



BEROEPSVERENIGING  
DER BELGISCHE VRIES-  
EN KOELNIJVERHEID



# THE ABCFI GENERAL CONDITIONS



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## DEFINITIONS

In the ABIE terms & conditions the terms and expressions used below have the following meaning:

**A. Cold Store:** each space that the Deposittee uses and in which acclimatization methods facilitate cold storage and/or processing of goods. The temperature will generally be above 0°C or, depending on the goods to be cooled, or just below 0°C.

**B. Cold Storage Agreement:** the agreement in which a party, the Deposittee, commits itself to the other party, the Depositor, to store and process goods in a Cold Store /Freezing Store and to return the goods which the Depositor entrusts or will entrust to him. This Cold Storage Agreement comes into effect through the Depositor's acceptance of the quotation. Acceptance of the quotation is evidenced either by the Depositor's signature or, failing this, by the execution given to the order. The Cold Storage Agreement can also be laid down in a separate contract signed by both parties. This contract specifies the duration, nature of the goods and details of the service.

**C. Deposittee:** the professional provider recognised by the ABCFI which accepts goods for storage on a professional basis, as referred to under i of this article.

**D. Depositor:**

- he who has entered into a Cold Storage Agreement with the Deposittee as referred to under b of this article.
- the warrant holder as referred to under l of this article.
- he who took over the rights of one of the above-mentioned.

**E. Freezing Store:** to this the same definition applies as to the 'Cold Store,' in the understanding, however, that the temperature in this space is always below 0°C.

**F Goods:** this concerns all the goods that are the subject of the Cold-Storage Agreement.

**G. Product Temperature:** the temperature, as constant as possible, expressed in °C as required by the Depositor, measured in the core of a product or in the core of a packing unit. The product temperature required is reached after the goods have been stored in the Cold Store/Freezing Store for at least two weeks. The product temperature is only recorded and measured by the Deposittee if this was expressly agreed upon at the time that the Cold Storage Agreement was entered.

**H. Quotation:** alle proposal issued by the Deposittee, which includes the specific assignment and any work.



**I. Storing:** services that include one or more of the following:

- the entry of goods in a Cold Store/Freezing Store, if and for as far as the entry is carried out by the Deposittee.
- the storing of goods in a Cold Store/Freezing Store.
- the cooling or freezing of goods in a Cold Store/Freezing Store.
- the otherwise handling and/or processing of goods in a Cold Store/Freezing Store or similar space if and for as far as such is carried out by the Deposittee.
- the exit of goods from a Cold Store/Freezing Store, if and for as far as this exit is carried out by the Deposittee.

**J. Storage Temperature:** the temperature requested by the Depositor, expressed in °C, under which the goods are to be stored or processed in a Cold-Store/Freezing Store. This temperature will be recorded by the Depositor.

**K. Warrant:** a document bearing the heading 'Warrant' respectively 'Delivery Order,' duly signed by or on behalf of the Deposittee, in which it is stated that the holder thereof is entitled to receive goods of a certain quantity and of a kind mentioned therein of the Deposittee.

**L. Warrant holder:** a person that makes himself known as a holder of a warrant to the Deposittee by submitting said warrant.

**M. Warrant holder last known to the Deposittee:** the person to whom the warrant has been issued or the warrant holder whose written request to the Deposittee to be regarded as such and which bears the most recent date. The Deposittee however is entitled to regard a different person as such if he has the justified reasons to presume that this latter person is the last warrant holder.

# THE GENERAL CONDITIONS

## **Article 1 Applicability/scope of these ABCFI terms & conditions**

**1.1** Every storing by a Depositee and every assignment thereto as well as every quotation submitted in connection thereupon will be governed by these ABCFI terms & conditions.

**1.2** These ABCFI terms & conditions are applied to all assignments of storage, services, or deliveries to the Depositor subject to changes, to which both parties agreed upon expressly in writing. Possible changes are only valid for the specific agreement that they cover and cannot be invoked for potential later assignments. Absolute Priority ABCFI conditions

### **Arrangement - conditions or other terms of Depositor**

**1.3** If the Depositor does not comment on these ABCFI conditions or transmits other conditions then they are deemed to be accepted in their entirety by the Depositor. Acceptance of these ABCFI conditions also implies that the Depositor fully waives the application of its own conditions.

If the Depositor nevertheless has comments on the ABCFI conditions or transmits other conditions this shall be settled as follows:

- if this occurs at the time of acceptance of the Agreement or just before the start of the work, these remarks or other conditions will NOT be taken into account.

In such a case, there can be no effective knowledge and acceptance of the remarks or other general conditions.

The Agreement is thus concluded with the ABCFI conditions as enclosed with the Quotation/Cold Storage Agreement.

- if the remarks or other conditions are submitted before the acceptance of the Cold Storage Agreement/Quotation, a written response will be given as soon as possible.

The parties undertake to do what is necessary within a reasonable time, taking into account the commencement of the work, to reach agreement in good faith on the elements that would be in dispute.

Where appropriate, the Agreement shall be concluded either in accordance with the negotiated terms or without application of the comments formulated or the incompatible clauses of the two general terms and conditions.

By these options, the Depositor expressly accepts that all clauses of these ABCFI terms & conditions, except for the clauses that concern mandatory legislation, are negotiable.

### **Annulment**

**1.4** The eventual annulment of one or more dispositions of these ABCFI terms & conditions, do not affect the applicability of all other clauses. In such event, the parties will negotiate in best effort and in good faith to replace this disposition by a legal, valid, non-annulled and executable disposition with a similar effect.

**1.5** These ABCFI terms & conditions annul and replace all previous agreements, propositions, discussions of negotiations, written or oral.

## **Article 2 Nature of the Cold Storage Agreement**

The Cold Storage Agreement will, as far as it applies to Cold Storage of goods and making available space in a Cold Store/Freezing Store, always be considered as a storage agreement unless agreed differently by the parties.

## **Article 3 Storage charges – costs**

### **Base storage charges**

**3.1** The volume, weight of the goods and the duration of the assignment, as mentioned in the quotation and/or the Cold Storage Agreement, are used as a base for the storage charges.

### **Reimbursement Work**

**3.2** The prices/rates agreed upon will only concern the work as stated in the quotation and/or Cold Storage Agreement. In case the operations have not been





specified, only the following are meant the depositing, the storage, and the removal of the goods. The storage charge and extra costs are owed to the Deposittee for the full period during which the space has been made available to the Depositor for the goods concerned.

#### **Other Work**

**3.3** All other work and the related costs, like for example relocation, handling and/or processing will be charged at the rates and on the conditions which, under identical circumstances, are charged by the Deposittee. If this is not possible, those prices/rates as are customary in the industry will be applied.

This work also falls under the scope of these ABCFI terms & conditions.

Work that the Deposittee does not wish to take upon himself, can be executed with his permission by or in the name of the Depositor under the supervision of the Deposittee, this against payment for the supervision.

#### **Costs Inspection**

**3.4** If, because of an inspection by the government, for example the Customs, the Deposittee must perform extra and unforeseen operations, the Deposittee is entitled to charge the related costs to the Depositor.

#### **Article 4 Modifications of prices/rates**

##### **Price change**

**4.1** The Deposittee is entitled to implement price changes, which are independent of the Deposittee 's will and which relate to imposed collective agreements, legislative changes and changed costs in fuel, energy, wages, materials, raw materials, transport, and transport-related items.

