

## **INTERCARGO EUROPE**

INTERCARGO EUROPE SRL Via E. Mattei, 7 20068 PESCHIERA B.-MI Tel. 02 99371400 – [info@intercargoeurope.com](mailto:info@intercargoeurope.com) – Capitale sociale EUR 10.000 – P.I. / C.F 09925510969

### **General Terms and Conditions**

#### **Article 1 - Applicability**

- 1.1 These Terms and Conditions apply to Intercargo Europe S.r.l., (VAT N° 09925510969), represented by its pro temp legal representative, with registered office in Peschiera Borromeo (MI), Via Enrico Mattei 7, ZIP code 20068, hereinafter, in short, “*Intercargo*”.
- 1.2 These General Terms and Conditions apply to all Intercargo legal relationships, derived from or connected to any service provided by Intercargo, regardless of whether this is done in connection with orders or for other reasons.
- 1.3 Where these general terms and conditions apply to each individual agreement, they apply, without exceptions, to any and all future services provided by Intercargo and to future agreements executed with Intercargo.
- 1.4 Should Intercargo fail to enforce any of the clauses of the General Terms and Conditions, this shall not constitute a waiver on the part of Intercargo of its right to enforce said clauses in different circumstances.

#### **Article 2 - Conditions applied by Intercargo by sector of activity**

- 2.1 Save when otherwise specified in writing, all services provided by Intercargo shall be provided as a freight forwarder.
- 2.2 Intercargo operates as a freight forwarder and/or carrier. When not otherwise specified, the carrier shall be considered exclusively a freight forwarder.
- 2.3 On no account shall Intercargo be liable for anything in connection with the performance of the transport services and their success.

#### **Article 3 - Offers and agreement**

Offers presented by Intercargo and orders forwarded to it are not binding until a written contract is executed with Intercargo. An agreement with Intercargo is considered as executed only after Intercargo’s written confirmation or if Intercargo has started to fulfil an order. Any amendments to a contract brought by Intercargo is considered accepted by the Other Party if the Other Party

does not reject such amendments within fourteen days from receipt of the relevant notification.

#### Article 4 - General terms of service

- 4.1 The Other Party (including the third party that becomes a party in the agreement between Intercargo and the Other Party) shall obtain and maintain all necessary authorisations and shall ensure that all the regulations that the Other Party is subject to shall be duly complied with.
- 4.2 To allow Intercargo to perform its services, the Other Party shall promptly provide all necessary information, such as, without limitation:
- the nature, type, quality, composition, temperature, weight, volume, origins, physical and/or chemical provenance of the goods and their value;
  - hazardous goods and substances inside the goods (including those not formally recognised as such);
  - consequences and legal requirements (ownership, files storage, customs formalities, etc.);
  - any needs for particular safe and secure storage given the nature of the goods;
  - special instructions concerning loading or unloading methods, and all other details that are relevant for Intercargo.
- 4.3 Intercargo has the right to refuse the goods if the contracting party fails to fulfil its obligations with regard to them under articles 4.1, 4.2 of these General Terms and Conditions, or if the goods are damaged or defective.
- 4.4 Intercargo can, but is not obliged to, adopt measures for the handling and management of the stored goods, of goods and merchandise owned by it or by others, so as to ensure their safe and secure storage, all at the risk and expense of the Other Contracting Party.
- 4.5 If the Other contracting Party should sell or in any case transfer the goods, or part of the same, this shall not free the Other contracting Party from its previous obligations towards Intercargo, until Intercargo shall have confirmed in writing to the Other contracting Party that it accepts both the transfer and the release of the goods.
- 4.6 The Other contracting Party is required to notify Intercargo promptly of any transfer or change of ownership of the goods or of the transfer of the goods or of the right to take charge of the goods, as the case may be.
- 4.7 The Other contracting Party is required to notify Intercargo in writing of any claim for damages by itself or by third parties acting on its behalf, concerning any damages and/or losses of own and/or relevant third-party vehicles, before the vehicle owned by Intercargo or its subcontractor leaves the premises. Failing such notification, any subsequent claim and/or complaint against Intercargo shall not be taken into consideration.
- 4.8 Save when otherwise agreed in writing, Intercargo is free to choose the modality of performance of the agreement. The Other contracting Party shall be required to comply with all general and specific instructions provided by Intercargo in connection with the performance of the agreement.
- 4.9 The Other contracting Party is required to buy appropriate insurance coverage that shall include, without limitation, the cargo and damages caused by the goods. Intercargo is not required to

insure the goods under this agreement.

