



**ECS EUROPEAN CONTAINERS NV – BARON DE MAERELAAN 155 – 8380 ZEEBRUGGE/BELGIE**

**BTW: BE 0435.131.508**

**2XL NV – BARON DE MAERELAAN 155 – 8380 ZEEBRUGGE /BELGIE**

**BTW: BE 0449.424.358**

# **GENERAL TERMS AND CONDITIONS OF TRANSPORT CARRIER UK**

## **1. Applicability**

- 1.1. The terms and conditions outlined in this Agreement shall apply to each Order and all agreements or contracts for the Carriage of Goods made by or entered into by or on behalf of ECS.
- 1.2. Any terms and conditions of the Carrier are hereby expressly considered as not applicable and may only apply if, for each matter, ECS has expressly accepted them in writing.

## **2. Definitions**

In addition to the terms defined elsewhere in this Agreement, capitalized words and expressions have the meaning outlined in Annex 1 of the Agreement unless in case the context would require otherwise.

### **3. Scope of the Agreement**

- 3.1. The Carrier undertakes to perform the Carriage of Goods in conformity with the terms and conditions of this Agreement and the Laws and in the most cost effective, safe, and economically efficient manner.
- 3.2. The Carrier shall perform the Transport Orders in a manner reasonably believed to be in the best interests of ECS and with such care as a reasonably prudent professional provider of similar services would use under similar circumstances. The Carrier shall utilize for the services the technical competence, financial capacity, management skills, competent and qualified personnel, and equipment necessary to carry out its duties and responsibilities.
- 3.3. The Carrier agrees and accepts that the provisions of the CMR apply to the Carriage of Goods by road performed for ECS, even if the Carrier performs a national (part of the) transport.
- 3.4. The Carrier warrants that it shall carry out and complete the Carriage of Goods and discharge all its duties and obligations under this Agreement under the terms of this Agreement.
- 3.5. The Carrier understands and accepts that ECS does not grant exclusivity or guaranteed minimum volumes to the Carrier for the performance of Transport Orders. ECS is entitled to also engage other carriers for the performance of Transport Orders.

### **4. ECS' Information duty**

- 4.1. ECS shall provide the Carrier with the information necessary to execute the Transport Order and to perform its obligations under this Agreement.
- 4.2. If the Carrier were to consider the information to be insufficient then the Carrier must request ECS for additional details or information before the execution of the Order, otherwise, it shall be assumed that ECS fulfilled its information duty under Clause 4.1 and the Carrier is able to perform the Carriage of Goods pursuant to Clause 3.1 of the Agreement.
- 4.3. The Carrier shall ensure that its contact person is available 24 hours a day and 7 days a week and who can be contacted by ECS in the case of any reason. This person must master English language to communicate smoothly and must provide for the communication with the driver.
- 4.4. The Carrier shall, without prejudice to article 4.1, also comply with the (operational) instructions of Consignors, and/or Consignees with a view to the efficient, safe, correct, and smooth performance of

the Transport Orders. For the avoidance of doubt, ECS, Consignors, and/or Consignees are entitled to communicate purely operational instructions to the driver required for the proper execution of the Transport Order to the driver.

- 4.5. In case of discrepancies between the instructions in the sense of this Clause 4.1 of ECS, the Consignee and/or the Consignor, the Carrier must immediately inform ECS thereof.

## **5. Information duty of the Carrier**

- 5.1. The Carrier shall immediately inform ECS of any unsafe situation, shortage, damages to the Units and/or Goods, nonconformities, defects, accidents, temperature deviations, temperature excursions, quality, health, and environmental problems, near misses, delays, removed labels and/or any possible improvements or changes during the execution of an Order.
- 5.2. If the Carrier were to be of the opinion that, for any reason whatsoever (including industrial actions, weather conditions, technical difficulties, possible infringements of the Laws, including cabotage and driving and rest times), the Order cannot be performed in conformity with the Agreement, the Carrier shall forthwith inform ECS in writing and request for additional appropriate instructions. In the absence of written notification from the Carrier to ECS, the Carrier is deemed to be in a position to perform the Transport Orders under the provisions of the Agreement and the Law.

## **6. Quality Standards**

- 6.1. ECS entrusts the Carrier with the performance of the Carriage of the Goods according to ECS's transport quality standards for the trucks, trailers, and other Units.
- 6.2. The Carrier shall ensure that all trailers used for the transport of Goods comply with the following standards to preserve the product quality and integrity during the transport:
- I. good overall condition;
  - II. clean and odorfree (trailer interiors must be free from all debris and odors from previous loads that can either mark or taint packaging or products);
  - III. dry (no condensation on floor, walls or roof) and without any leaks;

- IV. robust floor to enable safe loading and unloading operations;
- V. free from any material that may damage and/or contaminate the Goods;
- VI. where interior lighting is present, it must be protected. No unprotected bulbs, no broken glass or broken hard plastic protective covers.

### 6.3. Requirements for temperature controlled transport

6.3.1. If applicable, the Carrier shall ensure that all trailers/vehicles used for the transport of the Goods comply with the following requirements for temperature controlled transport:

- I. the trailers must be specified as suitable for the temperature controlled transport of chilled or frozen goods;
- II. the temperature controlled vehicles must carry suitable onboard temperature monitoring devices, which alert the driver in case of failure. The Carrier shall have a procedure in place to periodically verify the effective operation of temperature monitoring and temperature control devices;
- III. the trailers shall be conditioned to the specified temperature before loading.

6.3.2. The Carrier shall further ensure the technical ability to log temperatures inside the trailer and document them accordingly for each execution of an Order. Temperature protocols need to be verified by the Carrier on regular basis and kept for a minimum of four years.

6.3.3. The Carrier shall also ensure that:

- I. the interior temperature of the trailer are checked and recorded before loading the Goods;
- II. curtains or flaps are used where the outside temperature is out of the specified range and loading areas are not controlled;
- III. the Goods that are prechilled or prefrozen to the specified temperature prior to loading are kept at a specified temperature at all times. Any interruptions shall be addressed and recorded;
- IV. it avoids storing products directly in front of cooling equipment when this could affect the product quality;
- V. procedures are in place to deal with failures of vehicle or refrigeration systems, which include a notification to ECS.

