

GENERAL TRADING CONDITIONS

January 8, 2024

As lodged by Thermottraffic B.V. with the Chamber of Commerce in Rotterdam.

THERMOTRAFFIC GENERAL TERMS AND CONDITIONS

Article 1. Definitions and interpretation

1.1 A number of terms in these Terms and Conditions are capitalized. These terms shall have the following meanings:

"Affiliate" means, with respect to a Party, any entity that controls, is controlled by, or is under common control with such Party. For the purposes of this definition, an entity shall be deemed to control another entity if such first entity: (i) owns or controls, directly or indirectly more than fifty percent (50%) of the voting equity of the other entity (or other comparable ownership interest for an entity other than a company); (ii) has the right to appoint a majority of the directors to such other entity's board of directors; and/or (iii) has any other ability to control the affairs of such other entity.

"Agreement" means the agreement/contract entered into between Thermottraffic and Customer, any confirmation by Thermottraffic of an instruction received from Customer or any other service(s) agreed (to be) rendered by Thermottraffic.

"Article" means a clause in these Terms and Conditions.

"Authorities" means any government, customs, tax and/or regulatory body or authority or the equivalent thereof in any jurisdiction with whom Thermottraffic deals in the course of providing the Services, and **"Authority"** shall be construed accordingly.

"Belgium Services" means any of the Services, including Consultancy Services, where the contracting Thermottraffic party is Thermottraffic B.V. - Belgian Branch.

"Claim" has the meaning given to it in Article 10.4.

"Consultancy Services" means the provision by Thermottraffic to Customer of any advice, information or guidance in its professional capacity and based on its industry expertise, subject always to the provisions of Article 5.14.

"Customer" means the person or entity with whom Thermottraffic enters into any contract for the provision of any Services, or to whom Thermottraffic provides any advice, information or services, including Consultancy Services, and includes (if different) the party whom Thermottraffic invoices for the Services, the owner of the goods in respect of which Services are to be provided, and any other third parties who may become party to the contract between Thermottraffic and Customer or otherwise benefit from the Services provided by Thermottraffic. For the avoidance of doubt, Customer includes any third party which becomes a party to the Agreement between Thermottraffic and its Customer.

"Force Majeure Event" means any non-performance or delay in performance under an Agreement to the extent caused by fire, flood, hurricane, volcanic eruption, tornado, hailstorm or other act of God, acts or omission or the failure to cooperate by any third party, epidemic, strike, lockout or other labour dispute, riot, war act of terrorism, insurrection, act of public enemy or any other similar event or circumstance that is equally beyond the affected Party's reasonable control.

"Netherlands Services" means any of the Services, including Consultancy Services, where the contracting Thermottraffic party is Thermottraffic B.V.

"Party" means Thermottraffic or Customer, depending on the context.

“**Schedule**” means a document attached to these Terms and Conditions which forms an integral part of these Terms and Conditions.

“**Sectoral Terms**” has the meaning given to it in Article 3.1.

“**Services**” means any of the services under the terms of these Terms and Conditions, including Consultancy Services, provided by Thermottraffic to Customer.

“**Terms and Conditions**” means these Thermottraffic general terms and conditions, which shall apply to any Service(s).

“**Thermottraffic**” means Thermottraffic B.V., Thermottraffic B.V. – Belgium Branch, Thermottraffic Ltd. and/or any other (future) Affiliate of Thermottraffic using these Terms and Conditions.

“**UK Services**” means any of the Services, including Consultancy Services, where the contracting Thermottraffic entity is Thermottraffic Ltd.

1.2 Except as otherwise provided in these Terms and Conditions or required by the context, the following principles shall be applied in the interpretation of these Terms and Conditions:

- a. the headings identifying each section of these Terms and Conditions are for convenience only and shall not be deemed a part of the contents of these Terms and Conditions;
- b. a reference to a day shall be a reference to a calendar day;
- c. terms defined in the singular shall have a comparable meaning when used in the plural and vice versa;
- d. the words “**hereof**”, “**hereto**”, “**hereby**”, “**hereunder**” and “**herein**” shall, when used in these Terms and Conditions, refer to these Terms and Conditions (as a whole and not to any particular provision);
- e. any reference to a “**person**” includes an individual, firm, partnership, company, corporation, association, organization, government, state, foundation and trust, in each case whether or not having separate legal personality;
- f. the words and phrases “**other**” and “**including**” shall not limit the generality of any preceding words or be construed as being limited to the same class as the preceding words where a wider construction is possible; and
- g. a provision of law is a reference to that provision as amended or re-enacted from time to time.

1.3 These Terms and Conditions are drafted in the English language. In these Terms and Conditions Dutch terms and legal concepts are expressed in English terms and not in their original Dutch terms. Where indicated in italics, Dutch original terms of these English terms have been given. Such terms and expressions of law and of legal concepts as used in this Agreement have the meaning attributed to them under the laws of The Netherlands and this Agreement should be read and interpreted accordingly. For the purposes of Dutch law, as regards the construction of the meaning of any of the provisions of these Terms and Conditions, it is agreed that the literal interpretation thereof shall be applied with the exclusion of any (perceived) intent.

Article 2. Applicability

2.1 These Terms and Conditions are used by Thermottraffic B.V., Thermottraffic B.V. – Belgian Branch, Thermottraffic Ltd. and its Affiliates.

2.2 These Terms and Conditions apply to all legal relationships of Thermottraffic arising out of or related to any form of service to be performed by Thermottraffic, regardless of whether this is effected pursuant to orders or on other grounds.

- 2.3 To the extent that these Terms and Conditions apply to any single Agreement, they shall continue to apply without exception to any and all future services to be performed by Thermottraffic and to future Agreements concluded with Thermottraffic.
- 2.4 Failure by Thermottraffic on any occasion to invoke any of the provisions of these Terms and Conditions shall not constitute a waiver by Thermottraffic of its right to invoke the said provisions of these Terms and Conditions in other circumstances.

