behalf of the owner.
- 2.4 If the Services provided are subject to any compulsorily applicable legislation, regulations or directives, these conditions shall, in relation to such Services, be read subject to such legislation, regulations or directives.
- 2.5 Insofar as any clause or sub-clause of these conditions is held by a Court to be contrary to any compulsorily applicable legislation, regulation or directive or otherwise judged by a Court to be unlawful, void or unenforceable such clause or sub-clause shall, to the extent necessary, be severed from these conditions and rendered ineffective as far as possible without modifying or otherwise affecting the remaining provisions of these conditions.
- 2.6 Nothing in these conditions should be construed as surrender by the Company of any of its rights or immunities or as an increase of any of its responsibilities or liabilities under any compulsorily applicable legislation, regulations or directives.
- 2.7 Notwithstanding Clause 2.1 above, where the Company only supplies to the Customer any flexitanks, Isotanks, containers, container liners or other equipment and the Company provides no Services other than those ancillary to the sale or other supply of such flexitanks, Isotanks, containers, container liners or other equipment (such as, but not limited to, the fitting or installation of, training of the Customer's staff in the use of, supervision of loading, discharge or other use of, advice on the use and suitability of the flexitank, Isotank, container, container liner or other equipment) such supply and ancillary Services shall be subject to the Standard Terms for the Provision of Equipment and Supply of Products and Fitting Services of the Company and not these conditions. The Standard Terms for the Provision of Equipment and Supply of Products and Fitting Services of the Company are available on request or can be found at [www.hillebrand.com](http://www.hillebrand.com).
- 2.8 Where the Company issues a bill of lading in respect of the Services or any part thereof, the terms of the bill of lading shall prevail over these conditions in relation to those Services covered by such bill of lading.

### 3. Services

- 3.1 The Company shall have full liberty to subcontract all or any part of the Services on any terms whatsoever.
- 3.2 The Company shall be entitled to retain and be paid all brokerages, commissions, allowances and other remunerations customarily retained by or paid to freight forwarders.
- 3.3 The Company shall, in its absolute discretion, decide on the means, route and method by which the Services are to be performed.
- 3.4 Without prejudice to Clause 3.3 above, the Company shall be entitled to:
- (i) load or carry the Goods aboard any vessel, whether named in any bill of lading or other documents or not;
  - (ii) tranship, cross pump or otherwise transfer the Goods to a different conveyance, container, tank or different mode of conveyance or storage at any time during the Services; or
  - (iii) at any time during the performance of the Services, unpack, remove and store any Goods which have been loaded in or on a trailer, container, pallet or similar transport unit.
- 3.5 The Company shall be entitled to procure any or all of the Services as principal or as an agent for the Customer. Insofar as the Company procures any Services as agent, the Company shall, on demand by the Customer, provide evidence of any contract entered into as agent for the Customer.
- 3.6 When the Company acts as agent on behalf of the Customer, the Company shall be entitled (and the Customer hereby expressly authorises the Company) to enter into all such contracts on behalf of the Customer as may be necessary or desirable to fulfil the Customer's instructions. The Customer authorises the Company to enter into such contracts subject to the trading conditions of the person from whom the Services are to be provided.
- 3.7.1 Delivery of the Goods shall occur:
- (i) when the Company and the Customer have appointed a time and place for delivery, upon the Company tendering the Goods at the time and place so appointed;
  - (ii) when no time or place has been appointed, upon the Company tendering the Goods at the usual place of delivery at the Consignee's address within the usual local business hours; or
  - (iii) when the Consignee or the Customer is to collect the Goods or to arrange the collection of the Goods, upon the Goods being made available to the Customer, Consignee or agents or servants of either of them for such collection.
- 3.7.2 When the Goods are to be collected by or on behalf of the Consignee or the Customer or the Company holds the Goods on behalf or to the order of the Consignee or the Customer pending further instructions from the Consignee or the Customer, the Company shall be entitled to issue a notice to the Customer requiring the Customer to collect the Goods or issue instructions for delivery within a reasonable time (as stipulated in the notice) after receipt of that notice.
- 3.8 If the Consignee fails to take delivery of the Goods in accordance with Clause 3.7.1 above or the Customer or Consignee fails to collect the Goods or issue instructions upon expiry of the time stated in the notice issued in accordance with Clause 3.7.2 above:
- (i) the Company shall be entitled to store and/or arrange storage of the Goods;
  - (ii) Insofar as the Company arranges storage with third parties, the Company will act solely as agent for the Customer in arranging such storage and the Company may contract for such storage on any terms whatsoever;
  - (iii) Insofar as the Company stores the Goods itself the Goods shall remain at the sole risk of the Customer and the Company shall be under no liability whatsoever for any loss or damage caused to or suffered by the Goods whatsoever and howsoever caused;
  - (iv) The Customer shall be responsible for any costs or expenses of such storage and/or any Charges raised in relation thereto and, in addition, the Customer shall be responsible for arranging insurance in respect of the Goods; and
  - (v) The Company shall be entitled to dispose of or deal with (by sale or otherwise as may be reasonable in all the circumstances):
    - (a) after at least 14 days written notice to the Customer (or, where the Customer cannot be traced and reasonable efforts have been made by the Company to contact any parties who may reasonably be supposed by the Company to have any interest in the Goods, without notice), any Goods which have been stored by the Company (whether such storage be by the Company or arranged by the Company in accordance with Clause 3.8(ii) or (iii) above) for a period of 28 days and which cannot reasonably be delivered as instructed or for which no instructions for delivery are received; and
    - (b) without notice, any Goods which have perished, deteriorated or altered or are in immediate prospect of doing so in a manner which has caused or may reasonably be expected to cause loss or damage to the Company or any third parties or to contravene any applicable laws or regulations.
- 3.9 Insofar as the Company deals with Customs authorities it does so as agent for and on behalf of the Customer or the owner of the Goods.
- 3.10 The Company may at any time comply with the orders or recommendations given by any court, governmental authority, port authority or any other duly constituted legal or administrative authority. The Company shall be under no liability for any losses of whatever nature arising from or in relation to such compliance.