#### Article 5 - Quotes and Fees

- 5.1 Save when otherwise agreed in writing, all quotes and fees shall be in Euro, excluding VAT, taxes and charges levied by public authorities for particular goods, for their transshipment and/or storage.
- 5.2 If the prices applied by one's own suppliers or wages, social security contributions and/or other charges, rents and/or import duties and/or insurance premiums and other expenses of any kind should become subject to increases or surcharges after the date of acceptance of the order, Intercargo shall have the right to apply surcharges to quotes and fees as it deems necessary, and they shall be binding for the Other contracting Party.
- 5.3 Save when otherwise agreed in writing, Intercargo has the right to update its fees on an annual basis, as a consequence of increases in costs such as, without limitation, the costs of labour, equipment and fuel.
- 5.4 The agreed quotes and fees shall apply to services provided during normal work hours, namely, from Monday to Friday from 8.30 to 12.30 and from 14.00 to 18.00. Any services performed outside of work hours and during holidays in Italy (including evening and night shifts on the day immediately preceding such holidays) are to be considered as extraordinary services. Special quotes and fees shall apply to extraordinary services subject to labour availability.

#### Article 6 - Terms of payment

- 6.1 The Other contracting Party is required to pay the amounts invoiced by Intercargo within 30 days from invoice date, save when otherwise agreed in writing. Payment to Intercargo shall be made according to the terms specified by Intercargo .  
Any payments to (alleged) Intercargo representatives shall not release the Other contracting Party from its payment obligations towards Intercargo.
- 6.2 If the Other Party does not object to or return the invoice within 14 days from its receipt, it shall be considered as accepted.
- 6.3 The Other contracting Party cannot offset the invoiced amounts against any claims that it might have against Intercargo, nor may it suspend payment thereof.
- 6.4 In case of default of the Other contracting Party in paying the invoiced amounts within the time period set out in article 6.1, the Other Party shall be automatically in default and delinquent, with no need of a specific notice of default.
- 6.5 Interest under article 5 of Legislative Decree n° 23/2002 shall be calculated on the unpaid amounts starting from the moment the Other contracting Party defaults under article 6.4 hereof and until the date Intercargo receives payment of the entire amount. The Other contracting Party shall also pay any court and out-of-court expenses suffered by Intercargo in order to enforce compliance with payment obligations, out-of-court expenses being due under art. 6 of

Legislative Decree n° 231/2002.

- 6.6 Payments made by Intercargo or its agent on behalf of the Other contracting party, such as, without limitation, disbursements, import duties, sea freight and costs for additional services (including, without limitation, any stops) shall be invoiced separately and shall be paid immediately upon invoice receipt.
- 6.7 All costs and/or damages suffered by Intercargo due to a lack of availability of the transport vehicles used by or on behalf of the Other contracting Party or due to any defects of such vehicles, shall be paid or reimbursed to Intercargo, who shall be authorised to suspend its own services until such payment is made.
- 6.8 Intercargo can, at any time prior to, during and after the provision of its services, request advances on payments, stage payments or a security deposit to cover any claims. Should such payments not be made, or no security deposit be available, Intercargo shall have the right to withdraw from the agreement with immediate effect, without need for injunctions and without any obligation to pay any form of compensation.
- 6.9 All outstanding invoices and or claims issued by Intercargo shall become immediately due as soon as the Other Contracting Party or any of its representatives has received an administrative or bankruptcy order, the Other Contracting Party is declared bankrupt, ceases business in whole or in part, transfers business to third parties, or loses control of its business in whole or in part due to attachment or similar prejudicial measures. In such cases Intercargo will have the right to terminate the contract and interrupt any legal relationship with the Other contracting Party with immediate effect, without prejudice to the right of Intercargo to compensation for damages and without any obligation to pay any form of compensation.
- 6.10 Intercargo shall hold rights of lien, rights of retention and restraint on all documents, goods and funds of the Other Contracting Party that are or will be in the possession of Intercargo, regardless of the reasons and purposes, for any present and future claim against the Other Contracting Party. Intercargo may exercise such rights and the consequent actions with respect to the Other Contracting Party's outstanding dues to Intercargo in connection with previous legal relationships or previously accepted assignments. In the event of non-payment of the credit for which such rights are exercised, Intercargo shall be entitled to sell the goods, documents and funds in the manner prescribed by law.
- 6.11 Intercargo shall have the right to consider whoever entrusts the goods to it for the provision of services as the representative of the Other Contracting Party for the purpose of establishing a right of lien, a right of retention or a restraint on such goods.

#### Article 7 - Termination

- 7.1 Should circumstances ensue in which it is not reasonable to expect that Intercargo shall continue providing its services, such as, without limitation, in case of force majeure events with a duration exceeding 48 consecutive hours, Intercargo shall have the right to withdraw from the agreement with immediate effect and with no obligation of sending written notice, as the other Party is not entitled to any compensation for damages or expenses.

