

General conditions Shipit nv (limited liability company)

October 2003 – last revision applies

Article 1 : Definitions

In these General Conditions following terms are meant by:

- Shipit: Shipit nv (limited company) established in Antwerp, Belgium.
- Customer: the physical person or legal entity that commissioned Shipit to accomplish or have accomplished activities of supplying services and/or products.
- Subcontractor: the natural person or legal entity that, upon instructions of Shipit, accomplishes activities for or delivers services and/or goods to the Customer.

Article 2 : Paramount Clause

1. These General Conditions apply to the realization (including offers), the content and the performance of all agreements made between the Customer and Shipit.
2. General Conditions of the Customer will only apply when and if it is explicitly agreed in writing that these terms apply contrary to one or more provisions of the present General Conditions on the agreement concluded between parties.
3. Shipit is entitled to cause activities and supplies of services and/or goods that Shipit as an intermediary entrusts to third parties to be performed or to make use of goods or resources from third parties under the conditions that are customary in that branch of activity or under the conditions applied by these third parties without prejudice to Article 2, paragraph 1.

Article 3 : Subcontractors

1. Shipit has the right to perform activities and supplies of services and goods with its own personnel and means or at its choice to have them performed by the personnel or means of third parties.

Article 4 : Safety, health and environment

1. The Customer has an obligation, as soon as the Customer is aware of their (possible) existence, to inform Shipit of the possible or known dangers and/or risks concerning safety and health of the persons who perform activities for the Customer upon instructions from Shipit. Besides, the Customer has to inform Shipit about possible or known dangers and/or risks for the environment in general if and when these dangers and/or risks are or could be relevant for the activities of Shipit or its subcontractor(s).
2. The Customer has a duty to inform Shipit, as soon as the Customer is aware of their (possible) existence, about all possible or known dangers and/or risks regarding the safety of the equipment that is being used upon instructions of Shipit in performing the activities for the Customer.

Article 5 : Realization of the agreement

1. Unless stipulated otherwise by Shipit every offer of Shipit is valid for a period of 30 calendar days.
2. Offers and agreements of or with Shipit are only binding if and when put in writing and signed on behalf of Shipit by persons qualified to that effect under the law and/or the articles of association.
3. The mere fact of issuing a price quotation, estimation, preliminary calculation or similar communication be it by way of an offer or not does not oblige Shipit to conclude a contract with the Customer.
4. Further assignments from the Customer for the performance by Shipit of more and/or other services than those already agreed will only lead to an agreement if these instructions were confirmed in writing by those persons qualified to that effect by law and/or the articles of association.

Article 6 : Customer's obligations

1. The Customer has a duty to supply for its own account all information necessary for the correct execution of the agreement by Shipit and its subcontractor(s).
2. The Customer has a duty to inform Shipit at the earliest stage of the negotiations i.r.o. which regional, national or international statutory provisions as well as codes of good conduct are applicable on that type of activities, unless that is obvious. If need be, the Customer will cause for its own account an approved independent party to execute studies, inspections, analyses or investigations in order to clarify which legal provisions are applicable.
3. The Customer when performing the agreement with Shipit and its subcontractor(s) should do everything in its power that is reasonably needed or desirable to enable the timely execution by Shipit, especially by ensuring the possibility and access for persons commissioned by Shipit as well as for their material and machinery whenever necessary and by placing at their disposal (upon request) a fitting working space, sanitary fittings, public facilities, telephony and modest administrative assistance to the persons acting upon instructions of Shipit.
4. In case the Customer does not comply with the provisions of Article 6, paragraph 3, an agreed time of delivery is no longer binding and the Customer will be in breach without former notice in writing by Shipit. In this case Shipit, notwithstanding the rights existing by virtue of law, is then entitled to suspend the performance of the agreement until the Customer will have put an end to the breach.

Article 7 : Delays/time limits

1. The time limits agreed between Shipit and the Customer i.r.o. the performance of the agreement have only an indicative value failing a written and explicit agreement to the effect that the time limit(s) is/are definite. Even if a definite time limit is agreed by parties Shipit will only be in breach after being put on notice by the Customer.
2. Shipit is no longer bound by an agreed time limit if the Customer wishes modifications of the specifications of the work unless the modifications are so minor or the delays so unimportant that they should not reasonably oblige Shipit to amend the initial time tables drawn up by Shipit.

Article 8 : Modifications in nature and size of the activities due to external circumstances

1. After realization of the agreement changes can occur in the applicable legal rules. Moreover, on the side of the Customer the circumstances can change in comparison with those that existed at the time of the realization of the agreement. In case these changes could not reasonable have been foreseen by Shipit and lead to additional or other activities by Shipit or its subcontractor(s), Shipit will charge the costs involved therewith to the Customer.
2. If Shipit is forced to change the planning of the activities in between as a consequence of developments due to the Customer, Shipit has the right to charge the costs involved to the Customer.
3. If Shipit is forced to change the planning of the activities in between because of failure of another supplier of the Customer (other than Shipit or its subcontractor(s)) Shipit has the right to charge the costs involved to the Customer.