3.11 Insofar as the Company supplies Company Equipment for the provision of the Services, the Company reserves the right to make any changes to the Company Equipment as specified in any quote or order so as to comply with any statutory or regulatory requirements which apply in relation to the Services.

#### **4. Insurance**

4.1 Unless otherwise specified in writing in the quote or in another document issued by the Company or agreed upon in writing between the Customer and the Company, no cargo insurance shall be arranged by the Company on behalf of the Customer.

4.2 All insurances arranged by the Company are subject to the usual exceptions and conditions of the policies of the underwriters covering the risks.

4.3 Unless otherwise agreed in writing, the Company shall not be under any obligation to arrange a separate insurance policy on the Goods but may declare it on any open or general policy held by the Company.

4.4 In arranging insurance the Company acts solely as agent for the Customer.

4.5 Insofar as the Company has any liability for a failure to arrange insurance, the limits of liability under Clause 11.1 shall not apply.

#### **5. Special Instructions**

5.1 COD Shipments

5.1.1 Where the Company accepts instructions to deliver goods only as against production of payment of cash or the equivalent from a Consignee:

- (i) If the Company engages third parties to effect compliance with such instructions, the Company shall accept such instructions as agents only and shall have no liability for the failure of such third parties to carry out such instructions;
- (ii) In all other cases, the Company's liability for failure to collect such cash or equivalent shall be limited to the value of the cash or equivalent which the Company has failed to collect; and
- (iii) In consideration of the payment by the Company of any sums for which it is found liable under Clause 5.1.1(ii) above, the Customer hereby agrees that the Company may recover such sums from the Consignee. The Customer further agrees to provide the Company with all reasonable assistance in pursuing the Consignee for such sums including, but not limited to, an assignment of rights and/or the debt, allowing the Company to bring proceedings in the name of the Customer and the provision of relevant documentation and information.

5.2 Declaration of Value

5.2.1 Unless agreed in writing, the Company shall not make any special declarations of value or interest in relation to the Goods upon any transport documentation or otherwise.

5.2.2 If the Customer and the Company agree in writing to make a special declaration of value or interest upon any transport documentation, the Customer hereby agrees both to indemnify the Company for any increased costs or expenses and to pay the Company for any increased Charges arising by reason of such a special declaration.

#### **6. The Goods**

6.1 Without prior written agreement by the Company, the Company will not accept or deal with Goods which, by their nature, require special handling, carriage or security including, but not limited to, bullion, coin, precious stones or precious metals, jewellery, pictures, antiques, valuables, watches, human remains, livestock or plants. Should the Customer cause the Company to handle or deal with such goods otherwise than under a prior written agreement, the Company shall have no liability whatsoever for any loss or damage suffered by or in relation to the Goods, howsoever caused.