Article 3. Additional sectoral terms and conditions

- 3.1 Depending on the nature of the services to be provided under the Agreement, sectoral terms and conditions as determined for the relevant industry/service sector in the jurisdiction involved in rendering the relevant services ("**Sectoral Terms**") will apply in addition to these Terms and Conditions in so far as such provisions do not conflict with the relevant Agreement and the schedules or attachments thereto and these Terms and Conditions.
- 3.2 Subject and without prejudice to Article 3.1, if a provision in any of the applicable Sectoral Terms contradicts with any other provision of any other Sectoral Term(s), the provision most applicable to that part of Thermottraffic's Services shall apply.
- 3.3 Unless specifically agreed otherwise in writing, all Services - with the exclusion of Consultancy Services where applicable - rendered by Thermottraffic are performed by Thermottraffic acting in its capacity as:
- freight forwarder/forwarding and/or receiving agent [*'expediteur'*] (including for services such as chartering of trucks, barges, trains and/or vessels, even if these services are performed pursuant to a transport order);
 - road carrier [*'wegvervoerder'*];
 - customs agent [*'douaneagent'*];¹
 - cold store operator;
 - VAT fiscal representative; [*'beperkt of algemeen fiscaal vertegenwoordiger voor de BTW'*], [*'globale vertegenwoordiging'*] and [*'aansprakelijk vertegenwoordiging'*]; or
 - exporter of record.

Schedule 1 to these Terms and Conditions provides an overview of the Sectoral Terms for each activity for each relevant jurisdiction. All Sectoral Terms are available on [Sectoral Terms](#).

- 3.4 If the Sectoral Terms are revised, the revised text shall apply from the date of filing and/or publishing of the revised Sectoral Terms, provided that Thermottraffic shall always be entitled to declare in advance the Sectoral Terms which apply to a certain order, activity or other performance.

Article 4. Offers and Agreement

Offers made by Thermottraffic and orders made to Thermottraffic are non-binding until confirmed in an Agreement or in the event that Thermottraffic has started the performance of an order. Any amendment to an Agreement by Thermottraffic shall be deemed accepted by Customer if Customer does not reject such amendment within seven (7) days after notification of such amendment, or before the commencement of the relevant Services, whichever is the earlier.

¹ This relates to all customs, regulatory (including TRQ) and other compliance related services provided by Thermottraffic.

- 5.1 Customer (including any third party which becomes a party to an Agreement between Thermottraffic and Customer) shall procure that all permits and other authorisations necessary for the provision of the relevant Service(s) are obtained and retained and that all relevant laws and regulations to which the Customer is subject are complied with.
- 5.2 To enable Thermottraffic to perform its Services, Customer shall proactively and promptly provide Thermottraffic with all relevant information and/or documentation and information including:
- a. the bill of lading and/or any other transport document relating to the goods to be shipped or received including any and all health and/or food certificates and/or phytosanitary and flora/fauna certificates;
 - b. the nature, type, quality, composition, temperature, weight, volume, source, origin, physical and/or chemical properties of the goods;
 - c. hazardous properties and/or substances (whether or not generally known or recognized as such) of or within the goods;
 - d. any legal consequences and regulatory obligations relating to the handling and/or storage of the goods which are relevant to Thermottraffic;
 - e. whether a special method of storage, handling or treatment is required or necessary due to the nature of the goods; and/or
 - f. special directions regarding the method of loading, unloading, handling or treatment; and all other particulars, which are of relevance to the provision of the relevant Services.
- 5.3 Customer shall indemnify Thermottraffic for any claim from any employee(s) of Customer, any former employee(s) of Customer and/or any third party for damage or other loss regarding any product entrusted to Thermottraffic by or on behalf of Customer that results from or is connected with the rendering of any Services which are the subject of these Terms and Conditions.
- 5.4 Should a vessel, container and/or cargo have been fumigated, Customer is obliged to inform Thermottraffic promptly and at least seven (7) days prior to arrival in Rotterdam or any other designated harbour, of the fumigant used and in which container(s), barge(s), hold(s) and/or packing it was applied. Degassing and/or aerating the vessel, container and/or cargo to safety concentrations will be at Customer's risk and expense and Customer will indemnify and hold harmless Thermottraffic for any claim or liability in relation thereto.
- 5.5 Thermottraffic has the right to refuse to perform and/or to suspend and/or to terminate the Services, in all cases without liability if Customer does not fulfil its obligations pursuant to Articles 5.1 to 5.4 and/or if the goods are delivered to Thermottraffic in a damaged or defective condition.
- 5.6 Thermottraffic may, without being obliged thereto, take measures for treatment and handling of goods as it may deem necessary for the preservation or protection of the stored goods or of its own or other's goods or properties, all at Customer's risk and expense, and Customer will indemnify and hold harmless Thermottraffic for any claim or liability in relation thereto.
- 5.7 If Customer sells or otherwise disposes of (part of) the goods, this shall not release Customer from its previously assumed obligations to Thermottraffic until Thermottraffic has confirmed in writing to Customer that Thermottraffic has accepted both such transfer and the release of the goods.
- 5.8 Customer shall immediately notify Thermottraffic in writing of the transfer or passing of ownership of goods or the transfer or passing of the right to take delivery of the goods, as the case may be.