##### **Adjustment of prices**

**4.2** In the event there is an increase in costs as set out in **article 4(1)**, the agreed prices and fees can be adjusted immediately accordingly.

Such changes in prices/charges will be brought to the attention of the Depositor or, in case a warrant is in circulation, to the warrant holder last known to the Depositor, as soon as possible. These price changes may be charged immediately, both on current contracts and on quotations.

#### **Taxes and Duties**

**4.3** The Depositor is obliged to accept any adjustment of rates regarding expenses and/ or bearing costs (including new taxes, levies, costs of delay, waiting times, etc.) that are unknown at the time of entering into the Cold Storage Agreement, and which the Depositor would have had if the Depositor were to carry out the activities specified in this agreement for its own account.

#### **Article 5 Guarantee/advance payment**

The Deposittee may at any time request payment guarantees and/or advance payments and suspend the execution of the Agreement until those guarantees and/or advance payments have been made, without this giving rise to any form of compensation for the Depositor. The type of guarantee and/or the amount of the advance payment shall be specified in the Quotation and/or Cold Storage Agreement. If circumstances arise later that justify a change in the guarantee and/or advance payment, the Deposittee is entitled to adjust the amount of the advance payment and/or guarantee, without additional motivation.

#### **Article 6 Special additional conditions**

##### **Freight Forwarder**

**6.1** If the Deposittee acts as a freight forwarder, the Belgian Freight Forwarders Standard Trading Conditions (ABEV 2005) apply. The Deposittee will communicate this in writing at acceptance of the assignment to the client. A copy of these Standard Trading Conditions shall be delivered in advance to the client. The assignment of a freight forwarder consists of among other things sending goods either in his own name or in the name of his client, but at his expense and therefore of performing all essential services, the organisation of customs clearance, accomplishing all required formalities and concluding the necessary agreements.

##### **CMR Convention**

**6.2** On all national and international transport that the Deposittee takes upon himself as commissioner carrier or as carrier the CMR Convention is applicable.

##### **Cabotage**

**6.3** The dispositions of the CMR are also applicable on cabotage orders and this without prejudice to the applicable mandatory legal regulations.

### Article 7 Proof of depositing of the goods

The Deposittee will issue a receipt to the Depositor upon arrival of the goods on its premises. Subject to other convincing means of proof, this receipt is proof of the number of goods (pallets and / or packages - if observable-), possibly their weight and / or volume, as well as their method of packaging that has been presented by the Depositor for storage and / or processing to the Deposittee.

### Article 8 Condition of the space in the Cold-Store/ Freezing Store

#### Suitable and clean space

**8.1** The Deposittee is obliged to provide an adequate and clean space to the Depositor. The Depositor has the right to inspect the cleanliness and suitability of the provided space in the Cold Store/Freezing Store before the delivery of his goods and to note eventual remarks on the condition report.  
Inspection

**8.2** If the Depositor does not use the possibility to perform such an inspection and/or has made no objections to the cleanliness, suitability or condition of the provided space made available, the Deposittee is deemed to have complied with the obligation under **article 8(1)**.

### Article 9 Reception and description of the goods Detailed list

**9.1** The Depositor is obliged to provide at the time the Cold Storage Agreement was entered, but the latest at the placing of the goods a complete list with enough details concerning ALL goods to be stored to the Deposittee.

This list contains at least:

- the exact and precise description of the goods, among others the kind, number, weight, state, and danger-class.
- all instructions and limits concerning the protection, the processing or the stay of the goods and the execution of the assignment in general.
- all instructions concerning the protection of the appointees.

The goods must have all necessary brands concerning their characteristics.

### Packaging

**9.2** The Depositor is obliged to deliver the goods in good state and—if packed—, in sound and fit transport worthy packaging material.

### Marks

**9.3** The Depositor is obliged to deliver the goods—if applicable—clearly marked.

### EAN - code

**9.4** The Depositor is obliged, if an EAN - code has been applied, to apply this code at an accessible position, in such a manner that the reading of said code by means of a scanner is possible.

### Legal Obligations

**9.5** The Depositor is obliged to take care of all legal obligations concerning documentation, way of packaging and coding of the goods offered for storing. This list is not exhaustive.

### Check Inventory List

**9.6** When the goods are placed in storage, the Deposittee will go through the inventory list and determine the number of packages. If, due to the composition of the goods, it is not possible or cannot reasonably be required of the Deposittee to determine the number of packages, the Deposittee will determine the weight of the batch or other external characteristics.

### Refusal goods

**9.7** The Deposittee can refuse to accept the goods. If the Deposittee agrees to store or process the goods, then all necessary extra operations to prepare, clean or change the space provided for this, will be executed by or under the supervision of the Deposittee, at the costs and risk of the Depositor.

### Incorrect statement

**9.8** The Deposittee is never liable for the consequences of incorrect, misleading and/or incomplete statements, nor of the packaging material or containers provided by or because of the Depositor to him, nor for the consequences of defects to the goods, the packing material and/or the containers. The Depositor expressly indemnifies the Deposittee against all (financial) consequences, resulting from non-compliance with the obligations.





## Indemnification

**9.9** The Deposittee is never responsible if the Depositor does not comply with the obligations mentioned in **paragraph 2**. The Depositor indemnifies the Deposittee against all financial and material consequences, which may be caused by non-compliance with the obligations mentioned in **paragraph 2** of this article.

## Instructions

**9.10** The Depositor is obliged at the time that the Cold Storage Agreement was entered, but at the latest at placing the goods in storage to provide ALL instructions concerning the treatment of the goods to the Deposittee. If, at the delivery of the goods to be stored and/or processed no written instructions are provided by the Depositor to the Deposittee, the Deposittee will store and/or process these goods at its own discretion and in a manner customary in the sector.

If, in the opinion of the Depositor, a special method of storage of the goods is required, the Depositor will always notify the Deposittee of this timely in writing to give him the opportunity to take the preparatory measures, in the absence of which notification the Deposittee will not be liable for losses and / or damage, in any way whatsoever, during the storage of the relevant goods.

If, in the opinion of the Depositor, a special method of storage of the goods is required by the Deposittee or is made necessary by the nature of those goods, all associated additional costs will be borne by the Depositor.

## Control Goods

**9.11** The Deposittee is NOT obliged without clear instruction / order to do so to weigh or measure the goods to be stored, regardless of the method of packaging or storage, or to conduct any other investigation into the nature and condition of the goods, which should also be understood to include an investigation into moisture levels.

Nevertheless, the Deposittee is free to weigh and measure the goods to check the statement received, or to subject them to any other investigation if he suspects that the statement is incorrect. If, where appropriate, the Deposittee determines that the weight or size deviates from the statement by the Depositor,

the costs associated with weighing and / or measuring will be borne by the Depositor.

The Deposittee is never liable for differences between the description and / or indication of goods taken into custody and the actual quantity, nature, condition, and weight and / or volume of the goods.

## Article 10 Beginning and ending of the storage of the goods

**10.1** The storage begins at the physical reception of the goods by the Deposittee in the place and the way agreed upon by both parties.

**10.2** The Cold Storage Agreement ends:

- as soon as the Deposittee has placed the goods with the transport vehicle or are put in another place indicated by the Depositor.
- as soon as the Depositor manipulates the goods.

## Article 11 Sequence in which vehicles, wagons, containers, and ships are handled

**11.1** Vehicles, wagons, containers, and ships will be handled by the Deposittee in the sequence of their arrival in the loading/unloading area or at the quay of the loading/unloading area.