6.2 If the Goods are dangerous or may become dangerous during the performance of the Services, the Customer shall:

- (a) advise the Company in writing before the commencement of the Services of the exact nature of the Goods and of the danger and, if appropriate, any precautions to be taken by the Company in the performance of the Services to ensure that the Goods do not cause harm to any person, property or the environment;
- (b) ensure that the Goods, their packaging and any container, flexitank, Isotank, trailer or other equipment within which or upon which they are carried is clearly marked and labelled and that such marking and labelling and any packaging is in accordance with any applicable local law or regulations; and
- (c) comply with any legislation, conventions or regulations relating to the carriage of such goods or such other Services as are to be performed.

6.3 Unless notice is given by the Customer in accordance with Clause 6.2 above, the Customer warrants that it will not tender for carriage or other Services any Goods which are or might become dangerous or damaging to either themselves, Goods, property, any person or the environment.

6.4 If, in the Company's reasonable opinion, the Customer has or may have breached Clauses 6.2 and 6.3 above or the Goods may otherwise pose a risk to health, property or the environment:

- (a) the Company may without notice, at the expense and risk of the Customer and without liability to the Company destroy, dispose of, abandon, render harmless or otherwise deal with the Goods in any way in which the Company, in its absolute discretion considers appropriate;
  - (b) the Customer shall indemnify the Company from all and any claims, actions, indemnities, liabilities, expenses, losses, damages, costs, penalties or fines arising from or in relation to the Goods, the Services and the Company acting in accordance with Clause 6.4(a) above.
- 6.5 The Customer further warrants that:-
- 6.5.1 The description and particulars of the Goods and any information supplied by the Customer (including any information supplied by third parties on behalf of the Customer) is full and accurate;
  - 6.5.2 All Goods are packed and labelled and/or marked in a method which is suitable and appropriate having regard to the nature of the Goods and the anticipated Services to be provided;
  - 6.5.3 Where the Goods are supplied already loaded in a container, trailer or other transport unit, the Goods are properly loaded and stowed and appropriately secured therein (which securing shall include, but not be limited to, the proper use of dunnaging, airbags, straps and webbing) and the container, trailer or other transport unit is in sound condition and suitable for the carriage of the Goods to the intended destination;
  - 6.5.4 Where Goods are stowed on pallets, the pallets are in good order and suitable for the carriage of the Goods to the intended destinations and the Goods are adequately and properly stowed thereon;
  - 6.5.5 The Customer has obtained all necessary permits, licenses or other permissions or documents required of the Customer necessary for the intended carriage of the Goods; and
  - 6.5.6 The Goods do not include contraband, drugs, other illegal substances or stowaways.

## **6.6 Temperature Controlled Goods**

- 6.6.1 The Customer warrants that if the Goods are to be carried or stored in temperature controlled conditions:
  - (i) the Customer shall provide the Company with written notice of the nature of the Goods and the temperature range within which the Goods are to be carried or stored at the time of requesting the Services;
  - (ii) the Goods will be handed over by or on behalf of the Customer at the appropriate temperature;
- 6.6.2 Insofar as the container, trailer or other transport unit is supplied by the Customer, the Customer warrants that:
  - (i) it is in good working condition and will remain so throughout the provision of the Services;
  - (ii) it is suitable for the intended carriage and or storage;
  - (iii) where the Goods have been loaded by the Customer, they have been loaded in such a way as to ensure the proper functioning of the container, trailer or transport unit;
  - (iv) it has been properly pre-cooled or pre-heated (as appropriate) before loading the Goods; and
  - (v) the thermostatic controls have been properly set.

