



# Caliber

## Address

PO Box 2,  
6800 AA Arnhem  
The Netherlands

Tivolilaan 205  
6824 BV Arnhem  
The Netherlands

**Caliber.global**

**T** +31 (0)88 004 19 00  
**F** +31 (0)88 004 19 14  
**E** info@caliber.global

## GENERAL TERMS AND CONDITIONS

**CALIBER.GLOBAL B.V.**

**(FOR LOGISTIC AND PROFESSIONAL SERVICES)**

### 1. DEFINITIONS

In the present general terms and conditions, the following is defined as set out below:

- Principal: the natural person or legal entity and/or the party issuing the order or requesting the services;
- CALIBER: Caliber.global B.V. or the company located in or outside the Netherlands directly and/or indirectly affiliated to Caliber.global B.V.; each of the latter will be referred to individually and jointly as "CALIBER";
- The Agreement and/or the Order: the contract for logistic and/or professional and/or consultancy services and activities between the Principal and CALIBER under the terms of which CALIBER undertakes to perform services for the Principal;
- Party: CALIBER or the Principal;
- Parties: CALIBER and the Principal jointly;
- Terms: the present general terms and conditions.

### 2. APPLICABILITY

- 2.1** The present Terms are applicable to all offers, quotations, Orders and/or Agreements between CALIBER and the Principal.
- 2.2** Personnel and third parties (in the sense of section 6:76 Dutch Civil Code) called in by or on behalf of CALIBER to execute the Agreement can also invoke these Terms against the Principal.
- 2.3** Derogations from these Terms will be valid only if the Parties have agreed on these explicitly and in writing.

### 3. THE FORMATION OF THE AGREEMENT

- 3.1** Unless the Parties agree otherwise, and subject to the provisions of section 6:225(1) Dutch Civil Code, the Agreement will be formed by the present Terms and the order confirmation by or on behalf of the Principal.
- 3.2** If the Order is issued orally or as long as CALIBER has not (yet) received the order confirmation, the Agreement will be deemed to have been concluded under the applicability of the present Terms at the point at which CALIBER commences the execution of the Order at the Principal's request.
- 3.3** The Agreement will be concluded for an indefinite period, unless the content, nature or purport of the Order entails that it has been concluded for a specific project or definite period.

### 4. THE EXECUTION OF THE AGREEMENT AND SPECIFIC CONDITIONS

- 4.1.1** Any shipping and transport services will only be performed by CALIBER as freight forwarding agent ("expediteur") of the Principal, with the Dutch FENEX conditions (latest edition) to apply supplementary to the Agreement and these Terms.
- 4.1.2** If and when CALIBER is instructed by the Principal to perform advisory or consultancy services, it will do so to the best of its professional knowledge. The Principal will however always remain responsible and liable for its actions or omissions and the consequences thereof, resulting from adhering or following such advice.
- 4.2** In case Contractor would be considered actual carrier by law, the following regulations will apply to the Agreement and these Terms:
- 4.2.1** For international carriage by road, the CMR Convention and the terms and conditions of the waybill;
- 4.2.2** For national carriage by road, the AVC (*Algemene Vervoerscondities*) 2002 and the terms and conditions of the waybill;
- 4.2.3** For international carriage by sea: The Hague-Visby Rules and the terms and conditions of the seaway bill or Bill of Lading;
- 4.2.4** For national and international carriage by inland navigation: the CMNI Convention and the terms and conditions of the waybill or Bill of Lading;
- 4.2.5** For national and international carriage by air: the Montreal Convention 1999 and the (IATA) terms and conditions of the airway bill;
- 4.2.6** For national and international carriage by train: the COTIF/CIM Convention and the terms and conditions of the waybill.
- 4.3** Storage and warehousing services will be performed by CALIBER under the supplementary applicability of the Veemcondities Amsterdam/Rotterdam 2006.
- 4.4** Without prejudice to (the applicability of) any mandatory law, with respect to the Agreement, these Terms and any specific conditions or regulations as mentioned above, the following order of precedence has to be taken into account:
- The Agreement;
  - These Terms;
  - The specific conditions or regulations for the specific service or mode of transport mentioned in this clause 4;
  - The terms and conditions of the waybill for the specific mode of transport mentioned in this clause 4;
  - Directory law applicable to the specific service or mode of transport.