Article 9 : Copyright

1. The copyright of the reports, documents and other written texts that Shipit or its subcontractor(s) have prepared on behalf of the Customer rests with Shipit. The Customer has no right to copy or publish these writings without prior formal consent of Shipit (unless for explicit use within the organisation of the Customer).

Article 10 : Fees and commissions

1. Shipit will charge the Customer with a fee that corresponds to the services provided. The basis of the fee is defined in the agreement. Furthermore the Customer is held to pay the costs made by Shipit.
2. The costs that are involved in performing the agreement which are not covered by the fees of Shipit will be charged by Shipit to the Customer without surcharge with the exception of costs related to activities performed by (a) third party(ies) upon instructions from the Customer under the management of Shipit. In respect of such activities the rule is that Shipit has the right – failing any agreement to the contrary – to charge the Customer with a commission for management costs.
3. Taxes and dues that may be applicable as well in order to obtain permits will be charged by Shipit to the Customer. Taxes and dues that are levied abroad for which there is no restitution in favour of Shipit, will also be invoiced to the Customer.

Article 11 : Payment and invoicing

1. Failing an agreement to the contrary invoicing works and services supplied by Shipit and its subcontractors(s) will be undertaken either after the performance of the agreement or monthly for the part of the agreement performed during that particular month if the performance of the agreement takes more than 30 calendar days.
2. Failing an agreement to the contrary the Customer shall pay the invoice of Shipit within 15 calendar days as from the date of the invoice, without any right to compensation. If the Customer does not pay within the delay mentioned in the previous paragraph Shipit has the right to charge interests at 2% per month (to be increased with VAT).

3. In case of late payment the Customer is apart from the amount due and the interests thereon, held to pay all non-judicial and judicial recovery charges including the costs of lawyers, bailiffs and recovery agencies. For non-judicial costs a lump sum of 15% of the principal amount plus interests will be due with a minimum of EUR 200.-
4. The Customer is at all times and irrespective of the agreed payment conditions held to put up security upon first demand from Shipit for the amounts to be paid to Shipit as per the agreement. The security put in place will be such that the claim with all interests thereon and all costs is fully covered and that Shipit can call upon the security without problems. A security that becomes insufficient will upon first demand of Shipit be replaced by a security also covering the additional amount.
5. Claims or complaints regarding the performance of Shipit shall be no reason for the Customer to suspend payment to Shipit.
6. Every person or company that concludes an agreement on behalf of third parties or holding a request to invoice the works or services to third parties commits itself according to article 1120 of the Belgian Civil Code to pay and will be personally liable for payment even if Shipit agreed with this way of invoicing.

Article 12 : Interim termination

1. In compliance with the provisions of the following paragraphs of the present article and observing a period of notice of 28 calendar days the parties have the right to unilaterally put an end to the agreement reached between them by way of sending a registered letter to the other side.
2. In case of termination of the agreement by Shipit the Customer will receive a final account on basis of the works performed, the agreements concluded, the time spent and the costs made by Shipit and its subcontractor(s).
3. In the event of termination by the Customer when the activities of Shipit and/or its subcontractor(s) have started the Customer owes a compensation to Shipit for all costs already made by Shipit and its subcontractor(s), including for all works supplied and costs resulting from an interim termination of the agreements concluded with one or more subcontractor(s). Moreover, the Customer owes Shipit a compensation for early termination the amount of which corresponds to the fees agreed and/or to the commission that is due on the principal amount that is customary in the branch on basis of generally accepted practice.
4. In case of termination by the Customer before the works started the Customer needs to pay all costs already made by Shipit and its subcontractor(s) inclusive of all works performed and all costs caused by the interim termination of the agreements concluded with (further) subcontractors. Moreover the Customer owes a compensation to Shipit for termination of the agreement :
 - a) if the Customer terminates the agreement within a period of 21 calendar days before the works start, 100% of the fees agreed and/or a commission on the principal amount corresponding to genererally accepted practice.

- b) if the Customer puts an end to the agreement within a period of 60 calendar days before the works start, 50% of the fees agreed and/or a commission on the principal amount corresponding to generally accepted practice.
 - c) if the Customer puts an end to the agreement earlier than 60 calendar days before the works start, a percentage to be adjusted by Shipit (with a maximum of 50%) of the fees agreed and/or of the commission on the principal amount based on general accepted practice.
5. Parties have the right to terminate the agreement completely or partly or to suspend their duties if :
- a) a request for bankruptcy of the other party is lodged, either by this party itself, or by a third party or if the bankruptcy is declared by the court ;
 - b) if the other side lodges a request for judicial administration or is put under judicial administration by the court ;
 - c) if the other party is dissolved and/or put into liquidation.