**11.2** The Deposittee reserves the right to alter this sequence, if he reasonably considers it necessary to change it to comply with the regulations and/or directions of the Customs, the Federal Food Safety Agency (FAVV) or other authorities, or if special arrangements must be made to promote a smooth running of goods, or if other justified reasons require this.

## Article 12 Liability for delay

**12.1** The Deposittee is not liable for damage suffered by delay or interruption in its activities unless the Deposittee can be blamed for culpable acts, negligence, or gross negligence.

**12.2** The Deposittee is never liable for damage caused by the delay and consequences of the mooring, loading, or unloading areas not being accessible, usable, or already occupied, nor for any delay because of (controlling) actions by the FAVV (for example goods

being blocked pending analysis). This list is not exhaustive.

**12.3** Culpable delay as referred to in **article 12(1)** is understood to mean: placing the goods at a time that deviates from the agreed time of storing the goods and as a result of which the quality of the goods concerned no longer meets the requirements of the quality system concerned, which can be attributed to the Deposittee and as a result of which the Depositor suffers damage.

**12.4** When the liability of the Deposittee is determined due to culpable late storage, his liability is limited to the amount of the storage costs for the goods concerned.

The storage costs refer only to the costs made to store the goods.

In the event of culpable delay, compensation is only due if the Depositor proves that he has suffered damage as a result.

**12.5** The Depositor is obliged to make the goods available to the Deposittee at the agreed place, time, and manner, accompanied by a transport document and the other documents required by or pursuant to the law. If ships, vehicles, containers and/or wagons do not arrive or cannot be handled at the agreed time due to the actions of the Depositor and / or other parties, the Deposittee is entitled to compensation for all costs incurred by him to still collect the goods, including compensation for waiting times and working hours. This list is not exhaustive.

The Depositor is obliged to indemnify the Deposittee of all possible actions that third parties may bring against the Deposittee if the goods are not delivered on time and / or in accordance with legal requirements.

### Article 13 Operating hours

**13.1** Unless agreed otherwise all operations to be carried out by the Deposittee to or in connection with the goods will be usually carried out on working days during the hours at which the Cold Store/Freezing Store is open.

**13.2** If, due to regulations or measures of the authorities, unforeseen circumstances, either in the interest of the goods or the Depositor, any operations

are to be carried out at other times than those mentioned there, the Deposittee will be authorized, if necessary, without prior consultation with the Depositor, to carry out said operations out of normal working hours.

**13.3** If the Depositor demands that work be carried out outside regular working hours it will be the discretion of the Deposittee to comply with a request to that effect or not. The Depositor will, however, not refuse but on reasonable grounds.

**13.4** Any extra expenses incurred by the carrying out of operations outside regular working hours will be borne by the Depositor.

### Article 14 Directions on loading and unloading

**14.1** If parties agreed that the loading and/or unloading of vehicles, wagons, containers, or ships will be carried out by employees of the Deposittee, the Depositor will be required to provide the Deposittee with clear and prompt directions concerning the manner of loading and unloading and if a load consists of several batches which goods belong to which of the individual batches.

**14.2** If the Depositor has failed to provide adequate instructions and if batches have been mixed up, loaded, or unloaded incorrectly because of that failure, the Deposittee will not be liable for this. The Depositor must compensate the Deposittee if sorting out is required.

**14.3** If loading or unloading is carried out by or on behalf of the Depositor in accordance with the instructions of the Depositor, the moment of loading and/or unloading will be determined at the risk of the Depositor. The Deposittee is never liable for damage resulting from the wrong time of loading and / or unloading.

### Article 15 Visible condition of the goods on arrival

**15.1** The goods must be delivered in a good condition and—if packed—packed with properly and transport worthy packaging material. The goods must—if applicable—be clearly marked when delivered.



**15.2** If EAN codes have been applied, these codes must be carefully affixed in such an accessible place that the code can be read with a scanner.

**15.3** The Deposittee is not obliged to check the correctness of the EAN codes applied. The Deposittee can never be held liable for the consequences of incorrectly applied EAN codes.

The Depositor is obliged to indemnify the Deposittee against all claims that third parties may bring against the Deposittee, as well as to compensate the damage suffered by the Deposittee.

#### **Article 16 Refusal to store goods**

**16.1** The Deposittee has the right to refuse goods of which the nature, kind, quality, weight, value, number, packaging, product temperature deviates from the initial description or do not comply with the requirements that can be asked.

**16.2** The Deposittee has the right to refuse goods that are visibly damaged, in faulty condition, badly packaged or with no markings when delivered. The Deposittee will in this case make a clearly motivated reservation and ask the Depositor for further instructions. The Deposittee is not liable for all damages caused by a bad or inadequate packaging.

**16.3** The goods can also be refused if:

- the goods, in the opinion of the Deposittee, may cause danger and/or damage to other goods stored in the Cold Store/Freezing Store.
- the goods, in the opinion of the Deposittee, may cause danger and/or damage to people.
- the goods, in the opinion of the Deposittee, may cause danger and/or damage to the Cold Store/Freezing Store and/or the installations.
- the goods do not appear to be in order from a sensory point of view.
- the goods are not delivered at the prescribed and / or agreed temperature.
- the origin of the goods cannot be communicated and / or proven upon request to that effect.

#### **Article 17 Method of stacking the goods**

**17.1** The method of stacking the goods will be determined by the Deposittee in accordance with proper professional practice.

**17.2** If in the interest of the goods, on account of their nature or packing or any other reason, it should be necessary to stack the goods by a different method than might have been expected by the Deposittee, any additional storage charges and extra expenses resulting from that will be charged to the Depositor.

**17.3** In case the goods are delivered on pallets stacked by the Depositor, but safety requirements demand a separate way of stacking or extra precautions, the goods will be restacked at the expense of the Depositor, and/or those precautions will be taken.

#### **Article 18 Temperature and humidity**

**18.1** The Depositor is obliged to give the Deposittee clear instructions regarding the storage temperature. If the Depositor wishes to change the agreed storage temperature due to changing insights, the Depositor must immediately report this to the management of the Cold Store / Freezing Store. All additional costs associated with the change (including the increase in energy costs, relocation costs, labour costs) must be fully reimbursed by the Depositor. If the change is operationally not possible and / or causes serious operational problems, the Deposittee is free to refuse this change.

**18.2** If the Depositor has not provided the Deposittee with clear instructions regarding the storage temperature at which the goods must be stored or processed, the Deposittee will determine the storage temperature at its own discretion and experience. The Deposittee is not liable for damage because of the choice of storage temperature made in this way.

**18.3** The Deposittee will check the storage temperature at least twice a day, except for the days on which the Cold store is normally closed and ensure that this temperature is maintained as much as possible. Minor fluctuations, including those caused by the storage and retrieval of goods, the opening of doors, the defrosting of air coolers, the snow and ice removal of cooling coils, etc., are not regarded as deviations.

**18.4** A specific air humidity cannot be guaranteed by the Deposittee.

**18.5** If the Depositor presents the Deposittee goods for storage which may be damaged by carbon dioxide (CO<sub>2</sub> damage), or that require a critical storage temperature or other special attention, the Depositor will expressly notify the Deposittee of this in advance in writing. Failing such notification, the Deposittee will in this never be liable for damage caused by the referred conditions.