- 5.9 Customer shall notify Thermottraffic in writing of any claim by Customer, and/or any third party who acted on behalf of Customer, for damage to and/or loss of the means of transport of Customer and/or any such third party prior to the departure of the means of transport from the premises of Thermottraffic or its subcontractor, failing which any such claim against Thermottraffic will be barred [*vervallen*].
- 5.10 Thermottraffic may have some or all of the Services carried out in whole or in part by the staff and equipment of third parties as well as, at the discretion of Thermottraffic and free of charge, with the help of the loading and unloading equipment and/or drive power of the means of transport to be made available by Customer.
- 5.11 Save where specifically agreed otherwise in writing, Thermottraffic shall be free to determine the manner of executing any Agreement. Customer shall comply with all general directives and specific instructions given by Thermottraffic, relating to the execution of the Agreement and shall procure that its agent(s) will do the same.
- 5.12 Customer is obliged to take out adequate insurance with a reputable insurer to cover the goods for their full value during the provision of the Services, including but not limited to cargo insurance and insurance covering damage that can be caused by the goods. Thermottraffic does not insure the goods under any Agreement. Thermottraffic may, if specifically instructed to do so by Customer and if such instructions are accepted by Thermottraffic in writing, arrange such insurance on Customer's behalf via its own insurance broker, in which case Thermottraffic shall act strictly as agent only (and not as broker).
- 5.13 Customer further warrants and agrees that, in purchasing the Services from Thermottraffic:
- a. it shall comply with, and shall continue to comply with, all applicable laws, regulations and policies to which it is subject; and
 - b. it is the owner of the goods in respect of which the Services are to be provided and/or it is duly authorised by the owner to instruct or enter into an Agreement with Thermottraffic on the basis of these Terms and Conditions.
- 5.14 The following shall apply in relation to the provision of Consultancy Services by Thermottraffic:
- a. all orders are, with the express exclusion of articles 7:404 and 7:407 paragraph 2 of the Dutch Civil Code where applicable, acknowledged and carried out by Thermottraffic only, even if it is Customer's express or implied intention that an instruction will be carried out by a specific person;
 - b. Thermottraffic shall, where reasonable grounds exist, consult Customer when involving third parties and shall exercise the necessary care when selecting third parties. Thermottraffic shall not be held liable for the acts, errors, omissions and/or failures of these third parties and is authorised, without prior consultation with Customer or on behalf of Customer, to accept any possible limitation to its liability with regard to the third parties that it has involved;
 - c. except where precluded by the content or nature of the assignment, Customer warrants the accuracy, completeness and reliability of the information made available to Thermottraffic, even where that information originates from a third party. Except where precluded by the content of the assignment, Thermottraffic shall not be obliged to perform a specific investigation of the accuracy and completeness of the information provided by Customer;
 - d. Customer shall notify Thermottraffic promptly and in full of any facts or circumstances which Customer knows or could reasonably be expected to know could be of importance for the provision of the Services by Thermottraffic;
 - e. if Customer, other than through the action of Thermottraffic, fails to comply with its obligations arising from paragraphs c and d and as a result Thermottraffic incurs additional costs and work or other loss or damage, Customer shall be obliged to reimburse Thermottraffic for such costs, extra work and loss; and

- f. Thermottraffic shall carry out the assignment to the best of its ability and with due professional care. Thermottraffic does however not guarantee the achievement of any intended results.

Article 6. Rates and tariffs

- 6.1 Unless specifically in writing agreed otherwise, all rates and fees are in EUR or GBP in accordance with the quotation issued to Customer, and exclusive of all VAT, other taxes, (customs) duties and charges, levied by public authorities on the goods, their transshipment and/or storage thereof.
- 6.2 Where the prices charged by its suppliers, or where wages, social and/or other charges, freights and/or import duties and/or insurance premiums and/or energy costs and/or any other costs, under whatever title, are subject to increases or surcharges after the date on which the order is accepted, Thermottraffic shall be entitled to apply such surcharges accordingly to the rates and tariffs of ongoing orders; and any such application shall be binding upon Customer.
- 6.3 Unless specifically agreed in writing otherwise, Thermottraffic is entitled to yearly adjustments in agreed rates and tariffs, pursuant to any increase of costs, including costs of labour, equipment, fuel, insurance, energy and/or any other costs.
- 6.4 The agreed rates and tariffs apply during business hours. Services performed outside Business Hours and during public holidays (including the evening and night shifts preceding such days) are considered to be overtime services unless otherwise agreed in writing. Special rates and tariffs may apply in the case of overtime services whereby overtime services are subject to the availability of the workforce.

Article 7. Payment conditions

- 7.1 Customer shall pay the amount invoiced by Thermottraffic to Thermottraffic, in the currency of the invoice, within fourteen (14) days of the invoice date, unless otherwise specifically agreed by Thermottraffic in writing. Payment to Thermottraffic must be effected in the manner specified by Thermottraffic. Payment to a(n) (alleged) representative(s) of Thermottraffic shall not release Customer from its payment obligations towards Thermottraffic. Notwithstanding the above, payments by Thermottraffic or a subcontractor of Thermottraffic made on behalf of Customer, such as but not limited to disbursements, import duties, VAT, ocean freight, terminal handling charges and costs relating to additional services, have to be reimbursed directly by Customer promptly upon receipt of the invoice and no later than within one (1) working day. If payment has not been received by the due date in accordance with this Article 7.1, goods and/or documents will not be released/returned.
- 7.2 If Customer does not dispute or return an invoice within five (5) working days of receipt, the said invoice shall be considered to be undisputed. Customer may not dispute disbursements (including import duties, VAT, ocean freight, terminal handling charges and costs relating to additional services), which must be paid in accordance with Article 7.1.
- 7.3 Thermottraffic shall be under no obligation to release or ship any or all product(s) unless and until Customer has paid in full all amounts due to Thermottraffic.
- 7.4 Thermottraffic is entitled to set off any payment obligation towards Customer with any debt of Customer and/or any of its Affiliates. Customer shall not be entitled to invoke set off of the invoice amount against any claim it may consider it has on Thermottraffic and/or otherwise withhold, delay, defer and/or suspend payment thereof.
- 7.5 In the event of failure by Customer to pay the invoice amount to Thermottraffic within the period for payment provided for in Article 7.1, Customer shall be in default without the requirement of any prior notice of default.