#### 6.4. Other quality requirements

The Carrier shall assure that all drivers and other personnel comply with the good warehousing practices (GWP) and the employee personal practices of ECS, the Consignee, and/or Consignor.

### 7. Loading, Unloading, and Securing

7.1. The Carrier shall directly book time slots for loading with ECS (and/or Loading Place) and for delivery with the Consignee (and/or Delivery Place) in view of a safe and timely execution of an Order.

7.2. The Carrier particularly warrants the timely loading and delivery and accurately checks the conditions (including nature, type, quality, and temperature) and completeness of the Goods (both the Goods and the packing).

If this should not be possible due to a lack of data in the Transport Documents or there were to be any irregularity in this respect, the Carrier expressly makes a proviso (on the CMR document) for this.

7.3. The Carrier undertakes to load, stow, secure and unload the Goods in accordance with the good practice, guidelines, Laws, and recommendations and if the occasion would arise, in conformity with the additional instructions given by ECS, the Consignor, Consignee, or a Third Party. If the loading, stowage, and/or securing of the Goods were to be performed by or on the instructions of ECS, a Third Party, the Consignor, or Consignee, then the Carrier is held to control these operations performed by the Third Party, ECS, the Consignor or Consignee.

### 8. Transport Documents

8.1. The Carrier is responsible for the Transport Documents and the correct completion thereof.

8.2. The Carrier shall hand over the relevant Transport Documents to the Consignee of the Goods. It shall also provide ECS with (a copy of) the Transport Documents within 24 hours after ECS's request.

8.3. If for any reason whatsoever, a Transport Document is not provided at the place of receipt of the Goods, the Carrier must prepare such Transport Document.

8.4. ECS shall be entitled to consider the failure by the Carrier to obtain, retain or supply the Transport Documents as aforesaid as evidence of mis delivery and/or loss of the Goods by the Carrier.

## **9. Availability of the Carrier's Units**

- 9.1. The Carrier holds a sufficient number of Units available in a continuous manner and without interruptions for the execution of this Agreement. In case of unavailability of Units, including the provided (reefer) trailers, the Carrier shall immediately, and no later than 12 hours after the Order, inform ECS in writing thereof.
- 9.2. The Carrier agrees and accepts that possible costs as a result of the late supply of information on the availability of Units, shall be borne by the Carrier.
- 9.3. The Carrier shall not unreasonably refuse Orders offered by ECS whereby a systematic refusal of Orders shall be considered as a breach in the sense of Clause 24.2.1.

## **10. Precaution measures for Goods and Units**

- 10.1. The Carrier shall at all times take the necessary precautions to safeguard all Units and other equipment belonging to ECS, and/or Third Parties as well as its own Units and equipment and other property, including protection against weather conditions, environmental conditions, various damages, inspections, preventive maintenance, and theft.
- 10.2. The Carrier shall provide and maintain adequate security measures in relation to the Units and the Goods and may only park at parking areas, which are surveilled day and night.
- 10.3. The Carrier will, in the event of any suspicion of fraud, theft, or any other offense relating to the Carriage of the Goods, immediately provide ECS with a detailed report of the facts and the persons involved. At the request of ECS, the Carrier will take the necessary steps in this regard towards the authorities.
- 10.4. The Carrier is responsible for replacing or repairing any loss or damage to both own Units and ECS's Units unless the Carrier proves that the damage has been caused directly by ECS.
- 10.5. In case of an emergency threatening the Units, Goods, or other equipment, the Carrier shall immediately take all necessary reasonable conservatory measures and other actions without prior instructions from ECS and shall advise ECS of the situations. Upon receipt of this notification, ECS may issue complementary instructions to be executed by the Carrier without delay and at its own costs.

10.6. The Carrier shall comply with, and bear all costs related to, all stoppages of the performance of the Carriage of Goods due to any safety or security reason whatsoever imposed by ECS or on its own decision.

## **11. Warranties of the Carrier**

### **11.1. General**

11.1.1. The Carrier represents and warrants to ECS that each of the warranties set out in Clause 11 is true, accurate and correct on the Signing Date and will be true, accurate and correct during the execution of an Order and for the duration of the Agreement.

11.1.2. The Carrier shall notify ECS promptly upon becoming aware of any change, breach, modification, renewing or other events of facts, matters or circumstances for which Warranties are provided by the Carrier to ECS.

11.1.3. The Carrier shall promptly and spontaneously deliver to ECS a copy of all documents evidencing that the Carrier is authorised to perform the Carriage of Goods under this Agreement, has an efficient operation of its business, and complies with all Laws before the performance of the Services as well the warranties set out in this Clause 11. During the term of the Agreement, the Carrier shall also provide a copy of all said documents at ECS's first request.

### **11.2. Personnel and persons accompanying the Goods and Units**

11.2.1. The Carrier warrants that any person accompanying the Goods and/or Units is properly authorised to do so and will comply with the requirements of all applicable Laws and the instructions given by ECS to the Carrier.

11.2.2. The Carrier warrants that the performance of the Carriage of Goods shall be performed by suitably qualified, reliable, medical fit and competent personnel and that all used drivers and dispatchers are skilled in the Carriage of Goods and are sufficiently familiar with the applicable Law. The Carrier shall in this sense prepare a personal file recording mentioning, among others, the driver's training, medical fitness and criminal background.

ECS reserves the right to require the replacement of any personnel of the Carrier, which in ECS's opinion does not comply with this provision at the Carrier's cost.