### **Article 19 Place of storage and relocation of the goods**

**19.1** The Deposittee par excellence determines the space that is allocated to the goods. The basic principle is that the space must be suitable for the storage of the goods concerned.

**19.2** The Deposittee is entitled to transfer the goods presented to him for storage to another Cold / Freezing Store, provided this is suitable for the storage of the goods concerned. The Deposittee will inform the Depositor of the new storage space, whether outside its complex. The Depositor reserves its right to inspect the designated space, whereby **article 7** applies in full.

**19.3** If the relocation is to take place in the interest of the goods, the costs and transport risks of the relocation are borne of the Depositor.

### **Article 20 Means of transport, packing material and containers**

**20.1** The Depositor shall ensure that the means of transport, packaging materials and / or containers made available by or on behalf of him for the transport of the goods are always complete, with all accessories in a clean, odourless, tight, and acceptable condition.

**20.2** If the above-mentioned means of transport, packing materials or containers should not meet the requirements of **article 9** and **article 20**, the Deposittee will record this and make a motivated reservation at the reception.

**20.3** If the means of transport, packaging materials or containers do not comply with these requirements, the Deposittee is not liable for any damage or loss of any kind resulting therefrom and the Depositor indemnifies the Deposittee against all consequences arising therefrom.

**20.4** If, due to any regulations by the authorities, packing materials supplied by or on behalf of the Depositor (including disposable pallets) should be removed and/or destroyed in a prescribed manner, any cost in connection with that will be borne by the Depositor.

### **Article 21 Goods for which charges are to be paid**

**21.1** The Deposittee will under no circumstances be obliged to accept goods for which freight, taxes, duties, fines and/or other charges or expenses of whatever kind must be paid, unless adequate security is provided by the Depositor at Depositor's cost.

**21.2** The Depositor is liable for and indemnifies the Deposittee against all freight, taxes, duties, fines and / or other charges or costs, of whatever nature, payable in connection with the goods.

**21.3** Any freight, taxes, duties, fines and/or other charges or expenses however named, which are to be paid on arrival or afterwards must be paid in advance by the Depositor. Since this advance payment is short-term by its nature, no interest will be paid on it.

**21.4** The Deposittee will never be liable for, nor obliged to reclaim freight, taxes, duties, fines and/or other charges or expenses however named that have been overpaid by him, unless the Deposittee failed to exercise due care in accordance with the requirements of reasonableness and fairness.

### **Article 22 Duties, taxes, levies, and legal obligations in connection with Custom bonded warehouse**

**22.1** If goods are subject to customs and excise duty regulations or to other tax regulations and/or regulations by the authorities (e.g., agriculture levies) in connection therewith, the Depositor must always provide all information required by the Deposittee in a timely manner to enable him to submit relevant statements.

**22.2** The Depositor will be liable for any incorrect and incomplete information that may have been provided by him or on his behalf in connection with the Cold Storage Agreement. The Deposittee will never be liable for inspecting, accepting, keeping, completing, or delivering of any



document whatsoever, nor for the contents of such documents, unless under a legal obligation or if such has been expressly agreed upon in writing as an operation to be carried out by the Deposittee.

**22.3** The Deposittee is only obliged to verify weights, number of packages and description of the goods, the latter as far as this is externally visible to him. The Depositor expressly indemnifies the Deposittee against all damage that may arise from the incorrect and / or incomplete statement by the Depositor of accompanying notes.

**22.4** If goods are to be stored in a bonded or non-bonded Customs warehouse at the Depositor's request, these goods must always be correctly and sufficiently individually marked, especially if their packages are (practically) identical, and if their contents cannot be easily verified. Damage due to confusion and/ or mix-up of goods, which do not meet these conditions, will not be borne by the Deposittee.

#### **Article 23 Access**

**23.1** The Deposittee is obliged to admit the presence of the Depositor or of people appointed by him during normal opening hours only in the spaces or terrains where the goods are located, but exclusively at the risk of the latter and exclusively during the normal opening hours, on condition however that this:

- happens in the presence of the Deposittee.
- had been communicated and approved in advance.
- happens according to the house rules of the Deposittee.

**23.2** The Depositor is liable for all loss and / or damage to the detriment of the Deposittee, of any nature whatsoever, arising from acts or omissions of any person who may or may not be employed by the Depositor or is - because of his order or permission- present at the loading / unloading areas of the Deposittee.

**23.3** The Depositor indemnifies the Deposittee against all claims, of whatever nature, brought by third parties against the Deposittee and which are the result of the failure by the Depositor or by the persons engaged by him to comply with the regulations and instructions referred to in this article.

#### **Article 24 Duration of the Cold Storage Agreement**

**24.1** A Cold Storage Agreement that has been entered into for a limited period ends by expiration of that limited period unless parties agree otherwise.

**24.2** If a Cold Storage Agreement has been entered into for an indefinite period, the parties may terminate the Agreement either by e-mail with acknowledgement of receipt or by registered letter with due observance of one (1) month, failing which the Agreement shall continue for a period of one (1) year.

**24.3** If warrants have been issued these will be sent to the Deposittee within twenty-four (24) hours after the termination, so that the termination can be noted on them. However, the absence of such a note cannot be invoked against the Deposittee.

#### **Article 25 Taking back of the goods after the termination of the Cold Storage Agreement**

**25.1** Without prejudice to the provisions of **article 35** the Depositor is, at the termination of the Cold-Storage Agreement, obliged to take back his goods no later than the last working day of same agreement, and after payment of all that which he may owe, under whatever title, to the Deposittee, and after returning the warrant or delivery order, if it has been issued for that purpose.

**25.2** If the Depositor should fail to fulfil one of these obligations, the Deposittee will be entitled to take any such measures as necessary for the clearing of the Cold Store/Freezing Store space made available, including transfer of the goods to a different Cold Store/Freezing Store space, all this at the expense and risk of the Depositor, without prejudice to the right of the Deposittee to a compensation because of the negligence of the Depositor.

#### **Article 26 Dissolution of the Cold Storage Agreement by the Deposittee**

**26.1** The Deposittee always has the right, for urgent reasons, to dissolve the Cold Storage Agreement before the expiry date or before the completion of the work without notice of default, without any compensation for the Depositor, but without prejudice to compensation for damage suffered by the Deposittee, if a situation arises as described in **article 26(2)**.

**26.2** The following situations are to be considered as urgent:

- a. if the Depositor has not complied with or acted contrary to the provisions of **article 16**.
- b. if the Depositor has not complied with the provisions of **article 35**.
- c. if, at the request of the Deposittee the Depositor has no, or no sufficient evidence of insurance as stipulated in **article 42**.
- d. if the presence of the goods gives rise to fear loss of or damage to other goods or to the Cold/Freezing Store, or to death or physical injury to persons or animals.
- e. if the goods are subject to deterioration or loss of quality and the Depositor fails to provide clear instructions to prevent or remedy this.
- f. if the Cold Store / Freezing Store space, which for the implementation Of the Cold Storage Agreement is used, is wholly or partially destroyed because of fire, or is rendered unsuitable for Cold Storage or Freezing Storage or related operations.
- g. if it concerns goods that have been rejected by an authorized government body or when the competent governmental body has determined that they are not or no longer admitted in Belgium.
- h. if the circumstances of the collaboration are so complicated due to the actions of the Depositor that a continuation of the collaboration can no longer reasonably be expected of the Deposittee.
- i. if it is clear by conduct and/or statements and/or allegations that the Depositor will not comply on time.
- j. if the Depositor fails to comply, implicitly or explicitly, with the Deposittee's request to conduct renegotiations with the Deposittee, as provided for in **article 47(2)**.