13. Liability and duty to hold harmless

1. All agreements, transactions, services, activities, etc. are performed on behalf and at the risk of the Customer. Shipit is only liable for damage if the other side and/or the party lodging the claim, proves that the damage was caused by intent or heavy fault of Shipit itself, i.e. its management, meaning the board of directors.
2. In case Shipit or its personnel and/or management should be liable for damages in accordance with article 13 § 1, this liability of Shipit – unless damage is caused by Shipit's intentional fault – shall be limited to an amount corresponding to the amount of the highest fees and/or commissions invoiced by Shipit i.r.o. the services in question with a maximum of EUR 12.500.-
3. Shipit is not responsible for damage such as loss of turnover, loss of earnings, missed savings or loss of goodwill affecting the company or the profession of the Customer.
4. In any case the Customer holds Shipit harmless for any possible consequential damage and for any possible claims from third parties such as purchasers of the Customer.

14. Notice of default

1. Complaints regarding the lack of quantity or the bad performance of the works, services and/or defects of the products supplied will be forfeited if they are not lodged upon delivery (in case of apparent defects) or within eight (8) calendar days as from discovery (in case of hidden defects) by way of a registered letter sent to Shipit containing all relevant details, failing which Shipit may consider the complaint inadmissible. Failing an agreement to the contrary any other complaints are forfeited if they are not lodged within 15 calendar days as from the date of delivery.
2. In case the Customer has comments or observations regarding the invoice sent by Shipit the Customer needs to lodge a complaint with Shipit within 8 calendar days as from receipt of the invoice. Failing to such complaint within the aforementioned delay the Customer

will be considered to have agreed with the performance of the activities by Shipit and with the invoice sent.

15. Force majeure

1. Failure to fulfil the agreement by Shipit and its subcontractor(s) cannot be ascribed to Shipit if it is not caused by its/their fault, either by virtue of law, agreement or generally accepted practice. Failure of Shipit to fulfil the agreement as a consequence of (danger of) war, mobilisation, riots, floods, bad weather, closed shipping routes, other transport obstructions, stagnation, limitation or discontinuation of deliveries by (public) utility services, shortages of coals, gas, petroleum products or other means of generating energy, fire, strikes, lock outs, actions of trade unions, bankruptcy or liquidation of subcontractors, export limits, other measures taken by authorities and other similar circumstances will be considered as not to be ascribed to Shipit and do not give the Customer the right neither to discontinue the agreements nor to compensation.

16. Compensation for damages and holding harmless

1. The Customer will indemnify Shipit with respect to damage sustained and/or to be sustained resulting from the use as such by the Customer of any report, document or piece of writing produced by Shipit.
2. The Customer will compensate Shipit for damage sustained and/or to be sustained by Shipit as a result of the non-compliance by the Customer with Article 4 and Article 6.
3. The Customer will hold Shipit harmless both in and outside the court for any claims lodged by third parties on account of violation of patent rights, trademark rights or other intellectual property rights if the violation is related to the use of data which the Customer has provided to Shipit in relation with the execution of its assignment.
4. If Shipit has conducted studies or has had them conducted on behalf of the Customer and has given advices Shipit cannot give guarantees regarding the effect that the use of its advices or the application of the result of the studies will have because this effect/this application depend on a multitude of factors that are not within Shipit's influence.

17. Disputes

1. In case of dispute regarding the interpretation of the present general conditions only the Dutch wording is binding.
2. On these general conditions and on all agreements concluded by or with Shipit only Belgian law will be applicable.
3. The Antwerp courts have exclusive jurisdiction over all disputes concerning the supply of works, services and/or products [and in general all disputes under the present agreement/conditions].

18. Additional conditions regarding the activities as organiser of transport

1. When Shipit commissioned storage activities, transshipment activities, transport of persons and/or goods by rail, by road, inland water transport, transport by sea or by air or any other transport this is entirely at the risk of the Customer and the Treaties, Laws, Regulations, Provisions, Conditions, Terms etc. that are applied by the Carrier or goods operator commissioned by Shipit will be applicable.
2. Even in observing the provisions contained in the first and second paragraph of Article 6 it is not obvious which legal provisions will apply i.r.o. the nature of the goods to be carried and their handling. The Customer has a duty to clearly describe the nature of the goods to Shipit and to draw Shipit's attention to all legal provisions applicable on the carriage, the transshipment, the storage and the handling of these goods. In particular the Customer has a duty to declare whether the goods are dangerous or waste.
3. In case of non-compliance by the Customer of the provisions of Article 6, paragraphs 4 and 5 the Customer will be in breach without written notice by Shipit. In that case Shipit, without prejudice to any other rights as per the law, is entitled to suspend the performance of the agreement.

END of General Conditions Shipit NV (Ltd Company)

PLEASE NOTIFY US, SHOULD THIS DOCUMENT BE ILLEGIBLE