7.2 Without prejudice for Intercargo's other rights under this agreement, including the right to claim damages, any failure to comply with its obligations on the part of the Other Contracting Party allows Intercargo to terminate the legal relationship in whole or in part, or to immediately stop its services without notice in writing, as the Other Contracting Party is not entitled to any compensation for damages or expenses.

7.3 In the event that the Other Contracting Party or one of its representatives should become subject to an administrative measure or bankruptcy petition, the Other Contracting Party be declared bankrupt, cease business activities in whole or in part, transfer the business to third parties, or lose control of its activities in whole or in part due to seizure or similar prejudicial measures, and without prejudice to Intercargo's other rights under the agreement, including the right to damages, Intercargo shall be entitled to terminate the legal relationship in whole or in part or to suspend or discontinue the services with immediate effect and without notice in writing, as the Other Contracting Party is not entitled to any compensation for damages or expenses.

## Article 8 - Liability

8.1 Intercargo shall not be liable for any damage, including (but not limited to) damage to the goods and/or damage caused by the goods or their handling, unless the Other Party proves that the damage was caused by an act or omission by the administrative or management body of Intercargo, done either with intent to cause such damage or recklessly and with knowledge that damage would probably result. Any liability of Intercargo under the above, including liability arising from wilful misconduct and/or gross negligence, shall not in any event exceed the maximum limit of € 100.000,00 for each event or series of events with the same cause. This also includes damage to third parties that Intercargo is obliged to compensate, as well as damage caused by death or injury and any form of financial loss.

8.2 The Other Party shall indemnify Intercargo for any damage caused to it in the performance of its services, including (but not limited to) damage caused by materials or goods entrusted by the Other Party to Intercargo for the performance of the contract and/or damage caused by the handling of the goods or products, unless the damage is caused by an act or omission by the administrative or management body of Intercargo, done either with intent to cause such damage or recklessly and with knowledge that such damage would probably result. The Other Party undertakes to hold Intercargo harmless and indemnified from any and all damages of any kind suffered by Intercargo itself and/or by third parties in connection with the goods entrusted to Intercargo for storage or dispatch, including without limitation:

- a) damage caused by fire originated by the goods entrusted to Intercargo for storage or dispatch;
- b) damage resulting from the interruption of Intercargo operations caused by the fire in the goods;
- c) demolition and clearing costs arising from the fire accident.

This also includes damage to third parties that Intercargo is obliged to compensate, as well as damage caused by death or injury and any form of financial loss.

8.3 The liability of Intercargo as Freight Forwarder-carrier, when provided for and attributable to it, in relation to any damage and claim for compensation arising from the shipping and/or transport operations entrusted to it, including any technical stops, may not exceed the limit of compensation invoked by the Freight Forwarder and/or Carrier on the basis and by virtue of the uniform rules applicable to each individual shipment or the national law applicable to the

individual transport and/or shipping, including Italian law, and in any case the limit of compensation applicable and invoked by the carrier that actually performs the transport.

8.4 Intercargo is exempt from any liability unless the Other Party notifies Intercargo in writing of any damage or loss, within 8 (eight) working days from the time it became aware of it, or within 8 (eight) working days from the time the means of transport concerned, the goods or the person(s) involved, left Intercargo's warehouses, whichever comes first. Every claim against Intercargo shall become time-barred after 6 (six) months from the time it is made.

#### Article 9 - Indemnity and "Himalaya Clause"

9.1 The Other contracting Party is required to hold Intercargo harmless and indemnified from all third party claims for damages caused by Intercargo services, unless the damage is caused by an act or omission by the administrative or management body of Intercargo, done either with intent to cause such damage or recklessly and with knowledge that such damage would probably result. The Other Contracting Party is required to hold Intercargo harmless and indemnified at any time and in any case against third party claims in excess of a total amount of € 100.000,00 for each event or series of events with the same cause. Damages must include damage to third parties that Intercargo is obliged to compensate, as well as damage caused by death or injury and any form of financial loss.

9.2 The employees and/or subcontractors of Intercargo whose services are employed by Intercargo for the purpose of performing the agreement, in the event that they are held liable for damages, shall be entitled to rely on any limitation and/or exemption included in these General Terms and Conditions (including the technical terms and conditions referred to in Article 8 or any other contractual or statutory provision).

#### Article 10 - Hazardous Goods

10.1. In the event that the goods entrusted to Intercargo are considered hazardous within the meaning of the regulations in force for the carriage of hazardous goods by inland waterways, road or sea, the handling of these goods shall be governed by the European Agreement concerning the International Carriage of Dangerous Goods by Inland Waterways (ADN), the European Agreement concerning the International Carriage of Dangerous Goods by Road (ADR) and the International Maritime Dangerous Goods Code (IMDG Code) as well as the applicable national legislation concerning the carriage of dangerous goods.