- 11.2.3. The Carrier warrants that any driver accompanying the Units and/or Goods being carried shall comply with the proceedings set out in ECS' drivers manual and the applicable Law concerning the consumption of drugs or alcohol at all times whilst they are in their vehicles and must wear the Personal Protective Equipment (PPE) if required.
  - 11.2.4. The Carrier warrants that its personnel does not make statements to Third Parties about the nature of the Goods, their Delivery Place and/or about the Cargo Interests.
  - 11.2.5. The Carrier warrants that no Illegal Person shall have access to the Units and/or the Goods and takes all necessary precautions measure to prevent entry of such Illegal Persons. In the event of traces of entrapment, the Goods shall be considered a total loss which may be recovered from the Carrier by ECS, irrespective of whether the goods have been affected or not and irrespective of any outcome of a survey of the loss and/or damage.
  - 11.2.6. The Carrier warrants that every person (whether or not authorised) accompanying the Units or the Goods is employed and properly remunerated in accordance with the applicable Laws and has all the documentation required for the execution of Transport Orders, by immigration, customs, health and other regulations, Laws and Authorities (including A1 documents, L1 documents and proof of IMI declarations). The Carrier shall be liable to indemnify ECS forthwith in respect of Damages arising as a result of any such person failing to comply with such requirements, including all surcharges, penalties, fines relating thereto.
  - 11.2.7. The Carrier warrants that no person, other than the driver accompanying the Goods and/or Units and who is properly authorised to do so, shall enter the sites and warehouses at the Loading Places and/or Delivery Places without ECS's, the Consignor's or Consignee's consent.
- 11.3. Compliance with Laws and regulations
- 11.3.1. The Carrier complies, and shall cause its drivers and Subcontractors to comply, at all time and in all respects with all applicable Laws and the normal ethical practices that apply to ECS's business activities. Neither the Carrier nor any of the Group Companies has received any formal notice alleging any material noncompliance with respect to any Laws and no investigation by any Authority regarding a violation of any Law is pending or threatened.
  - 11.3.2. The Carrier holds all licences, consents, approvals, permissions, permits, certificates, qualifications, registrations and other (public and private) authorisations necessary for the proper and efficient operation of its business and the execution of the Transport Orders (together the "Authorisations").



All of the Authorisations are in full force and effect and have been complied with at any time.

11.3.3. The Carrier warrants that it is, and shall cause its drivers and Subcontractors to be, fully familiar with all Laws, orders, manuals, codes, regulations, recommendations, good practices whether internationally, nationally, regionally or locally in force during the duration of the Agreement which are relevant for the performance of the Transport Orders.

11.3.4. The Carrier warrants that it shall abide with all Laws, applicable for the executions of this Agreement, at the place where the Carriage of Goods is performed, including, transport regulations, social regulations, labour laws, tax requirements, general health, safety and environmental requirements concerning the Carriage of Goods and, if applicable, concerning the accommodation and personnel transportation.

#### 11.4. Trucks and trailers used for the Carriage of the Goods

11.4.1. The Carrier warrants that all trucks, trailers and other Units used for the Carriage of the Goods are in perfect technical conditions and suitable for the Carriage of Goods between the Loading Places and the Delivery Places.

11.4.2. The Carrier warrants that all trucks and other Units used for the Carriage of Goods are registered under the Carrier's transport license and comply with all Laws, orders, manuals, codes, regulations, recommendations, good practices whether internationally, nationally, regionally or locally in force during the duration of the Agreement which are relevant for the performance of the Transport Orders.

#### 11.5. Taxes

11.5.1. The Carrier complies, and shall cause its Subcontractors to comply, at all time and in all respects with Taxes and warrants there are no outstanding debts in respect of Taxes.

11.5.2. The Carrier is responsible for all Taxes, levies, duties, fees and the like in connection with the performance of the Agreement and shall indemnify, defend and hold harmless ECS for all liability and related costs and expenses that may arise in this respect.

### **12. Pallets used for the Carriage of Goods**

12.1. The Carrier shall maintain complete and accurate records that record all Orders and all pallets

exchanges so as to produce a continuous balance that shows the number of pallets that should be returned to ECS. A pallet should return to ECS within 14 days after handing over the pallet.

12.2. The Carrier shall retain the records for at least four years. Upon request by ECS, the Carrier shall be capable of retrieving and delivering the records to ECS within 24 hours from time of request by ECS.

12.3. In the event of termination of the Agreement, the Carrier must return all pallets used for the Carriage of Goods in good condition in accordance with the balance set out in the records mentioned in Clause 12.2.

12.4. ECS is entitled to charge the current market price per missing empty pallet.

### **13. Status of the drivers**

The drivers employed by the Carrier for the Carriage of the Goods maintain at every time their status as employees of the Carrier. The Carrier will retain the exclusive authority normally vested with an employer over these drivers, in accordance with all applicable Laws.

### **14. Assignment and Subcontracting**

14.1. The Carrier shall not assign the Agreement nor entrust any Transport Order (in full or in part) to Third Parties, other than an Approved Carrier, without ECS's prior written consent.

14.2. In case the Carrier is allowed to assign the Agreement or subcontract a Transport Order, it warrants that its Subcontractor does not further assign the Agreement or subcontract any party thereof, to another Third Party.

14.2.1. In any case, no assignment or subcontract (even with ECS's consent) shall relieve the Carrier of any of its obligations, responsibilities and liabilities under this Agreement. All applicable terms and conditions under this Agreement shall be imposed in all subcontracts entered into by the Carrier. The Carrier shall be liable to indemnify ECS forthwith in respect of Damages related to the Carriage of Goods performed by a Subcontractor, including all surcharges, penalties, fines relating thereto.

14.3. The Carrier agrees and understands that it is strictly forbidden to trade an Order on an electronic freight exchange platform.

## **15. Audit**

- 15.1. ECS, its representatives and its principals shall at all time be entitled to carry out checks on all aspects linked, directly or indirectly, to the performance of the Agreement, including checking the items and documents referred to in Annex 3, in order to verify the quality, uniformity and safety of the services and correct compliance with the Agreement and the Laws, and in order to guarantee the commercial arrangements between ECS and its principals. The Carrier guarantees that ECS can also exercise its control rights referred to this Clause 15.1 with regard to the Subcontractors.
- 15.2. The Carrier undertakes to duly inform its drivers and/or Subcontractors whom it calls upon for the performance of Transport Orders, before entrusting them with the performance of a Transport Orders, of the audit rights of ECS, and to have their agreement confirmed in writing. The Carrier shall provide a copy of this written consent to ECS upon first request.
- 15.3. Without prejudice to Clause 24.2, ECS is entitled to cancel Transport Orders, and/or to deny access to its premises to the Carrier, its driver, Subcontractors and/or other employees, in the event of (i) impediment to and/or refusal of ECS' right of inspection and/or (ii) in the event of breach of the conditions of the Agreement established during the exercise of the Audit rights referred to in Clause 15.1.
- 15.4. ECS and its representatives shall have the right to audit all documents pertaining to the services performed by the Carrier and during the four year period after the termination of the Agreement.
- 15.5. The Carrier shall, at its own expense, supply ECS all certificates of analyses, tests, inspections or origin as may be required by ECS within 24 hours after ECS's request, as well as any other documents, including temperature logs.

