

TERMS AND CONDITIONS - Carcenter Zeebrugge NV

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1. **Definitions**

1.1 In these Terms and Conditions:

“Supplier” means **Carcenter Zeebrugge NV** with registered office at Barlenhuisstraat 2, B-8380 Zeebrugge, Belgium (BE 0454.388.679);

“Customer” is the professional person or entity who is the owner (or a valid representative who has the authority to represent the owner) of the Vehicle and who enters into a Contract with Supplier for the provision of the Service(s)

“Facility” means the Supplier’s premises at the port of Zeebrugge, situated at Barlenhuisstraat 2, B-8380 Zeebrugge, Belgium;

“Service(s)” includes all activities by Supplier in assembling, modifying, cleaning, quality checking, repairing and/or upgrading Vehicle(s) or any part thereof and in selling any ancillary appliances as agreed between Supplier and Customer;

“Vehicle(s)” means any passenger car, light commercial vehicle (LCV) and/or any mixed use trucks or vans that have a maximum gross weight (GW) of 3,500 kg;

“Contract” means the contract concerning the supply of Services, therein included these Terms and Conditions”;

“Terms and Condition” means the general conditions contained in this document, including its appendices.

2. **Applicability**

2.1 These Terms and Conditions govern the relationship between Supplier and Customer, to the exclusion of any other conditions, in particular to the exclusion of all conditions of the Customer.

3. **Contract**

3.1 The Contract is deemed to exist from the moment Supplier receives and accepts a purchase order from Customer. The Supplier does not have an obligation to accept an order from the Customer.

4. **Insurance**

4.1 Customer undertakes to subscribe proper insurance cover, including a proper cargo insurance, with recognised insurance companies in accordance with the applicable statutory regulations and laws.

4.2 On the Supplier’s written request, Customer shall provide Supplier with a certificate signed by its insurers confirming its proper insurance cover.

4.3 In case of Customer’s failure to provide Supplier with such certificate, Supplier shall be entitled to immediately terminate the Contract without prior notice or indemnity and to be fully indemnified against any costs and / or expenses already incurred.

5. Performance of Supplier

- 5.1 Supplier shall perform the Service(s) with reasonable skill and care in accordance with the standards generally observed in the industry for similar services. No advice will be given, no new design will be proposed and no new constructions will be made by Supplier in respect of the Vehicle(s) (no product liability). Supplier will act as an executor / performer as per the Customer's instructions.
- 5.2 Supplier shall make all reasonable endeavours to deliver the Vehicle(s) in accordance with the timescales agreed between Supplier and Customer. In case of delay, Supplier shall notify Customer as soon as reasonably possible but the Customer shall in no circumstance be entitled to any form of indemnification.

6. Supplier's Warranties

- 6.1 Without prejudice to the limitations contained in these Terms and Conditions and to the largest extent authorized by applicable laws, Supplier warrants that its Service(s) will remain free of defects during a period of twelve (12) months starting from the time of delivery of the Vehicle(s). To the largest extent authorized by applicable laws, any other warranty (including but not limited to warranty for contamination, fallout, etc.) is expressly excluded.
- 6.2 To the largest extent authorized by applicable laws, the warranty only covers the Services, to the exclusion of defects resulting from the spare parts (or other material) themselves. The burden of proof that the defects exclusively result from the Services falls with the Customer.
- 6.3 The warranty is only granted to the extent the Customer notifies the Supplier in writing about the nature and extent of the defect within eight (8) days as from the moment it should have been discovered by a reasonably observant person.
- 6.4 If the defect is covered by the warranty, the remedy shall be limited to the repair of the Vehicle, to the exclusion of any other remedy or indemnity. Supplier shall not be liable for any additional costs such as but not limited to transport costs. Transport will be at the Customer's costs and risks.
- 6.5 Customer shall not be entitled to invoke the warranty if Customer made itself modifications / repairs on the Vehicle(s) or used the Vehicle(s) in an abnormal way or for an abnormal purpose.

7. Price

- 7.1 Upon receipt of the Vehicle at its Facility, Supplier shall provide Customer with a service estimate (price) to be approved by Customer. Supplier will not start to work on a Vehicle before the service estimate has been approved.
- 7.2 If while providing the Service(s) Supplier becomes aware of hidden damage or more generally realises that it will suffer additional costs to provide the Service(s), Supplier shall immediately inform Customer thereof and wait for its approval before continuing the Service(s). Under no circumstance will these costs be for the account of Supplier.