10.2. Should Intercargo suffer damage as a result of the breach by the contracting party of its obligations under any of the dangerous goods regulations referred to in Article 10.1, the Other contracting Party shall be obliged to compensate Intercargo in full for the damage caused.

10.3. Notwithstanding Article 9.1, the Other Party shall indemnify Intercargo for any damage caused by the dangerous goods or their handling, unless such damage is caused by an act or omission of the administrative or management body of Intercargo, done either with intent to

cause such damage or recklessly and with knowledge that such damage would probably result. This also includes damage to third parties that Intercargo is obliged to compensate, as well as damage caused by death or injury and any form of financial loss.

## Article 11 Processing of personal data

11.1. Intercargo and the Other contracting Party each undertake to comply with applicable data protection legislation, including EU Directive 96/46, and, as from 25th May 2018, EU General Data Protection Regulation (GDPR) 2016/679 (as well as any other applicable national legislation that complements or implements the GDPR), and to ensure that their staff, agents, representatives and subcontractors also comply with this legislation.

11.2. In its capacity as "controller" under this legislation, Intercargo may process the personal data (name, personal characteristics, contact details and financial information) of the Other contracting Party's agents, representatives, employees and subcontractors for purposes of customer management, preparation of offers and performance of the contract, booking/payment management, compliance with legislation (in particular CRM legislation), and direct marketing. Certain personal data may also be collected by consulting public databases. For electronic direct marketing communications, the opt-in consent will always be requested first. The personal data collected may be transmitted by Intercargo to its own subcontractors/processors, affiliated entities or to government bodies, for the purposes listed above. If personal data are transferred to countries outside the European Economic Area, Intercargo will ensure that all the legal conditions are met. Intercargo will grant all data subjects a right of access to the personal data relating to them and, where applicable, a right to correct or delete erroneous data, or a right to restrict processing or to transfer data, but only to the extent that the legal conditions are fulfilled and that an identity document has been provided. Each individual also has the right, free of charge and on simple request, to oppose the further use of his/her data for direct marketing purposes. Questions regarding the processing of personal data can be addressed to [privacy@intercargoeurope.com](mailto:privacy@intercargoeurope.com). More information on how Intercargo handles personal data can be found in the privacy notice on the website of Intercargo Europe. The client will make the information in this article 11.2 and on Intercargo's web page available to the employees, agents, representatives or subcontractors of which it provides personal data to Intercargo.

11.3. To the extent that the Other contracting Party also collects and maintains certain personal data from its contacts from Intercargo, it will also make its own privacy policy available to Intercargo, at any time and following any specific request to that effect. In such case, the Other contracting Party will also take the appropriate organisational and technical security measures to prevent the loss, theft, unauthorised access to or unlawful processing of personal data. Should these circumstances nevertheless happen (a "Data Breach"), then the Other contracting Party shall inform Intercargo thereof, insofar as Intercargo (or its agents, representatives, employees or subcontractors) could be affected by the Data Breach.

11.4. The provisions of Article 11.2 shall also apply to the processing of personal data of consignors or consignees of the goods to be dispatched/transferred, insofar as they are not already covered by Article 11.2.

Intercargo processes this information (and any personal data relating to it) for its own purposes and in accordance with legal obligations and provisions and by the means it chooses. Regarding the personal data which may be contained in the goods to be sent or transported, Intercargo is neither the controller nor the processor. It only holds physical objects which may

contain personal data without having any access to them.

11.5. Intercargo cannot be held responsible for any infringement of the applicable legislation on the protection of personal data by the Other contracting Party. The Other contracting Party shall indemnify and fully compensate Intercargo in this respect (also for administrative fines, claims of the parties involved, consequential damage, loss of profit, damage to reputation, attorney's fees, etc.).

#### Article 12 - Subcontracting

Intercargo can subcontract the services to third parties.

#### Article 13 - Miscellaneous

13.1 Inapplicability of the General Conditions of the Other Contracting Party. Intercargo explicitly excluded the applicability of the general conditions of the Other Contracting Party and/or its subcontractor, whether printed or not on the transport documents.

13.2 Amendments and integrations

Any amendment to the General Terms and Conditions requires the written form in order to be effective.

#### Article 14 - Complaints

In the event of loss/damage, the recipients are required to write down justified reservations on the transport document or to communicate them (in the case of hidden damages) in the manner and within the terms established by the regulations and conventions in force.

Any claim for loss, incorrect delivery, damage or injury must be made in writing and sent to the forwarder within 8 (eight) working days.

#### Article 15 - Governing Law and Competent Jurisdiction

15.1 The relationship between Intercargo and the Other contracting Party shall be governed by Italian law.

15.2 Any dispute arising between the parties shall be submitted to the exclusive jurisdiction of the Courts of Milan.

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