## **16. Payment**

### **16.1. Compensation**

- 16.1.1. As Compensation for the satisfactory performance of the Carriage of Goods, the Carrier shall receive payment in accordance with the amount agreed on.
- 16.1.2. The Carrier warrants that the agreed Compensations are correct and sufficient to support the

performance of all its obligations either expressed or implied in this Agreement or otherwise appropriate for the proper and timely performances of the Transport Orders, based on the applicable Laws in effect on the date of execution of an Order under this Agreement.

- 16.1.3. The Compensation comprises all costs of the Carrier to perform the Order, including costs related to insurances, fuel, wages, administration, and costs related to the Carrier's Units (e.g. depreciation, maintenance costs), road tolls, ferries, road charges.
- 16.1.4. ECS may withhold any payment due to the Carrier to such extent as may be necessary to protect ECS from loss because of doubt that the Carriage of Goods will fulfil the requirements of the Agreement or breach by the Carrier or any of the terms and conditions, or due to a dispute in an invoice.
- 16.1.5. ECS shall have the right, without prior notice, judicial intervention, or consent by the Carrier, to setoff against any sum due to the Carrier howsoever arising at any time from any claim, damage, loss, expense or other liability or cost which it may have or sustain under this or any other Agreement between ECS and the Carrier or any entity of the Carrier's Group Companies and shall likewise be entitled to deduct any such sum in respect of any claim, damage, loss, expense or other liability or costs sustained by any entity of ECS's Group Companies against the Carrier or any entity of the Carrier's Group Companies.

## 16.2. Invoicing

- 16.2.1. No payment for an Order will be due by ECS if the Transport Documents would not be submitted to ECS within 24 hours after ECS's request. In any case the Carrier shall not be entitled to invoice additional costs for late payment by ECS due to the late submission of the Transport Documents by the Carrier.
- 16.2.2. Subject to Article 16.2.1, the Carrier shall apply 60 days payment terms after the invoice date and the receipt of the Transport Documents pursuant to Article 16.2.1.

## 17. Damages to Units

- 17.1. The Carrier is liable for any damage, losses or defect to Units used for the performance of Transport Orders, regardless of whether the damage, losses or defect is due to the Carrier or a Third Party. The Carrier shall be responsible to make a contradictory statement regarding the conditions of the Units

handed over before using the Units. In the absence of a contradictory statement made by the Carrier, the Unit shall be deemed to have been handed over in mint condition and without any damage.

17.2. Notwithstanding Clause 5, the Carrier shall keep ECS fully informed of all problems encountered during the execution of an Order which are likely to culminate in (insurance) claims.

17.3. In the event of any occurrence likely to give rise to a claim, the Carrier shall:

- I. take any necessary steps to avoid extension of damage;
- II. notify ECS immediately and in any case no later than 48 hours after the occurrence indicating:
  - the time, place and date of the accident;
  - description of the events;
  - parties involved; and
  - the damages and photographs of the damages, preferably in colour,.

and provide as soon as possible photographs of the damages, preferably in colour.

- III. notify the responsible Third Party, if any, in writing of all damages and reserve all rights against the responsible Third Party.

17.4. The Carrier shall in any case refrain from carrying out repairs to Units which are to be approved by the insurer's expert and by ECS and any other actions which would prevent the performance of the damage survey.

17.5. After approval in line with the terms set out in Clause 17.4, the Carrier shall carry out the repairs to the Units by a professional repairer which has been approved in writing by ECS. The Carrier shall have the repair work documented by the repairer and shall submit proof of satisfying repair works to ECS.

17.6. Notwithstanding Clause 17.5, ECS is also entitled to be compensated for the unavailability of its Units. This compensation implies a penalty of EUR 5 per calendar day per container and EUR 20 per calendar day per reefer container or trailer ,EUR 40 calendar per calendar day per refrigerated trailer, without prejudice to ECS' right to claim additional damages if ECS can establish that it has incurred a prejudice exceeding the above provisional fixed amounts. The period of unavailability starts from the moment of discovery of the damage to the Unit until the Unit is handed back to ECS in its repaired state and the repairs have been approved by ECS.

17.7. In the event that satisfying repairs are not possible, or the repairs are insufficient to repair the damage or defect to a Unit, ECS shall be entitled to compensation.

## **18. Liability of the Carrier**

18.1. Subject to the applicable mandatory Law, the Carrier shall be liable for and shall save, indemnify, defend and hold ECS harmless (and/or the Group Companies) against any Damage, action, liability, cost or expense (including legal costs and expenses) whatsoever arising by reason of or in connection with:

- I. any of the Carrier's Warranties not being true, correct or accurate;
- II. any violation of any other covenant or obligation of the Carrier set out in this Agreement; or
- III. the Carriage of Goods, including delays, losses and damages to Goods and Units.

18.2. The Carrier shall fully indemnify and hold ECS harmless against any and all claims of Third Parties, including Authorities and Cargo Interests, that could be filed against ECS as a result of the performance of the Carriage of Goods and/or arising out of or in connection with this Agreement.

18.3. The obligations and liabilities of the Carrier under this Agreement, shall be considered as strict liabilities.

## **19. Insurance**

19.1. The Carrier agrees to obtain and maintain, at its own expenses, insurance coverage of the types set out this Clause 19.1 for the duration of this Agreement. The specified insurance is a minimum requirement and should not be considered an exhaustive list of the ultimate amounts and types of insurance, which the Carrier is required to provide. The minimum requirements are:

- I. CMR liability insurances with a minimum coverage of EUR 250.000 per incident;
- II. Employer's liability insurances as appropriate to fully comply with all applicable Laws and any other insurances as required by Law;
- III. Compulsory road traffic insurances;

IV. CTA insurances (container and trailers) with a minimum coverage of EUR 6.000 per container, EUR 30.000 per chassis/trailer, EUR 30.000 per reefer container, and EUR 60.000 per reefer trailer;

V. Such other insurances as may be required by Law and/or by ECS, for instance goods in transit insurances.

19.2. It is the Carrier's responsibility to ensure that each Subcontractor used by the Carrier in the performance of the Services shall carry and pay for insurances required by all applicable Laws, together with such other insurances as ECS may deem necessary.