- 7.6 From the moment Customer is in default:
- a. for UK Services, Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this Article 7.6a will accrue each day at an annual rate of 4 percentage points above the Bank of England's base rate from time to time, or at 4% per annum for any period when that base rate is below 0%; and
 - b. for all other Services, Customer shall owe statutory commercial interest on the grounds of article 6:119a in conjunction with article 6:120 of the Dutch Civil Code until such time as Thermottraffic receives payment of the amount in full. Customer shall also owe Thermottraffic any judicial and extrajudicial costs incurred in order to secure Customer's compliance with its (payment) obligations, whereby extrajudicial costs shall be fixed at 15% of the amount of the claim.
- 7.7 If for any reason, which shall be at the risk and for the account of Customer, incoming products cannot be handled or stored according to Customer's instructions or where for such reason products cannot be shipped according to Customer's instructions, any and all costs related thereto and any damage incurred by Thermottraffic has to be paid or compensated directly to Thermottraffic, and Thermottraffic may suspend its Services until such payment is made.
- 7.8 Thermottraffic is entitled at any time prior to, during and even after performance of its Services to require an advance payment, a prepayment, an interim payment or security from Customer for all current and future costs and claims by Thermottraffic against Customer; in the event of failure to provide the aforesaid payment or security, Thermottraffic shall be entitled to terminate the Agreement with immediate effect without judicial intervention and without any obligation upon Thermottraffic to pay any form of compensation.
- 7.9 All outstanding invoices and/or claims of Thermottraffic shall become immediately payable if and as soon as Customer or its representative applies for an administration order, files a bankruptcy petition, is declared insolvent, ceases its activities in whole or in part or transfers them to third parties, or loses control of its assets in whole or in part due to attachment or similar measures. In such an event Thermottraffic shall also be entitled to terminate the legal relationship with Customer with immediate effect, without prejudice to the right of Thermottraffic to claim damages and without any obligation upon Thermottraffic to pay any form of compensation.
- 7.10 Customer grants Thermottraffic a possessory pledge [*'vuistpand'*] and/or Thermottraffic has a right of retention [*'retentierecht'*] and/or a lien on all goods, documents and funds of Customer in the possession of Thermottraffic now or in the future regardless of the grounds and regardless of its designated use, for all and any claims against Customer now or in the future. Thermottraffic is also entitled to exercise such rights concerning what Customer still owes Thermottraffic in connection with previous legal relationships or previous assignments. In the event of non-payment of the claim(s) for which such rights are exercised, and/or in the event of any goods which are abandoned (which shall include any goods in respect of which delivery cannot be effected and/or Customer otherwise fails to provide instructions within fourteen (14) days of being required to do so), Thermottraffic shall be entitled to sell and/or otherwise dispose of such goods, documents and funds in the manner as it sees fit, unless otherwise prescribed by law.
- 7.11 Thermottraffic may regard anyone who entrusts goods and/or documents of Customer to Thermottraffic for performance of the Services as Customer's agent to create a pledge and/or allow for a right of retention and/or a lien on such goods and/or documents.

Article 8. Termination

- 8.1 In case of a Force Majeure Event which lasts for more than 48 consecutive hours, Thermottraffic has the right to terminate an Agreement with immediate effect and without the requirement of a prior (written) notice of default and without Customer being entitled to claim any damages or costs from Thermottraffic.
- 8.2 Notwithstanding Thermottraffic's other rights under any Agreement or these Terms and Conditions, including the right to claim damages from Customer, any breach of Customer's obligations pursuant to an Agreement and/or these Terms and Conditions and/or the Sectoral Terms constitutes a right of Thermottraffic to terminate the Agreement wholly or in part and/or to suspend or interrupt the services, by giving a written notice of default. If Customer does not completely and unconditionally cure its breach to the satisfaction of Thermottraffic, Thermottraffic can immediately terminate the Agreement without Customer being entitled to claim any damages or costs from Thermottraffic because of this termination.
- 8.3 If and as soon as Customer becomes insolvent; or it or its representative applies for an administration order or files a bankruptcy petition; or is declared insolvent, ceases its activities in whole or in part or transfers them to third parties; or loses control of its assets in whole or in part due to attachment or similar measures; or applies for judicial or extra-judicial settlement with its creditors or makes an arrangement for the benefit of its creditors; or is the subject of liquidation or dissolution or involuntary bankruptcy proceedings or otherwise discontinues business; then notwithstanding Thermottraffic's other rights under any Agreement, including the right to claim damages from Customer, Thermottraffic is entitled to terminate the Agreement and/or to suspend or interrupt the Services, with immediate effect and without the requirement of a prior (written) notice of default and without Customer being entitled to claim any damages or costs from Thermottraffic.
- 8.4 Without prejudice to the foregoing, Thermottraffic may terminate any Agreement immediately upon giving notice thereof to Customer (or, at its discretion, suspend the provision of the Services) if:
- a. Customer fails to pay any amount due under the Agreement on the due date for payment;
 - b. Customer suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business;
 - c. Customer's financial position deteriorates to such an extent that in Thermottraffic's opinion Customer's capability to fulfil its obligations under the Agreement has been prejudiced;
 - d. Thermottraffic reasonably believes that Customer is or is about to become subject to any of the circumstances listed in Article 8.3;
 - e. there is a change of control of Customer; and/or
 - f. Customer fails to comply with the provisions of Article 9.
- 8.5 In the event of termination of any Agreement, nothing shall be construed to release Customer from any of its obligations or liabilities accrued upon before termination (including its obligations to pay to Thermottraffic any and all fees or other amounts accrued but unpaid prior to the date of receipt of the notice of termination), provided that Thermottraffic will be released from any future obligations arising from the Agreement which have not yet been performed.