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**4.5** All dates, times, schedules and/or other periods agreed by CALIBER in connection with the execution of the Agreement will be estimates only, and will not be binding on CALIBER. Any liability of CALIBER for damage or loss due to delay is excluded.

**4.6** If a certain or specific service has been agreed, CALIBER can only invoice the Principal for extra services if the Principal had given its prior permission for such extra services. If CALIBER is however required to undertake extra services on the basis of its duty of due care, statutory or otherwise, it is authorized to invoice the Principal for these services, even if the Principal had not given its prior and explicit permission for such extra services.

## **5. THE PRINCIPAL'S OBLIGATIONS**

**5.1** The Principal must ensure that all data and records which are necessary for the prompt and proper execution of the Order are made available to CALIBER in time.

**5.2** The Principal must ensure that CALIBER is informed of any facts and circumstances which could be relevant to the proper execution of the Order, and without delay.

**5.3** Unless the Parties have agreed otherwise, the Principal is responsible for ensuring that the data and records made available to CALIBER are accurate, comprehensive and reliable, even if these are obtained from or via third parties. CALIBER is not liable for loss or damage of any kind whatsoever as a result of CALIBER's use of any incorrect or incomplete data provided by or on behalf of the Principal.

**5.4** The Principal is fully responsible and liable for all the materials and resources and all its personnel, auxiliary and otherwise, which it may make available to CALIBER in connection with the execution of the Agreement. The Principal is fully responsible and liable for any acts or omissions by such personnel, irrespective of whether these are employed by the Principal.

## **6. CONFIDENTIALITY**

**6.1** Subject to the Parties' statutory obligation to disclose information, and subject to the Parties' permission to disclose information, CALIBER and the Principal will observe confidentiality in connection with the existence and contents of the Order, the information provided by the Parties and the results of the services or the work.

**6.2** This clause is not applicable to information which was already in the public domain before the Agreement was concluded or information on the third parties called in by the Parties in connection with the Agreement.

## **7. DATA PRIVACY PROTECTION**

**7.1** CALIBER processes personal data in accordance with applicable national and/or international data protections laws, both within as outside the EU.

**7.2** In case CALIBER processes personal data for the Principal under the Agreement, CALIBER will be qualified as data processor and the Agreement will also qualify as data processing agreement. CALIBER will solely process received personal data further to documented instructions from the Principal and will not in any way use such personal data other than necessary for its performance under the Agreement.

**7.3** CALIBER will implement appropriate technical and organizational security measures to ensure confidentiality and protection against loss or unlawful processing. CALIBER will at the choice of the Principal, delete or return all personal data after the end of the provision of services relating to processing, unless storage is required by law.

**7.4** At its first request CALIBER will assist the Principal and provide all information available which enables the Principal to comply with its own statutory obligations and to demonstrate this. The Principal acknowledges and agrees that under the Agreement, CALIBER makes use of other processors. CALIBER will impose upon such further processors the same data protection obligations as stipulated in this article.

**7.5** CALIBER is not liable for damage of any kind resulting from its processing of personal data under the Agreement. The Principal indemnifies CALIBER (in its role of data processor or otherwise) against any damage or loss of the Principal or a third party, resulting directly or indirectly from CALIBER its processing of personal data.

## **8. INTELLECTUAL PROPERTY RIGHTS**

**8.1** CALIBER reserves and maintains to keep in any circumstances all rights in connection with the intellectual property which it owns, uses or has used and/or develops and/or has developed in connection with the execution of the Order, including but not limited to the application "MYCALIBER".