19.3. The Carrier shall submit evidence of the coverage of and payment of the premiums for these policies to ECS prior to commencement of the Services and shall procure that a possible claim is handled by or on behalf of its insurers without any delay.

19.4. The Carrier shall ensure that its insurers shall waive all rights of subrogation against ECS. In absence of such waiver, the Carrier shall indemnify and hold ECS harmless for all financial claims against it by any of the insurers mentioned in Article 19.1.

## **20. Liens and other remedies**

### **20.1. Right of lien**

20.1.1. The Carrier is not allowed to exercise a right of lien (such as a right of retention / right of pledge) on the Goods, Units, or other equipment made available by ECS to the Carrier for whatsoever reason. If applicable, the Carrier shall cause to impose the same prohibition on its Subcontractors.

20.1.2. In any case, the Carrier shall indemnify ECS against any and all damages that ECS could incur or for which it could be held liable and that are the result of exercising a right of retention or a right of pledge in respect of the Goods, Units or other equipment by the Carrier or its Subcontractor in breach of this Article.

20.1.3. ECS shall have a lien (and throughout this Clause such right of lien shall include a right of pledge such as e.g. the Luxembourg, Dutch or Belgian "pandrecht" and/or a right of retention) on the Units of the Carrier and/or other equipment or any part thereof for all sums whatsoever to the amount of the estimated value of all the expected costs and/or Damages which are foreseeable to become due to ECS under this Agreement, whether in respect of previous Orders or on general account or

otherwise however.

In this Article “sum” includes damages for breach of contract and other unliquidated claims, costs, expenses, liabilities and all previously unsatisfied debts whatsoever.

20.1.4. The execution of liens shall, at ECS’s discretion, by public sale, private sale, lease or appropriation apply as securities for the principal sum, interests, compensation clause and possible costs.

## 20.2. Suspension

20.2.1. Notwithstanding Clause 20.1 ECS is entitled to suspend payment of the invoices of the Carrier, the latter without any additional costs or interests at the expense of ECS, as long as a claim that is related to the liability of the Carrier has not been settled definitively.

20.2.2. ECS may also suspend any Payment due to the Carrier insofar as this is necessary to protect ECS against a loss due to doubts that the execution of a Transport Order will comply with the requirements of the Agreement or a breach by the Carrier of one of the terms and conditions of this Agreement, or due to a disputed invoice.

20.2.3. The Carrier is not, under any circumstances, entitled to suspend its obligations under this Agreement pursuant to article 1184 of the Belgian Old Civil Code, in order to safeguard the continuity of the deliveries for ECS at all times.

## 21. Cross default Clause

21.1. A default or breach of any nature whatsoever by the Carrier of any of its obligations under this Agreement towards ECS, will be considered to constitute a material breach of its obligations (of any nature whatsoever) towards each entity of ECS’s Group Companies and will entitle any entity of ECS’s Group Companies – immediate and without further notice – to suspend or terminate any of its contractual obligations towards the Carrier and to trigger or accelerate its contractual rights vis-à-vis such Carrier and/or to enforce any security or surety granted to it by the Carrier.

21.2. If the Carrier is a part of a group, a default or breach committed by any entity of the Carrier’s Group Companies towards any entity of the ECS’s Group Companies, shall be considered a breach by the Carrier under this Agreement and will give rise to the right of any entity of the ECS’s Group Companies as provided in this Clause 21.



## **22. Taxes**

The Carrier shall be responsible for all Taxes, charges, duties fees and the like related to the performance of the Services and shall be responsible for and shall save, indemnify, defend and hold harmless ECS in respect of all liabilities and associated costs and expenses which may be incurred in connection therewith.

## **23. Force Majeure**

23.1. Neither Party shall be liable for a breach of the obligations undertaken by it upon the terms of this Agreement by virtue of a Force Majeure, including, (i) war, (ii) terrorism, (iii) riot, (iv) lockout, (v) recession of trade or (vi) any other act of nature of man (including act of government) that is outside the reasonable control of the Parties and for which no blame or fraud can be imputed.

23.2. Notwithstanding Clause 23.1, the Carrier agrees and accepts that the following events shall never qualify as a Force Majeure: strikes, work stoppages, unavailability of Units, sickness and the lack of qualified personnel, fire, failure or late compliance by Third Parties (e.g. Subcontractors) of any obligation related to the Services.

23.3. Any Party that claims Force Majeure shall promptly notify the other Party of such Force Majeure, the effects on its compliance with its obligations, the estimated duration thereof and when the Force Majeure ends.

23.4. If the Force Majeure continues for more than twenty (20) days, either Party may terminate this Agreement by giving the other Party a further fifteen (15) days written notice.

## **24. Termination**

### **24.1. Duration**

24.1.1. The Agreement is entered into for an indefinite period of time from the execution of the first Transport Order.

24.1.2. The Agreement can be terminated at any time by a registered letter, taking into account a notice period of one (1) month.

24.1.3. A notification of new or amended general terms and conditions governing the same subject as this Agreement, shall be deemed to be an automatic termination of this Agreement without the need to respect a notice period mentioned in Clause 24.1.2.

#### 24.2. Events of termination

24.2.1. Notwithstanding Clauses 23, 24.1.1 and 24.1.3, ECS shall have the right to terminate this Agreement with immediate effect, and without any compensation being due, if:

- I. the Carrier is in breach of one or more of its obligations under this Agreement or if it becomes clear that the full execution thereof shall be impossible;
- II. any of the Carrier's Warranties not being true, correct or accurate; or
- III. ECS notices breaches in the exercise of its audit rights mentioned in Clause 15 which are of such a nature that they could lead to commercial and/or reputational damage for ECS and/or breach confidence in the Carrier or the Carrier refuses to participate to such audit;
- IV. it reasonable fears that the Carrier shall be unable to fulfil its obligations;
- V. the Carrier is declared in bankruptcy, or is in cessation of payments, or has decided to windup, or has asked for a judicial debt agreement, or seems to be insolvent in any other way;
- VI. serious changes occur in the ownership or shareholding of the Carrier.