Article 9. Liability

- 9.1 The provisions of this Article 9 apply together with the Sectoral Terms in Schedule 1, and all rights, remedies, immunities, defences, exclusions and limitations set out therein. For the avoidance of doubt:

- a. nothing in this Article 9 shall prevent Thermottraffic from relying on the limitations stipulated in the Sectoral Terms where applicable;
- b. if there is a difference between the maximum limitation pursuant to various Sectoral Terms that may apply, the lower limit shall apply; and
- c. in the event that no such a Sectoral Term applies, the maximum liability under any obligation of Thermottraffic to compensate or indemnify is limited to 20,000 SDR for each occurrence or series of occurrences with the same cause.

9.2 Thermottraffic shall not be liable for any loss and/or damage, including loss of and/or damage to the goods and/or loss and/or damage caused by the goods and/or the handling thereof, save where Customer proves that the loss and/or damage was caused as a result of an act or omission on the part of the board or management of Thermottraffic, done either with the intent to cause that damage or recklessly and with the knowledge that such damage would probably result therefrom. Damage shall also be understood to include damage to third parties which Thermottraffic is obliged to compensate; and damage caused by death or injury and any form of financial loss (without prejudice to the other provisions of this Article 9).

The limitation of liability and allocation of risk provided in these Terms and Conditions is agreed to as a fair balance between the risks associated with the rendering of the Services, the terms of the available insurance cover and the agreed remuneration. For the avoidance of doubt, in respect of UK Services where English law applies, nothing in these Terms and Conditions limits any liability which cannot legally be limited, including (but not limited to) liability for death or personal injury caused by negligence, or fraud, or fraudulent misrepresentation.

9.3 Customer shall be obliged to indemnify Thermottraffic for any damage caused to Thermottraffic in the performance of its Services, including but not limited to damage caused by material or goods provided by Customer to Thermottraffic for the purpose of executing any Agreement and/or damage caused as a result of handling that material or those goods, save where the damage was caused as a result of an act or omission on the part of the board or management of Thermottraffic, done either with the intent to cause that damage or recklessly and with the knowledge that such damage would probably result therefrom. Damage shall also be understood to include damage to third parties which Thermottraffic is obliged to compensate; and damage caused by death or injury and any form of financial loss.

9.4 In no circumstances shall Thermottraffic be liable for:

- a. loss of profits, sales or business;
- b. loss of agreements, contracts or other bargains;
- c. loss of anticipated savings;
- d. loss of use or corruption of software, data or information;
- e. loss of any licence, including any import or export licence or equivalent thereto;
- f. loss of or damage to goodwill;
- g. any non-conformance of the goods and/or non-compliance by Customer, owner, manufacturer and/or supplier of the goods, with applicable laws in any jurisdiction from, to or through which the goods are moved and/or cleared, including: consumer protection and market standards, including product labelling, testing and conformity with legal standards; environment and health safety, including food safety, and phytosanitary and flora/fauna controls; safety and security, including prohibited, illegal, restricted, dangerous and/or counterfeit goods and/or smuggling and/or any trade/defence policy restrictions on the goods being cleared through customs;
- h. any customs duties, taxes, other levies imposed by the authorities, interests, penalties and/or fines which are due in respect of the goods of Customer or others;

- i. any claim by Customer for preferential origin rates of duty;
 - j. any loss, damage, delay, costs, charges (including storage), penalties and/or fines arising from delay, seizure, detention or destruction by any Authorities, and/or from goods being improperly, insufficiently or inadequately labelled, classified, packed, or lacking the correct documentation or certification for clearance, or in any way not being compliant for the intended clearance; and/or
 - k. indirect or consequential loss.
- 9.5 Thermottraffic shall be discharged from all liability unless Customer notifies Thermottraffic in writing of any damage or loss, either within five (5) working days after Customer has become aware of such damage or loss, or within five (5) working days after the goods have been received by the carrier, whichever term is shorter. All and any claims against Thermottraffic shall become time-barred nine (9) months after such claim has arisen.
- 9.6 In the event of (or the likelihood of) a claim from customs, any tax authority and/or any other authority against Thermottraffic and/or at the time of termination or setting aside of any Agreement and/or Agreements concluded by Thermottraffic and Customer, Customer shall if required by Thermottraffic provide security in the form of an on demand bank guarantee by a first class Northwest European bank with an office in the Netherlands for any amount for which Customer is or may be liable to Thermottraffic such as custom's claims, levies and/or penalties. The bank guarantee shall be provided in order that Thermottraffic may have effective recourse in respect of any and all claims against Thermottraffic or third parties engaged by Thermottraffic from customs authorities, any tax authorities and/or other government agencies. The security to be provided shall cover the financial risks of Thermottraffic and shall not be released earlier than the expiration of the longest time bar period applicable to the customs claim under civil, administrative (including tax and customs law) or criminal law in accordance with EU and/or national law applicable (including, for the UK Services, English law) and only after written consent from Thermottraffic.
- 9.7 Thermottraffic shall not be liable for any delay, costs or failure to perform any of the terms and provisions of an Agreement arising from Force Majeure and/or the non-availability of a berthing or parking place upon arrival of floating or rolling means of transport.
- 9.8 Nothing in these Terms and Conditions limits any liability which cannot legally be limited, including liability for death or personal injury caused by negligence, or fraud, or fraudulent misrepresentation.