## **7. Customer's Undertakings**

- 7.1 The Customer agrees not to make any claim against any director, agent or employee of the Company in connection with any Services provided by the Company.
- 7.2 The Customer shall save harmless and keep the Company indemnified from and against all liability, loss, damage, costs and expenses incurred by the Company (including, but not limited to, claims, indemnities, demands, proceedings, fines, penalties and damages) arising out of:
  - (i) the Company acting in accordance with the Customer's instructions whether or not caused or contributed to directly or indirectly by any act, omission, neglect or default on the part of the Company and/or its employees or agents;
  - (ii) any act, omission or default on the part of the Customer or any breach by the Customer of any of the warranties or terms of these conditions; and
  - (iii) any claims for general average made against the Company in relation to the Goods. The Customer agrees to provide security for any general average claims to the Company or any other party designated by the Company, both promptly and in a form acceptable to the Company.
- 7.3 The Customer shall save harmless and keep the Company indemnified from and against all claims, indemnities, liabilities, costs and demands whatsoever, howsoever arising and by whomsoever made or preferred, in excess of the liability of the Company under these conditions.
- 7.4 The Customer acknowledges that the Company will enter into contracts with sub-contractors and other third parties for the purposes of performing the Services. The Customer agrees to indemnify the Company for any claims, actions, indemnities, liabilities, expenses, damages, costs, claims for equipment demurrage, vehicle detention, quay rent or other losses arising from or in relation to such contracts unless it can be shown that these were caused solely by reason of the Company's act, omission or default.

- 7.5 The Customer shall save harmless and keep the Company indemnified from and against all claims, demands and actions whatsoever brought or made against the Company for duty or any other tax, including, but not limited to, sales tax or value added tax or similar tax or levy imposed upon the Goods or imposed by reason of the carriage or loss thereof, by any government, governmental or quasi governmental organisation including any claim or demand made against any bond or security provided by the Company in relation thereto.
- 7.6 Where, for the provision of the Services, the Company lends, leases, sells or otherwise supplies the Customer with Company Equipment, the Customer warrants that:
- 7.6.1 the Customer will not load or permit to be loaded within a flexitank any Goods which exceed a temperature of sixty degrees centigrade or are below a temperature of zero degrees centigrade;
- 7.6.2 the Goods are not of a nature that will damage the Company Equipment. The burden is upon the Customer to check that the Goods will not damage or adversely affect the Company Equipment;
- 7.6.3 the Customer will strictly adhere to the operation and loading instructions issued by the Company in relation to the Company Equipment. Such instructions are available upon request and if they are not provided with the Company Equipment the Customer shall ask the Company for a copy thereof;
- 7.6.4 where the Customer fits or installs the Company Equipment itself or arranges for parties other than the Company to fit or install the Company Equipment, it will ensure that the employees or parties used to fit or install the Company Equipment:
- (a) are competent to do so;
  - (b) have received appropriate training in the fitting and installation of the Company Equipment;
  - (c) have read and understood any instructions issued by the Company.
- 7.6.5 the Customer has obtained all necessary permits, licenses or other permissions or documents required of the Customer necessary for the intended carriage or storage of the Goods and use of the Company Equipment.
- 7.6.6 where the Customer or Persons instructed for or on behalf of the Customer (other than the Company) provides containers, trailers or other such equipment into or onto which the Company Equipment is to be loaded or provides any equipment with which the Company Equipment will be used, such containers, trailers or equipment will be:
- (a) fit for their intended purpose;
  - (b) suitable for use with the Company Equipment;
  - (c) in a clean and sound condition;
  - (d) free from any defects which might damage or otherwise affect the Company Equipment;
- 7.6.7 where the Customer or parties instructed for or on behalf of the Customer (other than the Company) load Goods into the Company Equipment, the Customer shall, before any storage and/or carriage commences:
- (a) check the Company Equipment for any leaks, holes or defects;
  - (b) check that all valves, doors, taps or other outlets are properly shut, sealed and tight;
  - (c) ensure that the Company Equipment is properly secure and stable and that any Goods therein are secured and stable and that the Company Equipment and Goods are safe for and able to withstand the rigours of the intended storage and/or carriage;
  - (d) report any defects or problems under paragraphs (a) to (c) above to the Company immediately upon discovery thereof.