Such notification may be by e-mail with acknowledgement of receipt.

In the event of a situation as described under **article 26(2) j**, the Deposittee also has the right to suspend performance until the Depositor has provided adequate security to the Deposittee.

**26.3** If, in the cases referred to in the preceding paragraphs of this article, the Deposittee finds that the type, quality, quantity, weight, value, specific properties,

temperature, size or nature of the goods is incorrect, the Deposittee is also entitled to dissolve the Cold Storage Agreement with immediate effect.

### **Article 27 Dissolution of the Agreement by both parties**

#### **Notification**

**27.1** The party concerned shall promptly notify the other party in writing of any fact or circumstance as described below that may entitle either party to terminate the Agreement.

#### **Concurrent rights and insolvency**

**27.2** In the event of death, application or claim for or determination of bankruptcy, appointment of a provisional administrator or legal representative, request for suspension or judicial restructuring, judicial reorganisation, declaration of incompetence, any similar situation or procedure, liquidation, custody or enforcement, or any other form of concurrence of creditors that affects one of the parties or any other indication of manifest or imminent insolvency of one of the parties' assets, the other party has the right to terminate the Agreement. Such termination will be notified in writing to the other party or its successors in title.

#### **Netting**

**27.3** In accordance with the provisions of articles 14 and 15 of the Financial Security Act of 15 December 2004 (Wet Financiële Zekerheid), the Parties declare that they agree with the principle of "netting" in the event of insolvency proceedings, seizure, or any other form of concourse. Where appropriate, the Parties will automatically compensate and settle all current and future debts in relation to each other.

This debt comparison /compensation will in any case be opposable to the liquidator and the other concurrent creditors, who will therefore not be able to object to the debt comparison carried out by the Parties.

### **Article 28 Extraordinary measures**

**28.1** Without prejudice to the provisions of **article 26**, the Deposittee has the right to immediately take all measures, at the expense and risk of the Depositor, which the Deposittee considers necessary, including the destruction of the goods, if it can reasonably be expected that failure to take such measures could





create a risk of loss or damage to the goods themselves, of other goods or of the Cold-/Freezing Store or of death or physical injury to persons or animals.

All costs resulting from these measures will be borne by the Depositor.

**28.2** The Deposittee will notify the Depositor or if a warrant is outstanding the warrant holder last known to him of the measures that have been taken.

**28.3** In case of destruction of the goods such a notice to the warrant holder will be given in the manner as specified in **article 37** of these ABCFI terms & conditions.

**28.4** The Deposittee is at all times authorized to sell the goods that were removed from the Cold / Freezing Store pursuant to this article publicly, such at the expense of the Depositor.

If, due to the condition of the goods, great haste is required, the Deposittee must act to limit the damage and proceed with a private sale, whereby the Deposittee represents the interests of the Depositor to the best of its ability and insight.

**28.5** The Deposittee will not proceed to a public sale until after the depositor, if possible, has been summoned by a registered letter, or in a case as referred to in **article 38** of these ABCFI terms & conditions has been demanded by means of an advertisement in a national newspaper, to collect the goods against payment of any amounts owed to the Deposittee. If the Depositor failed to comply with this within one week after the above-mentioned registered letter was sent, respectively the advertisement appeared, the sale may take place.

**28.6** The Deposittee will be obliged to pay the proceeds of the goods, after deduction of all costs incurred thereon and of any claims against the Depositor, if possible, within one week of receipt, to the Depositor, failing which the amount will be kept in deposit.

**28.7** If preservation of the goods stored requires additional operations or incurring extra costs, the

Depositor will be obliged to pay to the Deposittee any cost in connection therewith, even if these additional operations/cost should not have achieved the desired result.

#### **Article 29 Prohibition of making the facility available to third parties**

The Depositor may not, without the prior written consent of the Deposittee, make the Cold-/ Freezing Store space made available to it available to third parties.

#### **Article 30 Delegation by the Deposittee**

The Deposittee will have the right to delegate his rights and obligations under a Cold Storage Agreement to a third party, provided that the continuity of the existing Cold Storage Agreement is guaranteed.

#### **Article 31 Repairs to the Cold-Store/Freezing Store**

**31.1** Without prejudice to the provisions in the articles **44** and **45** of these ABCFI terms & conditions the Deposittee will always properly maintain the Cold-/ Freezing Store facility and keep it in good working order.

**31.2** The Deposittee always has the right to immediately have such repair, reconstruction and / or renovation work carried out on the Cold- / Freezing Store that is necessary to be able to fulfil the obligations referred to in **article 31(1)**.

**31.3** In the event of repair, reconstruction and / or refurbishment work, the Depositor agrees that his goods will be transferred to another Cold- / Freezing Store space.

**31.4** Without prejudice to the provisions in **article 44** of these ABCFI terms & conditions the Depositor waives the right to claim any compensation for damage caused directly or indirectly by such repair, rebuilding, and/or alteration work, and for the temporary loss of the Cold-/ Freezing Store space made available to him. Only if the operations last more than forty (40) days and the Depositor can demonstrate that it is inconvenienced by the work, the Depositor can claim compensation.

### Article 32 Cleaning of Cold-Store/Freezing Store

**32.1** Unless expressly agreed otherwise in writing, at the end of the Cold Storage Agreement the Depositor will be obliged to pay the Deposittee any cost in connection with the cleaning and/or repairs of the Cold-/Freezing Store space made available for his goods.

**32.2** If the Depositor has made special provisions in the space or part of a space made available to it, the condition as it was at the time of entering into the Cold Storage Agreement must be restored, by or on behalf of the Depositor and at its expense, unless the parties agree otherwise.

### Article 33 No obligation to provide replacing Cold-/Freezing Store space in case of a calamity

If Cold-/Freezing space that has been made available to a Depositor is completely or partially damaged or becomes unsuitable for Cold-/Freezing Storage or Cold-/Freezing Store operations due to fire or any other unforeseen circumstance, the Deposittee will not be obliged to make available any other Cold-/Freezing space. Under those circumstances, however, the Deposittee will do all that which is necessary to find replacing Cold-/Freezing space.

### Article 34 Operations to be carried out by the Depositor

**34.1** If the Depositor wishes to have work carried out regarding his goods that fall outside the scope of the already agreed services / storage, these will be performed in accordance with the agreed prices / as provided for in the Cold-Storage Agreement, or, if the latter is silent about this, against the conditions applicable in the sector.

These activities include freezing, cooling, repacking, packing, repacking, thawing, tempering, checking, weighing, cutting, portioning, collecting, marking, stickering, pricing as well as filling or emptying barrels, tanks, and containers.

**34.2** Insofar as a 'new' product may arise because of the performance of activities by the Deposittee, within the meaning of the product liability legislation, the Depositor and never the Deposittee will be regarded as the producer. The Depositor will have to affix its own

trademark or distinguishing sign to the "processed" goods.

Should the Depositor fail to do so, the Deposittee is entitled to affix an indication on the goods, stating the name, address, and place of residence of the Depositor. All related costs are for the account of the Depositor. However, if government markings must also be applied, the Deposittee is entitled to terminate the Agreement if the Depositor refuses to do so.