Article 10. Indemnification and Himalaya clause

- 10.1 Customer shall be obliged to indemnify and hold harmless Thermottraffic from and against all liabilities, costs, expenses, damages, levies, VAT, taxes, charges, fines, penalties, claims, demands and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by Thermottraffic and arising out of or in connection with:
- a. any and all third-party claims relating to the provision of the Services;
 - b. any claim made for losses in excess of the limits of liability as set out in Article 9 or in respect of which Thermottraffic's liability is excluded;
 - c. Thermottraffic being deemed to have acted as indirect agent notwithstanding any Agreement between the parties that Thermottraffic will act as direct agent;
 - d. any breach by Customer of any of its warranties and/or obligations included in any Agreement and/or these Terms and Conditions, including all schedules hereto;
 - e. the matters set out in Article 11; and
 - f. any claim howsoever caused or arising made by any Authority,

save where such damage is caused as a result of an act or omission on the part of the board or management of Thermottraffic, done either with the intent to cause that damage or recklessly and with the knowledge that such damage would probably result therefrom.

- 10.2 Should employees of Thermottraffic and/or subcontractors whose services Thermottraffic employs for the purpose of implementing any Agreement, be held liable, such persons shall be entitled to invoke any limitation of and/or exemption from liability included in these Terms and Conditions (including the Sectoral Terms) and/or any other statutory or contractual provision, provided that this Article shall not affect Customer's rights against any third party with whom Thermottraffic has procured a contract on Customer's behalf pursuant to the Agreement. Where English law applies, such employees and/or subcontractors shall be entitled to enforce the benefit of this Article 10.2 in respect of the UK Services pursuant to, and in accordance with, the Contracts (Rights of Third Parties) Act 1999.
- 10.3 In addition, Customer shall indemnify and hold harmless Thermottraffic for any claims by whatever name, from whichever person, legal or private, concerning the latest version of:
- the (EC) Regulation No. 1907 / 2006 of December 18th, 2006, concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH);
 - the (EC) Regulation No. 1272 / 2008 of December 16th, 2008, concerning the classification, labelling and packaging of substances and mixtures;
 - the Wages and Salaries Tax and Social Security Contributions (Liability of Subcontractors) Act [*Wet Ketenaansprakelijkheid*];
 - the Act on Environmental tax base [*Wet belastingen op milieugrondslag*]; or
 - similar regulations or legislation, including, for the purposes of the UK Services, any similar or equivalent legislation under English law.
- 10.4 If any third party (including any Authority) makes a claim, or notifies an intention to make a claim, against Thermottraffic which may reasonably be considered likely to give rise to Customer's liability under the indemnity provisions of this Article 10 (a "**Claim**"), then upon receiving notice in writing from Thermottraffic specifying the nature of the Claim in reasonable detail:
- Customer shall immediately pay and/or reimburse any sums which are payable under this Article 10 upon demand by Thermottraffic (gross of any tax which may be payable on any such sums); and
 - Customer agrees that Thermottraffic may, at its sole discretion avoid, dispute, compromise or defend the Claim, or give Customer authority to avoid, dispute, compromise or defend the Claim at Customer's own expense.

Article 11. Transport and Dangerous Goods

- 11.1 In the event that Thermottraffic would be qualified as a(n) (international) road carrier, additional provisions, as defined in Schedule 2, apply.
- 11.2 In the event that the goods handled by Thermottraffic in the performance of the Services are deemed to be dangerous pursuant to the relevant regulations for the carriage of dangerous substances on inland waterways, by road or by sea, such handling of the goods shall be governed by the European Agreement concerning the International Carriage of Dangerous Goods by Inland Waterways, the European Agreement concerning the International Carriage of Dangerous Goods by Road and the International Maritime Dangerous Goods Code as well as the applicable national regulations with regard to carriage of dangerous goods.
- 11.3 Should Thermottraffic suffer damage as a result of failure by Customer to comply with the obligations laid down in any of the regulations on dangerous goods mentioned in Article 11.1, Customer shall indemnify Thermottraffic for any such damage to in full in accordance with Article 10.

Article 12. Subcontracting

- 12.1 Thermottraffic may subcontract any or all of the Services to third parties and to accept the (standard) terms and conditions of such third parties for such Services.

Article 13. Compliance and sanction rules

- 13.1 Customer accepts that based on applicable legislation to prevent money laundering, terrorist financing, bribery and corruption, Thermottraffic is required to report unusual transactions to the competent Authorities. Customer accepts that Thermottraffic may be obliged by the applicable legislation to identify Customer and verify the identification. Customer shall fully cooperate in this matter. Thermottraffic will record the required data and keep it in accordance with applicable regulations. Customer accepts that the aforementioned disclosure obligation prevails over the applicable privacy rules. Customer guarantees compliance with all applicable sanctions and restrictions laid down in and ensuing from all relevant US, UN, EU, UK or other relevant sanction Authorities and export control regulations in force at the conclusion of any Agreement and during its performance.
- 13.2 Customer specifically agrees that it will not directly or indirectly pay, offer, give, promise to pay or give, or authorize the payment or giving of any money or anything of value to any person or entity for the purpose of illegally or improperly including a decision or retaining business or any advantage in connection with any Agreement, and Customer will comply with all applicable country laws relating to anti-corruption or anti-bribery, including the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions as well as legislation implementing this OECD Convention.
- 13.3 In accordance with Article 8.2, Thermottraffic is entitled to suspend any or all of the Services and/or to terminate (*'beëindigen'*) an Agreement immediately if it reasonably suspects that the goods are directly or indirectly intended for any country subject to a sanction pursuant to US, UN, EU, UK or other relevant sanction Authorities' regulations for the goods in question, without an exemption or licence having been obtained for this purpose from a competent Authority. Thermottraffic is also entitled to terminate any Agreement with immediate effect if it reasonably suspects that Customer intends to violate or violates the obligations and/or legislation relating to anti-corruption or anti-bribery as mentioned in Article 12.2. Customer is obliged within 48 business hours after having received such notice of termination to instruct Thermottraffic how to dispose of the goods in question, failing which Thermottraffic in its sole discretion shall be entitled to sell these goods or have these goods destroyed or where possible donated to a charity.
- 13.4 Following the termination of an Agreement pursuant to Article 8.2 or this Article 12, any obligations of Thermottraffic under any Agreement will lapse immediately. Customer will fully indemnify and hold harmless Thermottraffic against any claim, fine and/or other damage of third parties arising or related to such termination and/or violation.