24.2.2. The Agreement may also be terminated at any time by mutual consent of ECS and the Carrier.

#### 24.3. Effect of termination

24.3.1. The Parties agree that notwithstanding the expiration or any termination of this Agreement, during the time before the final delivery of the Goods at the Consignor, the Parties will perform their obligations under this Agreement in utmost good faith, so that there will be no disruption in the ordinary course of ECS's business, with the proviso that this further performance will last no longer than one (1) week.

24.3.2. All further obligations of the Parties under this Agreement shall terminate, except the obligations set out in Clauses 24.3.1, 25.3 and 25.4.

24.3.3. In the event of termination of the Agreement by ECS on the grounds of Clause 24.2.1 (i) to (iii), ECS is entitled to compensation from the Carrier for the Damage thus caused, on the understanding

that (i) such damage is considered to be equal to the total amount invoiced by the Carrier to ECS during the last six (6) months preceding the month in which the Agreement is terminated. If the actual damages suffered are greater than this amount, ECS has the right to claim payment from the Carrier to compensate the full amount of the damages.

## **25. General Provisions**

### 25.1. Rights and remedies of the Parties

Except as otherwise provided herein, each Party's rights and remedies under this Agreement shall not exclude or limit any other rights or remedies that may be available to that Party under Belgian Law.

### 25.2. Amendments and waivers

25.2.1. No amendment to this Agreement shall be effective unless it is made in writing and signed by all Parties or their duly authorised representatives.

25.2.2. No failure or delay of a Party to exercise any right of remedy under this Agreement shall be considered as a waiver of such right or remedy, or any other right or remedy under this Agreement, nor shall any partial exercise of any right or remedy under this Agreement preclude any further exercise thereof or the exercise of any other right or remedy under this Agreement.

25.2.3. No waiver shall be effective unless it is given in writing and signed by all Parties or their duly authorised representatives.

### 25.3. Confidentiality

25.3.1. The existence, subject matter and contents of this Agreement are confidential. Each Party is prohibited from disclosing all or any part of this Agreement, or even its existence, at any time.

25.3.2. The Carrier shall not use the documentation and specifications for other purposes than the ones it has received them for, and shall not, either totally or partially, in any way whatsoever, reproduce them, transfer them to Third Parties, or inform Third Parties of their content.

25.3.3. The Carrier is required to regard as confidential all it has come to know concerning ECS in the scope of the Order, the conclusion and the execution of the Agreement, including the claims handling, and to require the same of his personnel and of eventual Third Parties intervening in the same framework.

#### 25.4. Non solicitation

- 25.4.1. The Carrier shall procure and guarantee that none of the Carrier's Group Companies shall, until ten years from the date of the execution of the latest Transport Order, directly or indirectly:
- I. solicit any person or company who has been in the course of the two years prior to the date of this Agreement (or shall become at any time during the cooperation) a customer, a supplier or business contact of the provider or any of their affiliated companies; or
  - II. induce or attempt to induce any person or company who has been in the course of the two years prior to the date of this agreement (or shall become at any time during the negotiation of the cooperation) a supplier or business contact of the provider or any of their affiliated companies, to cease to supply, to deal with the provider or restrict or vary the terms of supply to of deal with the provider or any of their affiliated companies.
- 25.4.2. If ECS become aware of any breach of the provisions of this clause 25.4 by the Carrier or its Affiliated Companies, ECS shall give notice to the Carrier enjoining it to cease, or to procure and guarantee that its Affiliated Companies, cease any such breach with immediate effect. In case of failure to comply with this injunction, the Carrier shall pay to ECS damages in a fixed provisional amount of EUR 100.000, to be increased by EUR 1.000 for each day, or part of a day, that such breach continues after the first day of infringement, without prejudice to ECS' right to claim additional damages if they can establish that is has incurred a prejudice exceeding the above provisional fixed amounts.

#### 25.5. Data protection

- 25.5.1. Parties agree to comply with all relevant data protection laws and regulations, including the Regulation (EU) 2016/679 (GDPR), applicable to the processing of any personal data under this Agreement.
- 25.5.2. The Carrier agrees that ECS is entitled to process personal data of or related to its officers, drivers or employees (each a "data subject") for the purposes of this Agreement. ECS acts as an individual data controller that determines the purposes and means of this processing of personal data of the data subjects (ECS shall not be considered a processor of the Carrier nor a joint controller). When the Carrier provides information or personal data to ECS about its officers, drivers and employees, it confirms that it has authority to act as their agent.

#### 25.6. Severability

25.6.1. If, at any time, any provision in this Agreement shall be held to be illegal, invalid or unenforceable, in whole or in part, under any applicable Law, that provision shall be deemed not to form part of this Agreement, and the legality, validity or enforceability of the remainder of this Agreement shall not be affected.

25.6.2. In such case, each Party shall use its reasonable best efforts to immediately negotiate in good faith a valid replacement provision having a similar economic effect which is as close as possible to that of the invalid or unenforceable provision, failing which, such invalid or unenforceable provision shall be automatically replaced by a provision which best meets the economic effects of the invalid or unenforceable provision.

#### 25.7. Governing Law

This Agreement and any extracontractual obligations arising out of or in connection with it shall be governed by and construed in accordance with Belgian law.

#### 25.8. Jurisdiction

The Courts of the registered office of ECS shall have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute in relation to extracontractual obligations arising out of or in connection with this Agreement).

## **Annex 1: DEFINITIONS & INTERPRETATION**

### **1. DEFINITIONS**

“**Agreement**” shall comprise the following: (i) the Transport Order, (ii) these Terms and Conditions, (iii) the Annexes, (iv) drivers manual which can be consulted via the ECS portal, (v) operational documents including instructions with respect to theft prevention, damage and recheck procedure, waiting times which can be consulted via the ECS portal, and (iv) any (oral or written) instruction by ECS.

“**ECS**” means any of the ECS’ Group Companies, including the companies ECS European Containers NV with registered office at 8380 Brugge (Belgium), Baron de Maerelaan 155 and with company number 0435.131.508, and 2XL NV with registered at 8380 Brugge (Belgium), Baron de Maerelaan 155 and with company number 0449.424.358.

“**ECS’ Group Companies**” means a member of the group consisting of ECS European Containers NV, 2XL NV,

its holding company and any subsidiaries of such holding company.