## **8. Charges and Payment**

- 8.1 Unless otherwise stated in writing, any quotations provided by the Company:
- (i) Shall be exclusive of any taxes;
  - (ii) Shall be exclusive of any taxes, levies, imposts, duties or other such costs or expenses raised upon the Goods; and
  - (iii) Shall, up to the time of shipment, be subject to variation to take into consideration increases in fuel charges, currency fluctuations, freight rates, changes in materials or equipment under Clause 3.11 hereof, or other such expenses. If a quotation is so varied, the Company shall advise the Customer as soon as practicable.
- 8.2 Unless otherwise agreed in writing by the Company and subject to Clause 8.3 below, all Charges shall be paid by the Customer to the Company within the terms and in the currency shown on the invoice.
- 8.3 The granting of any credit by the Company (including credit terms shown on the invoice) shall be at the absolute discretion of the Company. The Company may, in its absolute discretion, require the Customer to make payment in full or in part immediately upon presentation of an invoice whether this be before or after the Services have been provided.
- 8.4 Where the Company pays any value added taxes, sales taxes, duties or other taxes for or on behalf of the Customer, the Customer shall reimburse the Company in full immediately upon receipt by the Customer of a written demand.
- 8.5 The Customer shall pay all sums due to the Company in cash or as otherwise agreed without reduction or deferment on account of any claim, counterclaim or set-off.

- 8.6 If any sum payable by the Customer to the Company becomes overdue, interest will be charged at a rate of 2% above the SDR Interest base rate from time to time in force and shall accrue at such a rate after as well as before any judgment. Furthermore, the Customer shall save harmless and keep the Company indemnified from and against all claims, indemnities, costs, liabilities, expenses, fines, penalties or other losses of whatever nature arising directly or indirectly by reason of such late payment.
- 8.7 If the Customer fails to make any payment on the due date or if the Customer becomes insolvent or goes into liquidation, either compulsory or voluntary (save for the purposes of reconstruction or amalgamation), or if an administrator, administrative receiver or receiver is appointed in respect of the Customer and/or the whole or any part of the Customer's assets, or if the Customer makes an assignment for the benefit of, or composition with its creditors generally:
- (a) all and any sums owed by the Customer to the Company shall become immediately payable, whether or not such sums are subject to a credit agreement (which shall, for the avoidance of doubt, include the payment terms shown on the Company's invoices); and
  - (b) the Company may, without prejudice to any other right or remedy available to it, delay or withhold delivery, refuse to provide Services or cancel any or all orders from and/or contracts with the Customer.
- 8.8 Notwithstanding any agreement by the Company to collect freight, duties, taxes, Charges or any other sums of whatever nature from the Consignee or any other Person, the Customer shall remain liable to pay such sums to the Company.

## **9. Lien**

- 9.1 The Company has a general lien on all Goods, documents and money held by the Company which may be applied against any account or sums due from the Customer or the owner of the Goods to the Company whatsoever. Without prejudice to the general lien herein, the Company also has a particular lien on all Goods, documents and money held by the Company.
- 9.2 Upon the Company exercising its lien under Clause 9.1 above, storage charges shall apply to any Goods or documents held subject to the lien. Moreover, other expenses, such as, but not limited to, equipment demurrage and rental charges may accrue. Such storage charges and other expenses shall be for the account of the Customer and the Customer shall indemnify and hold the Company harmless from and against all and any such charges and expenses.
- 9.3 Upon giving the Customer at least 28 days written notice, the Company may sell, dispose of or otherwise deal with the Goods, documents or money as agents for and at the expense of the Customer and apply the proceeds towards the payment of any sums due from the Customer or the owner of the Goods to the Company.
- 9.4 Upon accounting to the Customer for any balance remaining after payment of any due sums and the costs of and/or associated with the storage, sale, disposal and/or dealing with the Goods, the Company shall be discharged from any liability whatsoever in respect of the Goods or documents.
- 9.5 The notice period for the sale, disposal or dealing with the Goods in Clause 9.3 above shall not apply where the Goods are likely to perish, deteriorate or damage other Goods or property or if the Company considers them to be a risk to life, health or the environment. In such circumstances, the right to sell, dispose or deal with the Goods in Clause 9.3 shall arise immediately upon the sum becoming due. The Company shall take reasonable steps to notify the Customer or other persons interested in the Goods of its intention to sell, dispose or otherwise deal with the Goods.
- 9.6 The Company may apply any money held by the Company to the settlement of any sums due from the Customer or owner of the Goods as the Company, in its absolute discretion, considers appropriate. The Company will, after satisfaction of all sums due from the Customer or owner of the Goods, account to the Customer or the owner of the Goods for the balance of any money so held.