Article 14. Confidentiality

- 14.1 Customer will not divulge in any way any information that comes to its knowledge in performing any Agreement and which it knows or may reasonably be assumed to know is confidential, except in so far as it is compelled to divulge such information under a statutory regulation or court ruling.
- 14.2 Customer will impose the same duty of confidentiality on its own staff and guarantees that they will comply with the same.

- 14.3 Customer will not divulge to third parties in any way the results of the Services performed or provide any information on the results to third parties without Thermottraffic's express written consent. Thermottraffic may attach conditions to any such consent.
- 14.4 After termination of an Agreement, Customer shall promptly deliver to Thermottraffic without delay, at Thermottraffic's request, information that Customer has in its possession for the purpose of performing the Agreement, with the exception of information that Customer is required to have in its possession on the basis of legislation and/or generally accepted professional rules applicable to Customer.

Article 15. Privacy

- 15.1 Thermottraffic may process personal data obtained from Customer in the context of the performance of an Agreement, in order to comply with legal obligations and its legitimate interests. In the performance of the Agreement, Thermottraffic shall determine the purpose and means of processing personal data. Thermottraffic shall be the controller of personal data (as described in the General Data Protection Regulation) obtained from Customer in connection with the performance of the Agreement. As controller, it is not necessary for Thermottraffic to enter into a data processing Agreement with Customer. Thermottraffic will only process personal data to the extent that this is compatible with the purpose for which the personal data are collected.
- 15.2 Thermottraffic may, whether or not in connection with an Agreement, process, store and share Customer's personal data to everyone within the Thermottraffic organization in connection with the performance of the Agreement and for the purpose of relationship management. Thermottraffic will take appropriate technical and organizational measures to protect the personal data against loss, unauthorized access and alteration. For more information, please check the Privacy Statement of Thermottraffic which may be amended, varied, supplemented or updated from time to time at [Privacy statement - Thermottraffic](#).
- 15.3 Customer will keep the personal data collected during the performance of any Agreement confidential. Customer will not disclose personal data it obtains in the performance of the Agreement or make it available to third parties, unless Thermottraffic has given prior written permission or when a statutory regulation obliges Customer to do so. The confidentiality obligation does not apply with regard to information that has become publicly known without violating the confidentiality clause or in case information was already known to the recipient at the time of receiving the information under the Agreement, or if that information was provided by a third party, without violating a confidentiality clause.

Article 16. Miscellaneous

16.1 Non-applicability of Customer's terms and conditions

The applicability of any general terms and conditions of Customer and/or its subcontractor(s), whether or not printed on the order or any other instructions, is explicitly rejected by Thermottraffic.

16.2 Invalidity

In case any of the terms, conditions and provisions of these Terms and Conditions are invalid or partially invalid the respective text is to be replaced with a corresponding text which is valid and equivalent to the intended meaning; and the remainder of these Terms and Conditions shall remain unaffected and valid.

16.3 Non-assignability

Customer's obligations under any Agreement shall not be assignable or otherwise transferable by Customer, in whole or in part, without the prior written consent of Thermottraffic. Customer's rights under any Agreement shall not be assignable and cannot be transferred.

16.4 Severability

Should any court or Authority or regulatory agency or body determine, in an enforceable form and manner, that any provision of these Terms and Conditions is void, invalid, unenforceable, or illegal, such determination shall not affect any other provision of any Agreement between Thermottraffic and Customer, which shall, if reasonable, be construed and performed as if such void, invalid, unenforceable, or illegal provision had never been contained herein.

16.5 Amendments

Thermottraffic may from time to time during the term of an Agreement modify, vary, or alter any of the provisions of these Terms and Conditions by notifying Customer in writing. No other amendments, changes or modifications to these Terms and Conditions shall be deemed valid and binding unless made in writing and signed by a duly authorised officer of Thermottraffic.

16.6 No waiver

The failure of Thermottraffic to insist in any one or more instances upon strict performance of any of the provisions of these Terms and Conditions or under any Agreement or to take advantage of all of its rights hereunder or under any Agreement shall not operate as a continuing waiver of any of its rights exercisable under these Terms and Conditions or any Agreement.

Article 17. Applicable law and jurisdiction

17.1 Subject to Article 17.3, these Terms and Conditions, including all Schedules, attachments and appendices attached hereto and thereto, and all matters arising out of or relating to any Agreement, as well as the choice of law and forum in these Terms and Conditions itself, are governed by, and construed in accordance with the laws of the Netherlands as applicable to its territory in Europe.

17.2 Subject to Article 17.3, any disputes relating to these Terms and Conditions or in connection with any Agreement, or any other order or supply or failure to supply, whether under contract law or of a non-contractual nature (including this Article 17.2 and including any dispute regarding the existence, validity or termination of any Agreement or any non-contractual obligations), will be exclusively resolved by the Amsterdam District Court following proceedings in English as applicable for the Chamber for International Commercial Matters (Netherlands Commercial Court or "**NCC**"), to the exclusion of the jurisdiction of any other courts. An action for interim measures, including protective measures, available under Dutch law may be brought in the NCC's Court in Summary Proceedings ("**CSP**") in proceedings in English. Any appeals against NCC or CSP judgments will be submitted to the Amsterdam Court of Appeal's Chamber for International Commercial Matters (Netherlands Commercial Court of Appeal). It is agreed that the Netherlands Commercial Court is the most appropriate and convenient court to settle disputes between Thermottraffic and Customer under the applicable Dutch law.