**34.3** The Depositor indemnifies the Deposittee indefinitely against claims from third parties, by whatever name, based on product liability legislation.

### Article 35 Terms of payment

**35.1** All amounts owed by the Depositor, for whatever reason, must be paid within one month of the invoice date without any set-off, unless otherwise agreed.

**35.2** The storage fee and - if the goods are insured through the intermediary of the Deposittee - the insurance premiums and costs of insurance will be charged for the agreed period, whereby part of this period will be regarded as a full period.

**35.3** Under no circumstances may the Depositor invoke losses, damage, or any delay to suspend or set off all or part of the payments it owes to the Deposittee.

**35.4** Any protest the billing or the charged services and amounts charged must be received in writing by the Deposittee within eight (8) days following the invoice date.

If the Depositor has not objected within that period, he is deemed to have accepted the invoice in its entirety and without reservation.

**35.5** In case of late payment:

- from the following day, by operation of law and without notice of default, default interest of eight percentage points more than the reference interest rate (the interest rate of the European Central Bank) is due and rounded up to the higher half percentage point.
- any delay in payment shall automatically and without notice also give rise to a fixed compensation of 10% on the outstanding balance to be paid, with a minimum of €125. The award of this reasonable

compensation of 10% does not exclude payment of any litigation costs nor of any other proven recovery costs.

- all amounts due to the Deposittee, also the amounts that have not yet expired are legally immediately due and payable without any notice of default.
- the Deposittee is no longer obliged to (further) execution and can suspend all services immediately and without prior notice, without any compensation for the Depositor.
- all permitted payment terms expire and the Deposittee may decide to execute the Cold Storage Agreement only further under the strict condition that the outstanding due is fully settled before delivery is made and/or services are provided.

#### Security

**35.6** The Deposittee has the right, in the event of any change in the financial situation of the Depositor, a change of owner (s) and in the event of reasonable doubt about the solvency of the Depositor, both at the start of the Cold Storage Agreement and during the term of the Cold Storage Agreement to desire security. In case of non-compliance, the Deposittee is entitled to suspend the Cold Storage Agreement until this request has been complied with.

If the Depositor indicates that it cannot comply with such request, the Deposittee is entitled to dissolve the Agreement without being obliged to pay compensation for any damage, without prejudice to the obligation of the Depositor to compensate the damage suffered by the Deposittee because of the dissolution.

#### Modification of payment terms in the event of JRP

**35.7** In the event of a judicial reorganization on the part of the Depositor, the Deposittee reserves the right to perform services only against cash payment, or to require payment in advance, or to determine modified payment terms, or to suspend performance if the Depositor also suspends its contractual obligations.

#### Bankruptcy Depositor

**35.8** Any claims of the Deposittee against the Depositor will be immediately due and payable if the Depositor is declared bankrupt, applies for judicial approval of payment, the goods of the Depositor are seized or he otherwise loses free disposal of his assets, if he offers a

composition to his creditors, if he is in default of fulfilling any obligation towards the Deposittee, or if he ceases to conduct his business or - in the case of a legal person or company - if it goes into liquidation.

#### Article 36 Right of retention and right of pledge

**36.1** As security for the payment of all sums owed by the Depositor to the Deposittee for this and previous orders, the Depositor grants (1) a contractual lien and (2) rights of pledge for all Goods handed over to the Depositor. This is regulated in conformity with Book III, Title XVII Civil Code: 'Collateral securities on movable assets'.

**36.2** The Deposittee may exercise its possessory lien and right of pledge on all goods and documents as security for all claims it has, and will have, against the Depositor, even if those claims are based on something other than the assignment placed with the Deposittee.

**36.3** All goods entrusted for storage are considered to form part of the same contract and are not divisible, even if they are performed by means of successive service assignments.

**36.4** In case of damage to the goods of other parties, for which the Deposittee - either or not through the intermediary of the Depositor - has taken out an insurance, the Depositor shall be obliged, within two (2) days after a request to that effect by the Deposittee, to pledge the claim under the insurance agreement to the Deposittee, and/or to cede or transfer it, unless the Depositor proceeds to the immediate payment of what the Deposittee has to claim and/or - to the satisfaction of the Deposittee - provides sufficient security for the obligations related to the deposit which are not yet due

**36.5** The Deposittee shall have the right to let assignments given by the Depositor for activities other than storage or processing operations (e.g., transport operations) be performed by an enterprise affiliated with the enterprise of the Deposittee (an enterprise belonging to the group of companies of which the enterprise of the Deposittee is also a part).

Notwithstanding the fact that on practical grounds it may be decided to invoice the Depositor directly by affiliated companies, this claim shall remain a claim of

the Deposittee against the Depositor in respect of these activities, so that the right of pledge and retention contained in this article shall also apply to these claims. If necessary, these parties shall transfer their claims on the Depositor to the Deposittee.

### Article 37 Issue of warrants

**37.1** After a batch or a quantity of goods has been stored and the quantity and/or weight and its identity have been determined by the Deposittee, a warrant or delivery order can be issued at the request of the Depositor, on the understanding, however, that:

- the Deposittee need not comply with the request for the issue of a warrant or delivery order before the Depositor has met all his obligations towards the Deposittee.
- the Deposittee will be entitled to refuse the issue of a warrant if he deems that there are grounds for that.

**37.2** Notwithstanding the provisions in **article 44** of these ABCFI terms & conditions the Deposittee will have no responsibility for the correctness of the particulars stated on warrants and delivery orders or whatever other documents issued by the Deposittee and concerning the nature and quality of the goods, if its determination requires special specialist knowledge or more than superficial examination.

### Article 38 Notices to warrant holders

If the Deposittee wishes to give notice to the holder of a warrant whose name or address has not been made known to him, said notice will be given by means of an announcement in a national daily newspaper to be chosen by the Deposittee; the cost hereof will be borne by the holder of the warrant.

### Article 39 Transfer of ownership of goods entrusted to the Deposittee

**39.1** If the Depositor transfers the ownership of the goods given for storage to a third party, all claims that the Deposittee has on the Depositor will be immediately claimable and the goods will serve him as a guarantee until all claims are completed.

**39.2** If the ownership of goods entrusted to the Deposittee is in dispute between two or more parties, or if such goods are seized by third parties, the Deposittee

shall have the right to defend his interest in the goods by taking legal measures. The costs of these measures will be borne by the original Depositor.

**39.3** The original Depositor remains liable to the Deposittee for all claims of the Deposittee in respect of or in connection with the custody, even if these arose after the transfer of the goods, unless the Deposittee has released the Depositor from this liability in writing.

**39.4** The right of lien as described in **article 36** will always apply to the goods until all claims of the Deposittee against the original Depositor have been paid.

**39.5** After transfer of the goods, the new owner will be considered the Depositor, and together with his predecessor he will be severally liable for any claims referred to in **paragraph 3** of this article, also if these existed before the transfer.

### Article 40 Delivery of the goods by the Deposittee

**40.1** If a warrant is outstanding, the goods that have been entrusted to the Deposittee will exclusively be delivered against surrender of that warrant.

**40.2** If no warrant has been issued, the Deposittee shall have the right to require that before the goods are delivered, a receipt (inbound slip) or written statement, duly signed by the Depositor or his representative, be submitted to the Deposittee.