## **10. Liability**

- 10.1 The Company shall, subject to these conditions, be liable for the Customer's direct losses arising from a breach of the Company's obligations under its agreement with the Customer.
- 10.2 The Company shall not be liable for any loss, damage or claims arising from or in relation to:
- (i) act of God;
  - (ii) consequences of war, invasion, act of foreign enemy, hostilities, civil war, riots, rebellion, insurrection, military or usurped power or confiscation, requisition or destruction of or damage to property by or under the order of any government or public or local authority;
  - (iii) seizure or forfeiture under legal process;
  - (iv) breach by the Customer of a warranty or other obligation provided by the terms of these conditions;
  - (v) any other error, act or omission, misstatement or misrepresentation by the Customer or other owner of the Goods or by servants or agents of either of them;
  - (vi) inherent liability to wastage in bulk or weight, latent defect or inherent defect, vice or natural deterioration of the Goods;
  - (vii) insufficient or improper packing, labelling, addressing or, where performed by the Customer, owner of the Goods or servants or agents of either of them, insufficient or improper loading, stowage and securing;
  - (viii) strike, lockout, stoppage or restraint of labour from whatever cause;
  - (ix) the effects of extremes of temperature, humidity or other climatic conditions outside those reasonably to be expected during the ordinary course of the anticipated Services;

- (x) the condition of any container, trailer or other equipment supplied by or on behalf of the Customer;
  - (xi) any failure by the Customer to inspect the Company Equipment upon loading of any Goods or report any problems or defects in the Company Equipment in accordance with Clause 7.6.7 or otherwise; and
  - (xii) any cause or event which the Company is unable to avoid and the consequences of which the Company is unable to prevent by the exercise of reasonable diligence.
- 10.3 Where the Company can demonstrate that the loss, damage or claim could be attributable to one of the causes in clause 10.2 above, it shall be presumed that the loss, damage or claim was so caused. However, the Customer shall be entitled to prove that the loss, damage or claim was not so caused.
- 10.4 Where the Company can demonstrate that the loss, damage or claim arose from or in relation to the carriage of Goods by sea, the Company shall not be liable for any loss, damage, claim or indemnity arising from or in relation to any of the exceptions in Article IV of the Hague Rules as amended by the Brussels Protocol 1968 (The Hague-Visby Rules). The provisions of this Clause shall be in addition to and without prejudice to the Company's right to rely on the exceptions and limitations within Clause 10.2 above.
- 10.5 Except under special arrangements agreed in writing by an Executive Board Member of the Company, the Company gives no warranties or undertakings with regard to collection or delivery dates or times and is under no liability whatsoever for failure to adhere to any collection or delivery dates or times.
- 10.6 The Company shall not in any circumstances be liable for any mis-delivery, loss, damage or delay to the Goods whatsoever and howsoever arising which occurs whilst the Goods are outside the custody, control or care of the Company or those subcontractors, servants or agents employed by the Company to perform the Services.
- 10.7 The Company shall not in any circumstances be liable for any consequential loss whatsoever, howsoever arising, including, but not limited to, loss of profits (whether direct or consequential), loss of goodwill, loss of market share, loss of future or anticipated sales, loss of production or factory "downtime", damages, costs and expenses incurred or payable by the Customer to any third party or any other indirect or consequential loss.
- 10.8 Any liability of the Company arising from or in relation to a breach of the Company's obligations under its agreement with the Customer, whether arising in contract, tort, bailment or otherwise, shall be subject to the terms of these conditions.

#### 11. Limits of Liability

- 11.1 For all claims whatsoever, howsoever arising (except for those under Clauses 4.5 and 5.1.1(ii)), the Company's liability shall not exceed:
- (a) For claims for loss of or damage to Bulk Goods:-
    - (i) the value of the loss or damage; or
    - (ii) a sum calculated at the rate of 300 SDR per metric tonne on the gross weight of the goods actually lost or damaged; or
    - (iii) a sum not exceeding 7,300 SDR for all Goods contained within any one flexitank, Isotank or similar transport container

whichever shall be the least.
  - (b) For claims for loss of or damage to all other Goods:-
    - (i) the value of the loss or damage; or
    - (ii) the sum of 2 SDR per kilo of the gross weight of the Goods lost or damaged,

whichever shall be the least.
  - (c) For all other claims (except those referred to in sub-clause (d) below):
    - (i) the value of the Goods which are the subject of the relevant transaction; or
    - (ii) where the weight of the Goods which are the subject of the relevant transaction can be ascertained, 2 SDR per kilo of the gross weight of such Goods; or
    - (iii) 45,000 SDR,

whichever shall be the least
  - (d) If any claim is made by the Customer against the Company for failure to adhere to any collection, delivery or other dates or for failure to effect collection, delivery or perform any other Services within a reasonable time, the Company's liability shall in all circumstances not exceed:
    - (i) the loss or damage suffered; or

- (ii) a sum equal to twice the amount of the Charges raised or to be raised by the Company in relation to the transaction from which the claim arises; or
- (iii) the sum of 45,000 SDR,

whichever shall be the least.