**8.2** Unless the Parties explicitly agree otherwise, the Principal guarantees that CALIBER can freely use documents, data and information which it provides to CALIBER in connection with the Agreement without infringing on any intellectual property rights. CALIBER is not liable for damage of any kind whatsoever as a result of the aforementioned use.

## **9. RATES AND PAYMENT**

**9.1** Principal accepts that CALIBER will periodically review its rates, *inter alia* on the basis of developments in prices, wages and salaries. All rates are exclusive of VAT and other taxes, levies and charges imposed by government agencies.

**9.2** The Principal must make payment without any form of discount or setting-off within 14 days of the invoice date. Payment must be made in Euros (€) by transfer into a bank account designated by CALIBER. Objections to CALIBER's invoices will not suspend the Principal's payment obligations.



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**9.3** If it fails to arrange payment within the period referred to in clause 9.2, the Principal will be in default by the operation of law. In that event, the Principal will be required to pay statutory commercial interest over the outstanding sum as of the date on which the sum became payable until the date of payment. In addition, all the collection costs incurred after the Principal's default, both judicial and extra-judicial, will be for the Principal's account. The extra-judicial costs will be fixed at 15% of the principal sum plus interest, without prejudice to CALIBER's right to claim the actual extra-judicial costs if these exceed this sum. The judicial costs include all the costs incurred by CALIBER, even if these exceed the total sum fixed by the court (*wettelijke liquidatietarief*).

**9.4** If CALIBER believes that the Principal's financial position and/or payment pattern gives reason for doing so, CALIBER is authorized to require the Principal to pay an advance and/or to provide additional security in a manner to be decided by CALIBER. If the Principal fails to provide such security, CALIBER is authorized to immediately suspend its performance of the Order, without prejudice to its other rights, and CALIBER will be authorized to demand the immediate performance of any obligations which the Principal may have towards CALIBER on any grounds whatsoever.

**9.5** In the event of a joint Order, the Principals (whether acting as consortium or as joint venture) will be jointly and severally bound to pay CALIBER all sums payable pursuant to the Agreement.

## **10. SUSPENSION, RETENTION AND TERMINATION**

**10.1** CALIBER will be authorized to suspend the execution of the Agreement, in whole or in part, at any time if the Principal is in default in its execution of one or more of its obligations under the Agreement or under other agreements between the Parties, in which event no prior notice of default or announcement will be necessary.

**10.2** Any loss and/or damage and other costs, including costs incurred by CALIBER, which could arise from a suspension described in clause 10.1, will be for the Principal's account. In that event, CALIBER will remain fully entitled to the agreed fee or freight.

**10.3** With respect to any debt, outstanding amount or default of the Principal under the Agreement or other agreements between the Parties, CALIBER has a right of retention and/or a possessory lien on all assets of the Principal within the custody of CALIBER.

**10.4** The Agreement cannot be terminated in the interim by Principal. If the Agreement is however terminated or considered to be terminated in the interim (for instance by law or by means of a court order), CALIBER will be entitled to and the Principal will be liable for compensation of the loss and/or damage which CALIBER incurs, as a result of the loss of potentially-productive capacity and any additional costs which it is

reasonably required to incur as a result of the interim termination of the Agreement, unless the facts and circumstances which gave rise to the termination can be attributed to CALIBER in full.

## **11. COMPLAINTS**

**11.1** At all times the Principal is required to notify CALIBER in writing of any complaints concerning the services performed and/or sums invoiced by CALIBER within 14 days of discovering the matter of which it wishes to complain or, in the absence thereof, within 14 days of the execution of the Order.

**11.2** If the Principal fails to lodge a complaint within the period referred to in clause 11.1, all its rights and its claims towards CALIBER, on any grounds whatsoever, in connection with the matter on which it is lodging the complaint or the period within which it could have lodged the complaint, will lapse, be cancelled and will be null and void.