### Article 41 Loss or destruction of documents

**41.1** If a warrant has been lost, destroyed or otherwise can no longer be displayed and the Deposittee has been informed of this by registered letter in which the contents of that warrant are described, the Deposittee will, upon request and provided no reason, to doubt the correctness of the grounds for such a request, place notifications twice in a national newspaper with an interval of at least fourteen (14) days, whereby the parties concerned with the relevant document are called upon to join the office of the Deposittee without delay.

**41.2** The Deposittee is entitled to issue to the applicant a 'duplicate warrant' or 'duplicate delivery order' bearing the word 'duplicate' if nobody has applied to the



Depositee as the rightful claimant to the destroyed or lost warrant or delivery-order within fourteen (14) days after the date of the second announcement. By the issue of such a 'duplicate warrant' or 'duplicate delivery order' the old warrant or delivery order loses its validity against the Depositee.

**41.3** The person to whom the Depositee has issued a 'duplicate warrant' or 'duplicate delivery order' indemnifies the Depositee against any loss or damage which may be caused by such an issue and will pay any expenses that have been caused for the Depositee in connection with the issue.

#### **Article 42 Risks and insurance by Depositor**

**42.1** All storage of goods in a Cold-/Freezing Store will be done for the account and risk of the Depositor. The Depositor must at least always take-out adequate insurance against FLEXA risks. In such cases, plus other risks that may be covered under a fire policy, the Depositor and its insurer will waive any recourse against the Depositee and all third parties. At the first request of the Depositee, the Depositor will provide proof of this insurance and waiver of recourse.

#### **Insurance by intermediary of the Depositee**

**42.2** The Depositee will only upon a written and explicit request of the Depositor with explicit mention of the desired coverage, insure the goods with a waiver of recourse against the Depositee for the benefit of and at the expenses of the Depositor, with a certified insurance company. The Depositor will communicate the exact location of the goods to the insurer.

If the insurer does not want/cannot give coverage for the goods of the Depositor, the Depositee will communicate this forthwith to the Depositor. The Depositee is in such a case never responsible for such a refusal.

**42.3** In all cases in which the goods that are entrusted to the Depositee have been insured, and damage is caused by the nature of the goods that are offered by the Depositor, the Depositor is obliged to pledge the claim against the insurer to the Depositee at the Depositee's first request, such as an additional security for all that which the Depositor owes the Depositee.

**42.4** If in the event of damage to or loss of the goods entrusted to the Depositee due to fire or any other cause, its cooperation is called in to determine such loss or damage, the Depositee shall be entitled to the incurred costs.

**42.5** Unless agreed otherwise, an insurance entered by the Depositee at the request of the Depositor will be continued from month to month. Insurance will terminate at the end of the month in which the Depositor has given the Depositee notice to terminate them or in which the goods have ceased to be in storage with the Depositee.

At delivery of a part of the goods the Depositor will inform the Depositee of the value, for which amount the Depositor wishes to have the remaining goods insured. Failing such a statement the Depositee will be entitled to decrease the insured amount in the same proportion as the goods have been decreased in number, weight, or size.

**42.6** If the amounts communicated by the Depositor to the Depositee are not the same as the value of the goods and the coverage of the insurance is incorrect, the Depositee will never be liable for this.

#### **Article 43 Damage to Cold-/Freezing Store and/or its installations**

The Depositor will be liable for all damage of any kind caused to the Cold-/Freezing Store, Cold store/Freezing store installations and/or other possessions of the Depositee, caused by the goods delivered by him for storage.

#### **Article 44 Claims of third parties**

**44.1** The Depositor indemnifies the Depositee against all claims brought by third parties against the Depositee for death, physical injury, damage in connection with storage and/or processing of the Depositor's goods or their presence in the Cold- / Freezing Stores.

**44.2** Similarly, the Depositor must indemnify the Depositee if the Depositee is sued by third parties in response to a recourse claim, by whatever name and arising from the rights of the Depositor or a party subrogated by or on behalf of the Depositor or who has taken over the rights of the claim against the Depositor

for compensation for damage caused to goods of the Depositor.

### Article 45 Liability of the Deposittee

**45.1** The Deposittee will never be liable for an inherent vice of the goods, like:

- natural quality of the goods.
- changes in quality in the course of time.
- mould and intrinsic deterioration.
- fermentation, rust, mildew, freezing, melting, coagulation.
- gasification, drying in, loss of weight, leakage, and decay.
- damage by rats, mice, insects, worms, and other vermin.
- damage caused by other goods.
- hidden defects of Cold-storage/Freezing warehouse premises and/or Cold-storage/Freezing installations.

### Diligence

**45.2** The Deposittee must carry out his assignments with reasonable care, diligence and insight and takes due care of the goods entrusted to him.

### Limited Liability

**45.3** If the Deposittee can nevertheless be blamed of an error or negligence in the performance of the assignment given to it, the Deposittee is entitled to limit its liability.

This liability is limited to the direct material damage that is the direct result of his concrete proven error or negligence.

Compensation for material damage and / or loss that is the direct result of a concrete proven error can never exceed the actual value. The liability of the Deposittee is limited to €1.00 per kg of damaged or lost gross weight. The maximum liability regardless of the number of packages for each claim of damage, shall in no case exceed €25.000 per event or series of events caused by one and the same cause.

For damage caused to the ship or means of transport with which the goods are supplied or removed, the maximum liability is €25,000.

### Convergence

In the event of convergence of several claims relating to damage caused to the ship or means of transport, loss and/or damage to goods or materials made available by the Depositor or by third parties, the total liability shall not exceed €50.000 irrespective of the number of prejudiced parties.

**45.4** The Deposittee will never be liable for lost profit, consequential damage, and immaterial damage.

### Stock count

**45.5** The Depositor may request the Deposittee to do once a year a stock counting. The stock list of the Depositor will after this stock counting be compared to the one of the Deposittee. If, after comparison, a positive stock difference is determined, the stock list of the Depositor will be adapted to the stock list of the Deposittee, and this without any negative consequence for the Deposittee. This new list will be signed and serves between the parties as proof of stock for the newly started stock year/stock period.

### Negative Stock count

**45.6** If a negative stock difference is established, with a difference that is of more than 0,2% of the annual volume, or another percentage agreed upon in advance by the parties, the Deposittee will pay a compensation to the Depositor. The goods for which compensation has already been paid by the Deposittee must be deducted from this negative stock difference. After payment of the compensation, the Depositor's stock list is aligned with the Deposittee's stock list.

This new list is signed off and applies between the parties as proof of stock for the new stock year / stock period to be commenced.

**45.7** Under annual volume is understood the total of incoming, outgoing, and processed quantities of goods.

**45.8** The compensation is the arrival value of the relevant stock differences above the agreed percentage to be proven by the Depositor. The liability for stock differences is limited as provided in **article 45(3)**.

**45.9** With 'value at arrival' is meant the cost price of the goods, plus the transport costs until the reception by the Deposittee.



## Article 46 Force majeure

**46.1** There is force majeure in the event of a non-attributable impossibility for one of the parties to fulfill its obligation. The unforeseeable and unavoidable nature of the impediment to performance may be taken into account in this respect.

The following situations can be taken into account as force majeure:

any situation that escapes the control of one of the parties, such as:

- fire, explosion.
- labor disputes (strike).
- pandemic, epidemic, quarantine.
- (civil) war, riot, rebellion and revolution, military or usurping power, insurrection, act of terrorism.
- sabotage or piracy.
- requisition.
- embargo, currency and trade restriction, sanction.
- cybercrime.
- long-term interruption of transport, telecommunications, information systems.
- general transport shortages.
- energy restrictions or energy shortages.
- unavailability of materials and equipment, insofar as these are due to a case of force majeure as described above.