**“Authorisations”** has the meaning set out in Clause 11.3.2.

**“Authority”** means any Belgian or foreign governmental authority, quasigovernmental authority, multinational organization or body, court, government or self regulatory organization, commission, tribunal or any regulatory, administrative or other agency, or any political or other subdivision, department or branch of any of the foregoing.

**“Business Days”** means any day other than Saturday and Sunday.

**“Cargo Interest”** means anyone who would suffer a loss if the Goods were damaged, lost, delayed or destroyed or who would benefit from the safe arrival of the Goods.

**“Carriage of Goods”** means all logistical operations for the optimal transport of Goods, including the efficient planning, communication of the planning, loading, unloading, securing, transport, delivery, by order of ECS, as well as the structured reporting of performance, costs and the transport administration to ECS.

**“Carrier’s Group Companies”** means members of the group consisting of the Carrier (as the case may be), its holding company and any subsidiaries of such holding company.

**“Carrier”** means the entity mentioned in the preamble and who is legally admitted in its country of establishment to the international transport market of goods by road for hire or reward or on his own account in accordance with the relevant international and national laws and regulations.

**“Compensation”** means fees, charges, rates, expenses relating to the Carriage of Goods provided by the Carrier as set out in Clause 16.1.1.

**“CMR”** means the Convention on the Contract for International Carriage of Goods by of 19 May 1956 and the Protocol 1978 as from time to time amended.

**“Consignee”** means the person named as such in the Transport Documents and the person to whom delivery of the Goods is to be made.

**“Consignor”** means the person named as such in the Transport Documents and on which behalf the goods deemed to be sent.

**“Damage”** means any loss of ECS which shall be assessed and construed in accordance with the general principles of Belgian civil law, including but not limited to any consequential loss and damages and any other financial consequences thereof.

**“Delivery Place”** means the location for delivery of the Goods as set out in the Transport Order or in

accordance with ECS's instructions.

**"Annexes"** means the exhibits to this Agreement.

**"Force Majeure"** shall mean any unforeseeable and unavoidable incident that renders execution of the Agreement impossible.

**"Goods"** means the goods described or deemed to be described in the consignment note.

**"Illegal Person(s)"** means any person(s) who is (are) refused entry to a country of (un)loading or transit, whose entry there is unlawful for any reason whatsoever or undocumented.

**"Law"** means any national or international law, statute, regulation, directive, statute, rule, ordinance, subordinate legislation, principle of common law, judgment, order, instruction, award or decree of any Authority (including any judicial or administrative interpretation thereof) in force, fully implemented and enforceable.

**"Loading Place"** means the location for loading of the Goods as set out in the Transport Order or in accordance with ECS's instructions.

**"Order"** or **"Transport Order"** means a request by ECS or ECS' Group Companies to the Carrier to carry the Goods in accordance with ECS's instructions.

**"Payment"** means any amount payable under or in connection with this Agreement including any amount payable by way of indemnity, reimbursement or otherwise.

**"Services"** means the services to be performed by the Carrier as defined within this Agreement, including all necessary equipment, Units, personnel, and the like whether or not expressly defined in the Agreement.

**"Signing Date"** means the date of this Agreement.

**"Subcontractor"** means any Third Party to which the Carrier assigns the Agreement or subcontract any Services as a part thereof.

**"Approved Subcontractor"** means the Subcontractors communicated to ECS and approved by ECS prior to the conclusion of this Agreement.

**"Taxes"** means all forms of taxation, duties, levies, imposts and social security charges, whether direct or indirect including, corporate income tax, wage withholding tax, national social security contributions and employee social security contributions, value added tax, customs and excise duties, capital tax and other legal transaction taxes, dividend withholding tax, (municipal) real estate taxes, other municipal taxes and duties, environmental taxes and duties and any other type of taxes or duties in any relevant jurisdiction;

together with any interest, penalties, surcharges or fines relating thereto, due, payable, levied, imposed upon or claimed to be owed in any relevant jurisdiction.

**“Third Party”** means any other (legal) person or entity than the Parties.

**“Transport Documents”** means all relevant transport documents for the execution of the Carriage of the Goods, including the CMR waybill, proof of delivery, temperature printout, packing list, acknowledgement of receipt of convoy costs and custom documents.

**“Unit”** means any vehicle, trailer, container, flat, article of transport or other equipment including pallets in or on which the Goods are carried and/or stored as well as fillers, straps and other securing equipment for securing the Goods and any accessories, irrespective whether it belongs to ECS, a Third Party or the Carrier.

**“Warranties”** means the representations and warranties set out in Clause 11, given by the Carrier to ECS.

## 2. INTERPRETATION

In this Agreement, except where the context otherwise requires:

- 2.1. titles, headings and table of contents included in this Agreement are for convenience only and do not express in any way the intended understanding of the Parties. They shall not be taken into account in the interpretation of the provisions of this Agreement.
- 2.2. reference to an enactment or statutory provision shall include a reference to any subordinate legislation made under the relevant enactment or statutory provision and is a reference to that enactment, statutory provision or subordinate legislation as from time to time amended, consolidated, modified, re enacted or replaced.
- 2.3. the words “include”, “includes”, “including” and all forms and derivations thereof shall mean “including but not limited to”.

### **Annex 2: ECS’ CODE OF CONDUCT**

1. The Carrier will be in compliance with all applicable laws and regulations of the country where operations are undertaken.
2. The Carrier will respect human rights, and no employees will suffer harassment, physical or mental punishment, or other forms of abuse.



3. The Carrier will comply with all applicable wages, hours, laws, rules and regulations – including minimum wages, overtime and maximum hours in the country concerned.
4. There shall be no use of forced labour, and employees will be free to leave employment. There shall be no use of forced prison bonded or involuntary labour, and employees will be free to leave employment after reasonable notice without penalty or salary deductions. Employees have the freedom to leave the premises when their work shifts end.
5. There will no use of child labour, and specifically there will be compliance with relevant International Labour Organization standards.
6. The Carrier will respect the rights of employees to freedom of association and recognition of employees' rights to collective bargaining , where allowable by law.
7. The Carrier will provide safe and healthy working conditions for all employees.
8. The Carrier will carry out all operations with care for the environment and will include compliance with all relevant legislation in the country concerned.
9. The Carrier will follow all applicable laws and regulations to handling, storage, transportation, recycling and disposing of hazardous and non-hazardous waste.
10. All services will be delivered to meet the quality and safety criteria specified further in the cooperation agreement, as well as other manuals and instructions, and will be safe for their intended use.
11. Business will be conducted with integrity. There will be no payment, services, gifts, entertainment or other advantages offered or given to any employee of the client or third party which are intended to influence the way in which the client's employee or third party exercises his or her duties. Similarly, the client will not offer or give such payments, services, gifts, entertainment or other advantages to any carrier which intends to influence the way the carrier exercises his or her duties. There will be no actual or attempted money laundering.
12. The Carriers' working on behalf of ECS will take responsibility to require adherence to the principals of this Code of Conduct from their direct suppliers and exercise diligence in verifying that these principles are being adhered to their supply chain.
13. The Carrier undertakes to man the vehicles that are to be used for the implementation of its

commitments with trained and experienced personnel who meet all the legal requirements to drive a vehicle.