- 11.2 For the purposes of Clause 11.1, the value of the Goods shall be taken to be their value upon the taking over of the Goods by or on behalf of the Company or, where the Goods are not taken over by the Company, upon the commencement of the Services
- 11.3 Where Goods have been supplied in or on a trailer, container, pallet or similar transport unit and loss or damage is caused only to some of the Goods within or on the trailer, container, pallet or similar transport unit, the weight of the Goods for the purposes of calculating the limit of liability in Clause 11.1 above shall be the weight only of those Goods which have actually suffered loss or damage and shall not in any event include the weight of the trailer, container, pallet or similar transport unit.
- 11.4 The Company may, at its discretion, agree to increase the limits of liability herein. The Company reserves the right to demand an additional charge for the Services if such an increase is agreed. Such an agreement must be made in writing and signed by an Executive Board Member of the Company.
- 11.5 Where the Services or part thereof are subject to compulsorily applicable legislation which imposes a compulsory limit of liability in excess of that in Clause 11.1 above, and the Customer can prove that the loss occurred during the performance of such Services, the limit of the Company's liability shall be determined by reference to such compulsory legislation.

## 12. Claims

- 12.1
  - (a) Where loss or damage to the Goods is reasonably apparent upon delivery, the Consignee or the Customer shall notify the Company of the loss or damage in writing at the time of delivery.
  - (b) Where loss or damage to the Goods is not reasonably apparent upon delivery, the Consignee or the Customer shall notify the Company of the loss or damage in writing within 7 days of delivery.

Where neither the Consignee nor the Customer notify the Company of any loss or damage in accordance with Clauses 12.1 (a) or (b) above (as appropriate) the fact of the Consignee taking delivery shall be prima facie evidence that it has received the Goods in good order and condition and as described in any consignment note accompanying the Goods.

- 12.2 Any claim must be notified to the Company within 14 days of the date upon which the Customer became, or ought reasonably to have become, aware of any event or occurrence alleged to give rise to the claim.
- 12.3 If any claim is not notified to the Company in accordance with Clause 12.2 above, such claim shall be waived and absolutely barred unless the Customer can prove that it was impossible for the Customer to comply with the time limit in Clause 12.2 above and that the Customer made the claim as soon as it was reasonably possible for it to do so.
- 12.4 The Company shall, in any event, be discharged from all liability whatsoever and howsoever arising unless suit is brought and written notice thereof is given to the Company within 9 months from:
  - (i) The date of the event or occurrence alleged to give rise to the cause of action against the Company; or
  - (ii) Where the date of the aforementioned event or occurrence cannot be ascertained, the date of delivery or, where no delivery occurs, the intended date of delivery of the Goods; or
  - (iii) Where the Services do not require the delivery of Goods and no date of event or occurrence can be ascertained under Clause 12.4 (i) above, the completion of the Services.

## 13. Law and Jurisdiction

- 13.1 Any dispute arising from or in relation to these Conditions and any contract or agreement subject thereto (whether or not such disputes are pursued for breach of contract or duty in tort, bailment or otherwise) including, but not limited to, any dispute as to the validity or interpretation of the contract or agreement or of these Conditions shall be subject to the exclusive jurisdiction of the courts of the country in which the Hillebrand Group company providing the Services or upon whose behalf the Services are provided has its place of business.
- 13.2 These Conditions and any contract or agreement between the Customer and the Company which is subject to these Conditions and any dispute arising thereunder (including, but not limited to, disputes as to the validity of and effect of such agreement, these Conditions or any part thereof whether or not such disputes are pursued for breach of contract or duty in tort, bailment or otherwise) shall be construed and resolved in accordance with the law of the country identified in Clause 13.1 above.

## 14. Payment processing

- 14.1 Unless otherwise stated in writing, all payments by credit or debit cards or otherwise through the Company dedicated web-portal or mobile application are processed by JF Hillebrand IT BV, Amsterdamsevaart 268, 2032EK Haarlem, The Netherlands.