8. Risks, Delivery & Acceptance

- 8.1 Unless agreed otherwise, all deliveries are ex-works (EXW) and all risks related to the transport remain with the Customer.

- 8.2 Upon delivery the Customer will examine the Vehicle and promptly (but in any case within three (3) working days from the delivery) notify the Supplier in writing of all defects to the Services. To the largest extent authorized by applicable laws, Customer is not allowed to refuse the Vehicle for defects resulting from the spare parts (or other material) which have been chosen by the Customer itself.
- 8.3 Upon notification of Supplier, Customer shall ensure that all Vehicles are immediately removed from the Facility and at the latest two (2) working days after the receipt of this notification. After this period, Supplier shall have no liability for any loss or damage caused to such Vehicle(s) and Customer shall be liable to indemnify Supplier against all reasonable expenses which Supplier may incur in removing the Vehicle(s) from the Facility and transporting, storing and securing the Vehicle(s) elsewhere, including any reasonable charges levied directly by Supplier or levied on Supplier by the port authority and/or terminal operator.
- 8.4 Where appropriate, parking and storage of Vehicle(s) are subject to the rules and regulations of the relevant port authority and/or terminal operator and to such directions and instructions as the port authority and/or terminal operator may issue. Customer shall be liable to indemnify Supplier against any financial consequences which Supplier may incur to the port authority and/or terminal operator by reason of the use of such facilities. Neither Supplier nor the port authority nor the terminal operator (including their employees and agents) shall be liable to Customer in respect of such use.

9. **Payment**

- 9.1 All the invoices issued by Supplier are to be paid promptly upon their receipt (i.e. within maximum thirty (30) days of the invoice date), unless expressly agreed otherwise in writing.
- 9.2 The invoice cannot be compensated with any claim that the Customer may have against the Supplier.
- 9.3 Payment shall be made in accordance with instructions stipulated on the invoice. Bank charges, commissions and credit card levies (if applicable) in connection with the payment of the invoice shall be for the account of the Customer.
- 9.4 In case of late payment, interest will *de iure* and without notice be due on all outstanding amounts, on top of the recovery costs amounting to EUR 40. . Such interest to accrue from day to day at a rate of interest fixed by the European Central Bank (ECB). The calculation method is in accordance with the European directive 2000/35/EG of June 29th 2000, increased by seven (7) percent points and rounded upwards up till the higher half percent point. However the applicable interest shall never be less than twelve (12) percent per annum, whatever the highest. If within a term of fifteen (15) days, following a reminder, the Customer still fails to pay, then the amount claimed will *de iure* be increased with ten (10) percent extra, without prejudice to the additional damages that Supplier may claim under applicable laws.

10. **Liability of Supplier**

- 10.1 To the largest extent authorized by applicable laws, Supplier is not liable for:
- indirect damages, such as loss of profits, loss of revenues, loss of chance, loss of data, loss of clientele, etc.;

- damages resulting from the spare parts and other material used when providing the Services; and
 - damages resulting from the transport of the Vehicle.
- 10.2 The Supplier's liability is limited to a maximum of the wholesale value of the Vehicle(s).
- 10.3 The Supplier shall never be liable for an event of Force Majeure. Force Majeure means any event, reason or circumstance beyond the Supplier's reasonable control capable of causing breach of these Terms and Conditions; this will include by way of example but without limitation: an act of government or regulatory authority, fire, hail, snowfall, flood, inundation, storm, unusual atmospheric circumstances or any other heavy weather or natural disaster, atmospheric or industrial or nuclear fall-out, airborne contamination, exhaust fumes, ordinary wear and tear and deterioration inherent to open-air storage, bird droppings, vermin, insects, fungal attack, rot, corrosion, war, threat of war, terrorism, threat of terrorism, vandalism, riot, civil commotion, strike, threats of strike, lock out, blocking or other labour dispute or industrial action, closure of ports, breakdown in or interruption of communications, technical problems of any nature.