**46.2** As soon as a party has or should have knowledge of a case of force majeure, it must report this to the other party in writing within five (5) working days. If notice is not given within five (5) days, the exemption to perform will not be effective until the notice reaches the other party.

**46.3** The party that rightly invokes force majeure is relieved from its obligation to fulfill its contractual obligations as well as from any liability for damages or contractual damages for breach of contract, from the moment the impediment causes the inability to perform, provided that notice is given within five (5) days.

**46.4** In the event of temporary force majeure, the fulfillment of the obligation is suspended for the duration of the temporary impossibility, plus the time required to restart the work.

Where applicable, the temporary impediment will only result in the performance of those obligations (with the

exception of payment obligations, such as the storage fee) being postponed, and the force majeure will not be regarded as a reason for non-compliance with the Cold Storage Agreement or for the Cold Storage Agreement to be terminated.

If the suspension is unreasonably long in relation to the originally proposed performance period, then each party has the option to dissolve the contract, after a prior notice of default that has remained unanswered ten (10) working days after it was sent.

**46.5** Any costs arising from such a reported force majeure situation will be borne exclusively by the affected party.

## Article 47 Unforeseeable circumstances

**47.1** By unforeseeable circumstances is meant: events of such a nature as to give rise to a contractual imbalance, which the Parties did not intend and of which the other party cannot expect the Agreement to be maintained unchanged.

**47.2** If the following requirements are met, a party may ask the other party to renegotiate the contract with a view to adjusting the original contractual balance or terminating the contract:

- a change of circumstances that makes the performance of the contract unduly onerous, to such an extent that performance can no longer reasonably be demanded;
- which was unforeseeable at the conclusion of the contract;
- which is not attributable to the debtor; and
- the debtor has not assumed this risk.

**47.3** In any case, the parties will continue to honor their commitments in the course of the renegotiations.

**47.4** Among other things, and depending on the concrete facts, may qualify as circumstances justifying renegotiations:

- changed socio-economic conditions such as persistent abnormal price increases or general supply problems of raw materials, materials and energy as a result of a war, embargo or other international economic sanctions.
- strike.

- epidemic, pandemic.
- a general structural market disturbance, major changes in exchange rates,...
- an amendment or novelty of legislation and/or regulations and/or binding opinions of official bodies published and entered into force after the date of signature of the contract.

**47.5** As soon as a party becomes aware or should become aware of unforeseeable circumstances that justify a renegotiation of the Agreement, it must report these facts to the other party in writing within five (5) working days.

The parties undertake to start the negotiations within ten (10) working days after sending the written notification and to conduct them in good faith.

In any case, the party requesting the negotiations must inform the other party about the concrete impact as soon as possible.

**47.6** In the event of rejection or failure of the renegotiations within a reasonable time, the parties may, through alternative dispute resolution, or the court at the request of one of the parties either

- amend the contract to bring it into line with what the parties would reasonably have agreed upon at the time the contract was concluded had they taken account of the change of circumstances, or
- terminate the contract in whole or in part on a date that may not precede the change of circumstances and in accordance with the modalities established by the body in charge of alternative dispute resolution or by the court.

### Article 48 Scope of protective provisions

Any subcontractors, agents, representatives, employees, or others who have received an order from or who have been appointed or engaged by the Deposittee, will each separately enjoy the same protection and be entitled to the same exclusions, exemptions and limitations of liability as apply to the Deposittee himself under these ABCFI terms & conditions or under the Cold Storage Agreement between parties.

### Article 49 Claims against the Deposittee

#### Lapse of claim

**49.1** All claims against the Deposittee lapse if the damage, loss, claims of third parties, fines, resp. costs are not brought to his attention at the latest within twenty-four (24) hours after the goods have been received by the Depositor, unless the Depositor proves that the damage, the loss, the claims of third parties, the fines could not reasonably have been reported earlier, in which case notification must be made within twenty-four (24) hours after the aforementioned facts have become known to the Depositor.

**49.2** Any right of action of the Depositor against the Deposittee will lapse six (6) months after the end of the day on which any damage to or loss of the goods has been notified to the Depositor, or the Depositor notified the Deposittee of any damage with due observance of the provisions of **paragraph 1** of this article, unless the claim has been brought in court within the aforementioned period.

### Article 50 Processing and protection of personal data

**50.1** Both parties undertake to comply with the applicable legislation on data protection, in particular the General Data Protection Regulation (GDPR) 2016/679, and ensure that their personnel, consultants, and subcontractors also observe this legislation.

**50.2** Both parties process as a Controller the identification- and contact data of the involved employees and the third parties appointed by both, for the purpose of the performance of the Agreement, the keeping of customer/supplier records, the accounting, and the management of any disputes.

**50.3** Both parties guarantee to have adequate lawful basis on which to transfer the personal data to one another as well provide their employees the information on the processing, including a reference to the Privacy Policy.

**50.4** Both parties have implemented appropriate measures to guarantee the privacy and security of the personal data. Parties declare to only give access to a few employees only (based on the 'need to know' Principle).



### **Article 51 Translations**

These ABCFI terms & conditions were originally drawn up in the Dutch language.

English language words used in these ABCFI terms & conditions intend to describe Belgian legal terms or concepts only. The consequences of the use of those words in English law or any other foreign law shall be disregarded.

References to any foreign legal concept shall, in respect of any jurisdiction other than Belgium, be deemed to include the concept which in that jurisdiction most closely approximates the Belgian legal concept.

Regarding the translations of the present terms and conditions into all other languages, in the event of misunderstandings about the wording and substantive meaning, the tenor, scope and interpretation of these translations, the Dutch text shall serve as basis and the explanation and interpretation of the Dutch text prevails over that of any translation. These terms and conditions are communicated to the Depositor in Dutch, French, English, or German, at the choice of the Depositor.

### **Article 52 Competent judge and applicable law**

**52.1** All agreements to which these ABCFI terms & conditions apply are exclusively governed by Belgian law.

**52.2** All disputes that could arise from agreements on which these ABCFI terms & conditions are applicable will be submitted to the arbitration by one or three arbitrators. If the parties opt for one arbitrator, said arbitrator will be appointed by mutual consultation.

If the parties opt for three arbitrators, each of the parties will appoint one arbitrator. Both appointed arbitrators will jointly appoint the third arbitrator. The arbitrator's decision will be binding and in accordance with the principles of justice and equity. Initially, either party will pay their own arbitrators, and the cost of the third arbitrator will be borne by both parties, each for 50%.

The party that was found to be at fault, however, will be obliged to cover all cost, including all costs of legal assistance of the other party. If the parties cannot reach an agreement on the number or the person of the

arbitrators, the decision will be made by the President of the Court of Commerce in the territory in which the Depositee is located, acting at the request of either party.

### **Article 53 Filed ABCFI conditions**

These ABCFI terms & conditions have been filed by means of an i-registration in the registry of the 'Benelux Bureau voor Modellen en Tekeningen' of Brussels, which guarantees their authenticity and date of registration.

The applicable version will always be the latest version that has been filed, or the version that was valid at the time at which the Cold Storage Agreement was entered.



BEROEPSVERENIGING  
DER BELGISCHE VRIES-  
EN KOELNIJVERHEID



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