17.3 Articles 17.1 and 17.2 shall not apply to the provision of UK Services, which shall be governed by the law of England and Wales, and in connection with any UK Services any disputes relating to these Terms and Conditions or in connection with any Agreement, or any other order or supply or failure to supply, whether under contract law or of a non-contractual nature shall be settled exclusively by the courts of England and Wales.

Schedule 1 – Sectoral Terms

1. Save as specifically provided otherwise in writing, the following Sectoral Terms, the most recently filed version thereof, shall apply with the exception of any choice of law and choice of forum clause or arbitration clause included in such Sectoral Terms (in respect of which Article 17 of these Terms and Conditions shall apply). For the avoidance of doubt, these Terms and Conditions apply together with the Sectoral Terms and the rights, remedies, limitations and exclusions contained therein, provided that in the event of a conflict between these Terms and Conditions and the Sectoral Terms, the former will prevail.

Services

2. For the purposes of Services (to be) rendered by Thermottraffic within a member state of the European Union:
 - (i) when acting in its capacity as freight forwarder/forwarding and/or receiving agent and/or customs agent, exporter of record and/or VAT (fiscal) representative in respect of services and/or activities as described in Article 2.1, the Dutch Forwarding Conditions of the Fenex [*Nederlandse Expeditievoorwaarden*] shall apply;
 - (ii) when acting or qualified as a road carrier, both in the event of domestic or international transport by road, the CMR Convention of Geneva, 19th May 1956, with the Protocol dated Geneva, 5th July 1978 shall apply; and
 - (iii) when engaged in cold store activities, the Dutch General Storage Conditions of the Association of Dutch Cold-Storage and Freezing Warehouses (version 2020) [*NEKOVRI*] shall apply

Belgian Services

3. For the avoidance of doubt for the purposes of the Belgian Services, Thermottraffic shall always act as a freight forwarder/forwarding and/or receiving agent, and/or customs agent, exporter of record and/or VAT (fiscal) representative in respect of services and/or activities as described in Article 2.1 pursuant to the Dutch Forwarding Conditions of the Fenex [*Nederlandse Expeditievoorwaarden*].

UK Services

4. For the purposes of the UK Services:
 - i. when Thermottraffic is acting in its capacity as freight forwarder/forwarding and/or receiving agent and/or customs agent, exporter of record in respect of services and/or activities as described in Article 2.1, the Standard Trading Conditions of the British International Freight Association shall apply;
 - ii. when Thermottraffic is acting – or is qualified – as an international road carrier, the CMR Convention of Geneva, 19th May 1956, with the Protocol dated Geneva, 5th July 1978 shall apply; and
 - iii. when Thermottraffic is engaged in cold store and/or national distribution activities, the Cold Chain Federation Recommended Conditions for Storage and Distribution services shall apply.

Schedule 2 – Transport

1. Within the framework of border-crossing carriage operations any loading and unloading operations shall not be included in the carriage. If within the framework of domestic carriage operations the loading and unloading operations are not included in the carriage, Thermottraffic shall not be liable and Customer shall indemnify Thermottraffic from third-party claims, by any name and through any cause. If the loading and unloading operations are included in the carriage, the liability of Thermottraffic in respect of these operations shall be equal to the carrier's liability on the basis of the AVC 2002 as referred to in Article 9 of these Terms and Conditions.
2. If Customer offers any container(s) with contents for carriage and this/these container(s) have not been loaded by Thermottraffic, Thermottraffic shall not be liable for damage arising as a result of the method of loading; if Customer offers goods for carriage that are loaded into a container and/or palletized and/or have been packed in such a manner that any check of the number of items and/or the contents is not possible, Thermottraffic shall not be bound by the number and/or the contents as stated by Customer and/or mentioned on the waybill, if during loading no check by Thermottraffic is possible and/or a check will cause material delay to the carriage, s determined by Thermottraffic, and Thermottraffic shall not be bound by the number of items and/or the condition of the cargo and/or contents, as stated by Customer and/or mentioned in the waybill.
3. Customer or addressee shall be obliged:
 - a. to offer only properly packed goods for carriage;
 - b. to guarantee the loading and unloading material and bearers such as pallets and rolling containers made available by it;
 - c. to guarantee the consignee's acceptance of the material supplied to by Customer or addressee;
 - d. when making available pallets, to make use, as much as possible, of pallets that can be taken up on four sides by forklift truck and hand pallet truck with the sizes 80x60 cm, 80x100 cm, 80x120 cm and 100x120 cm, standardized in accordance with NEN 1929, NEN 1930 and NEN 2264 respectively, with a maximum loaded weight of 600 kg in the event of manually moved pallets;
 - e. when making available rolling containers, to see to suitable and reliable rolling containers, whose dimensions and quality correspond or are equal to the prescriptions of NEN-ISO standard 1718, NEN-ISO standard 2175 and NEN-ISO standard 2184 with a maximum loaded weight of 400 kg;
 - f. to provide skilled personnel for the handling of the goods and of the required auxiliary material in the event of loading and unloading; and
 - g. in the event of exchange of pallets immediately to assess the quantities and the external condition of those pallets, to give clear instructions and to state any remarks on the document of carriage.
4. If Customer instructs Thermottraffic to deliver goods on COD terms, Thermottraffic shall not be responsible for any damage if the consignee pays by check and it later appears that the relevant cheque is not covered. Thermottraffic shall not then be obliged to take any action. The collection of the COD charges shall then be at the expense and risk of Customer.
5. At all times Customer shall not load more than the maximum cargo weight legally permitted. Customer shall indemnify Thermottraffic with regard to the consequences and/or damage of and created by overloading to the extent caused by or owing to the conduct of Customer.