14. Manning the vehicle with personnel who are not trained and who are inexperienced, or personnel who do not conform, may be considered a serious breach of contract.
15. The Carrier's personnel remain under the leadership, authority and supervision of the Carrier. The Carrier remains responsible for its personnel at all times, amongst others with regard to respecting the driving and rest periods, social and fiscal legislation, working hours, wages ...
16. The Carrier will execute the transports in all autonomy and independence, though according to the dispatching established by the client
17. ECS does not exercise any authority on the carrier or its personnel, but can give the following instructions without it being seen as the exercise of authority: (i) technical instructions in connection with the execution of this agreement and the transports that are to be executed, including those concerning the prevention of overloading, loading safety, (ii) instructions regarding cases of damage or incidents that are related to the goods to be transported, during loading, during transport or upon arrival at the addressee, (iii) customs related instructions, (iv) general instructions, obligations and guidelines that are the result of the nature of the executed activity, or that are necessary for the attainment of an established result.
18. The Carrier declares and undertakes that the drivers will not accept any other direct instruction, order, directive or sanction, neither from the client nor from the interested parties concerning the cargo and that the drivers will not report either to the client or directly to the interested parties concerning the cargo.
19. The Carrier undertakes to inform each of the drivers on this subject in advance that they are under the obligation to notify the carrier immediately should such an event occur. If necessary, the Carrier will inform ECS of this immediately. Eventual complaints must only be directed to the carrier and addressed and resolved by him immediately
20. The Parties will, however, make provision that the drivers of the Carrier can deliver CMR waybill/POD at a designated place at ECS. These documents will be delivered to the Carrier by the relevant front desk immediately for further processing and/or decision. It is possible that, if it is urgent, communication with the driver will be done via the front desk in accordance with the instructions of the Carrier.

21. The following documents can also be presented to the drivers at these front desks, in accordance with the instruction of the Carrier.
22. The Carrier will fulfil all social laws and fiscal obligations imposed on the employers with regards to its employees. The Carrier will prove that he has complied with all social laws and tax obligations at the time of the conclusion of the agreement and before he starts working for ECS.
23. The Carrier must be able to evidence ECS that the statutory social contributions of the personnel who are deployed for the contract have been paid and that the required tax withholdings were implemented. The Carrier must be able to submit evidentiary documents that demonstrate compliance with the legal provisions at the first request of the client.
24. Whenever operating in Belgium with non Belgian employees, as appropriate and in accordance with the legal requirements, these employees must be in possession of the necessary documents, such as A1 documents, residence permits, work permits, Limosa declarations (L1 documents) and other documents that indicate the correct membership and payment at a social security system.
25. The Carrier will be responsible for the compliance with labour law provisions, including driving and resting periods, salary/wages, working hours and minimum rest periods (including, among other things, the ban on taking normal weekly rest in the cabin and the obligatory return of the driver, holidays, compensation for overtime, health, safety, hygiene and wellbeing of employees in the workplace with regards to its own employees. The Carrier will ensure that its subcontractors will comply with these provisions with regards to their respective employees. The Carrier undertakes to provide all possible relevant documentation to the client upon simple written request and in particular to prove that all obligations under employment law have been fulfilled.
26. The Carrier declares not to employ any unauthorised workers and undertakes to have the provisions of this article complied with by its own subcontractors.
27. Under no circumstances, ECS will tolerate forced labour or human trafficking. ECS also expects that the Carriers treat their workers fairly and offer transparent employment terms and good working and living conditions.
28. The Carrier undertakes not to employ workers under the posting of workers regime, except by means of authorized employment agencies, and to see to it that no agreements are concluded with false self employed persons.

### **Annex 3 CHECKLIST**

The Carrier acknowledges and accepts that ECS is entitled to verify information and documents at any time in the context of the performance of this Agreement. In the event that ECS is questioned by Authorities in the context of the execution of this Agreement, the Carrier also undertakes to provide all assistance and documents requested by ECS without delay. The right of audit includes (non exhaustive) the following:

#### **I. What documents can ECS ask you for as Carrier/employer?**

1. Proof of registration of the Company;
2. Proof of registration of the Company as employer;
3. Proof of no debt status: taxes, wages and social security debts;
4. Work regulations with all work schedules;
5. Proof of compliance with remunerations and working conditions;
6. Employment contracts of drivers, with any addenda (supplements);
7. Performance and salary data of employees: individual account, salary slips, performance lists, payment receipts, etc.;
8. Transport licence;
9. List of licensed vehicles/number plates;
10. List of drivers;
11. Waybills, and subcontracting agreements;
12. Insurance certificates;
13. When employing non-EU employees or self-employed persons, the following documents may be requested:
  - The labour cards and/or work permits and residence permits for non-EU nationals;
  - Professional cards for non-exempt foreign self-employed persons (non-EU nationals);

14. A1-documents for drivers;
15. IMI (posting) declarations for drivers.

## **II. What questions can ECS ask your drivers?**

1. Who is his employer: Identification details of the employer and/or client.
2. About his status: Identification details of the driver.

## **III. Documents (to be presented immediately by the driver for inspection)**

1. Identity Documents;
2. Driving licence;
3. Employment agreements;
4. Work permits and residence permits (for non-EU nationals);
5. Waybills;
6. Board documents (technical inspection, insurance,...) and lease contract;
7. Copy of transport licence;
8. Declaration of posting (IMI registration);
9. A1documents;
10. Transport documents.