11. **Lien**

- 11.1 Unless otherwise agreed and to the largest extent authorized by applicable laws, Supplier (in addition to and without prejudice to all its rights to exercise a lien on the Vehicles or any part thereof apart from this Clause 11) shall have both a particular lien and a general lien on all Vehicles and documents in its possession or control for the payment of:
- (A) Any unpaid Service and any other sum whatsoever due from any person(s) with an interest in the Vehicles; and
 - (B) Any other sums which may become due to Supplier by reason of and pursuant to these Terms and Conditions.
- 11.2 Subject to a prior notice to the Customer and to the largest extent authorized by applicable laws, Supplier shall be entitled (and is hereby authorised by Customer) to sell such Goods (or any part thereof) as may be necessary and to apply the proceeds of sale in settlement of any unpaid sum due, inclusive of all proper charges and expenses associated with such exercise of the lien and power of sale (including any legal costs and expenses reasonably incurred).
- 11.3 In this Clause 11, "sums" includes, but is not limited to unpaid Services, damages for breach of Contract and other unliquidated claims, costs, expenses, liabilities and general average and all previously unsatisfied debts whatsoever.
- 11.4 Customer expressly agrees to indemnify Supplier against all financial consequences arising out of the exercise of such lien and power of sale if the exercise proves to be unlawful or ineffective.

12. **Termination**

- 12.1 Supplier is entitled to terminate the contract, either totally or partially, by means of an oral or written declaration and without further notice or indemnity, with immediate effect if:

- (A) Customer is in breach of one (1) or more of its obligations and fails to remedy the breach within thirty (30) days as from notification thereof, or if it becomes clear that full execution shall be impossible ();
- (B) Supplier reasonably fears that Customer shall be unable to fulfil its obligations under these Terms and Conditions;
- (C) Customer is declared in bankruptcy, is in cessation of payments, has decided to wind-up, has asked for a judicial debt agreement or seems to be insolvent in any other way;
- (D) changes occur in the ownership or shareholding of Customer;
- (E) Supplier, at its sole discretion (acting reasonably), is of opinion that a Force Majeure shall delay the Supplier's execution of the Services unreasonably, or that this execution shall be more onerous to carry out or shall cause operational difficulties for Supplier; or
- (F) Customer is in breach of its anti-bribery obligations, as detailed under Article 13 below.

13. Anti-Bribery

- 13.1 No offer, gift, payment, consideration or benefit whatsoever, which constitutes an illegal and/or corrupt practice and/or which is in connection with the conclusion and/or performance of services covered by these Terms and Conditions, can or will be made by Customer, directly and/or indirectly to Supplier or a subcontracting and/or a third party, as an inducement or reward for the execution of these services.

14. Sub-Contracting, Protection & Claims

- 14.1 Customer undertakes that no claim whatsoever shall be made in relation to the Vehicle against any employee, agent, independent contractor or sub-contractor (including stevedores) of Supplier. Supplier shall be entitled to be paid by Customer on demand an amount equal to any sum recovered by such Customer or any other person in breach of this Clause 4.
- 14.2 Customer shall hold Supplier harmless against any third party claim made in relation to the Services or Vehicle.
- 14.3 Customer may not assign or transfer (directly or indirectly) any of its rights or obligations under these Terms and Conditions without the prior written consent of Supplier. Supplier shall be entitled, without the consent of Customer, to assign or transfer (directly or indirectly) any of its rights or obligations under these Terms and Conditions.

15. Waiver

- 15.1 The delay or failure of Supplier to exercise its rights under these Terms and Conditions shall in no case constitute or be deemed a waiver or forfeiture of such rights, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise thereof or the exercise of any other right or remedy.

16. **Severability**

If any term of these Terms and Conditions shall be found to be invalid or unenforceable then such invalidity or unenforceability shall not affect any other provisions all of which shall remain in full force and effect. Supplier and Customer shall take immediate action necessary to replace the provision concerned by a valid provision which approximates as closely as possible their original intention.

17. **Governing Law & Jurisdiction**

These Terms and Conditions and all contracts to which they apply and all disputes (whether contractual or non-contractual) in connection with or arising out of or in relation to these Terms and Conditions or the provision of the Service(s) hereunder shall be governed by the laws of Belgium and shall be subject to the exclusive jurisdiction of the courts of Brussels.

1 February 2017