## **12. WAIVER OF RIGHTS**

CALIBER's failure to immediately enforce a right or exercise a power will not prejudice or restrict its rights and powers under the applicable law, Agreement or the present Terms. A waiver of rights under the Agreement or Terms will only be effective if these are agreed in writing.

## **13. LIABILITY AND INDEMNITY**

**13.1** Save for its intentional act or gross negligence and without prejudice to limitations of liability provided for in the specific regulations and conditions mentioned in clause 4 above, any liability of CALIBER under the terms of the Agreement or on whatever other ground (whether under contract or in tort) towards the Principal, is at all times restricted to the sum paid out by its liability insurer in that case. If and to the extent no payment is made under the aforementioned insurance for any reason whatsoever or if no such insurance was taken out, CALIBER's liability is restricted to the total fee or freight for which CALIBER has invoiced the Principal, with an aggregate maximum of 25,000 Euros.

**13.2** Any liability of CALIBER for consequential or indirect damages of the Principal is excluded.

**13.3** Any possible liability for loss, damages, fines, penalties or levies on behalf of custom authorities and/or resulting from the import or export of goods, for or on behalf of the Principal, is excluded.

**13.4** CALIBER is not liable for any loss or damage exceeding the sum referred to in this clause 13 or for any loss or damage on any other grounds, and the Principal will indemnify CALIBER against this in full at all times. The Principal specifically indemnifies CALIBER against and in connection with any damage, loss, claims or proceedings lodged against CALIBER in connection with any events, damage, loss, costs and/or fines or penalties in connection with that which is provided for (but not limited to) in clauses 4.1.2, 4.5, 5.3, 5.4, 7.5, 8.2, 13.2 en 13.3.



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**13.5** The Principal shall take out proper insurance and coverage to insure itself against the afore-mentioned liabilities and indemnities. The Principal will have CALIBER mentioned as co-insured under its relevant policies in this regard and will provide CALIBER with copies of these policies upon CALIBER's first request. The insured under the policies mentioned will be third parties towards each other, within the scope of the insurance policies, and the insurers will waive any rights of recovery against CALIBER.

**14. EXPIRY OF CLAIMS**

Without prejudice to the provisions of clause 11, any claims and/or rights of claim the Principal may have against CALIBER on any grounds whatsoever in connection with the Agreement, the present Terms or on any other grounds, will lapse and be cancelled if such a claim has not been lodged within one year of the event which gave rise to that claim before the court having jurisdiction.

**15. ASSIGNMENT OF THE AGREEMENT**

The Principal is not permitted to transfer or assign the Agreement or parts thereof to third parties, unless CALIBER consents thereto explicitly. If CALIBER consents to such a transfer, the Principal will remain liable towards CALIBER in addition to that third party for the obligations under the Agreement and the present Terms at all times, unless the Parties explicitly agree otherwise.

**16. APPLICABLE LAW AND JURISDICTION**

The Agreement, the present Terms and the other legal relationship(s) between CALIBER and the Principal are subject to the laws of the Netherlands. The Civil Court of Amsterdam has jurisdiction for any disputes between CALIBER and the Principal, unless the Parties explicitly stipulate otherwise after the dispute has arisen.

**17. FINAL PROVISIONS**

- 16.1** If it appears to be impossible to invoke any provision of the Agreement and/or the present Terms, the content and purport of that provision must at any rate be interpreted in such a way that it can be invoked as closely as possible, without prejudice to the validity of the remaining provisions of the Agreement and the present Terms.
- 16.2** The Parties hereby explicitly reject the potential applicability of the Principal's general terms and conditions as a result of the applicability of the present Terms. The present Terms will be deemed to be the first terms and conditions to be invoked in the sense of section 6:225(3) Dutch Civil Code.
- 16.3** The present Terms have been drawn up in the English and Dutch language. In the event of any conflict in the interpretation in the content or purport of the present Terms in Dutch or English, the Dutch text will prevail.
- 16.4** The present Terms have been filed with the Clerk of the District Court of Arnhem (Gelderland) under number 19/2018