

COMEXAS Côte d'Ivoire Standard Terms and Conditions (STC)**Date: 2020-05-06****Revision:1****1. Scope of Application and Definitions**

- 1.1. All activities and any business undertaken or services performed by COMEXAS Côte d'Ivoire (called COMEXAS) as ship agent, husbandry agent, customs clearing agent as well as all additional activities and services offered and undertaken in his capacity as freight forwarder, carrier, charterer, stevedore or warehouse operator shall exclusively be governed by these Standard Terms and Conditions (herein after called STC), unless they should be held contrary to the provisions of a mandatory law.
- 1.2. The Client hereby expressly agrees and confirms that he has taken note and fully understood these STC and that they shall be deemed accepted at the time of ordering. They shall apply to any and all orders placed either verbally or in writing (by letter, fax or e-mail), even though if in a specific service request no reference to these STC has been made explicitly by COMEXAS.
- 1.3. These STC describe and define exclusively the right and duties, obligations and liabilities between COMEXAS and the Client.
- 1.4. Client or Principal means any company or person on whose behalf COMEXAS undertakes any business, provides any kind of advice, information or services and includes any person named as shipper, consignor, consignee, receiver or owner of the goods in any freight forwarding form or transport document.
- 1.5. COMEXAS shall herewith be fully authorised with the express consent and agreement of the Client to have the liberty and absolute discretion as to the organisation, selection of means, modes and routes of transportation as well as procedures to be followed in the organisation and performance of all kind of services, agency activities, organisation, handling, storage and transportation of goods, organisation of transportation of persons, husbandry services as hotel accommodation and other similar services.
- 1.6. Air Freight: The term "kg" is to be understood per kilogram chargeable weight, based on weight/volume ratio of 1:6, whichever yields more. That is 1'000kg = 6cbm. All charges will be raised on actual weight/measurements of the cargo, irrespective of weight/measurements shown on the airway bill and/or manifest.
- 1.7. Sea Freight - General cargo: The term "Freight ton weight/measure" is to be understood to mean per 1'000kg or 1cbm, whichever yields more. All charges will be raised on actual weight/measurements of the cargo irrespective of weight/measurements shown on the Bill of Lading and/or manifest. Sea Freight – Containerised cargo: The term "20/40 Container" is to be understood to mean commonly used shipping line equipment. For containers with other dimensions, portakabin, open-top, flat racks containers... the non-containerised general cargo tariff shall apply.

2. Scope of Activities and Services**2.1. COMEXAS acting as Agent**

COMEXAS shall ordinarily and purely act as Agent of the Client or Principal when offering and performing any kind of activities and services as ship agent, ship broker, bunker agent, clearing agent, husbandry agent, customs broker or additional and ancillary services. Such kind of additional services can include but shall not be limited to all kind of supply services, hire of cars, trucks, forklifts, equipment, the organisation of international and national transportation and travel services, hotel accommodation, transportation of persons and/or other similar or ancillary services of the industry in the Country where the contract has been concluded or the services are performed.

2.2. COMEXAS acting as Freight Forwarder

In case of organisation of the transportation of goods, COMEXAS shall act in his capacity as Freight Forwarder and shall also be qualified as an Agent. COMEXAS shall be entitled and mandated by the client to organise the carriage of goods, customs clearance and / or other similar services and logistics services at his own discretion, or according to clear written instructions of the Client. In his capacity as Agent, COMEXAS shall conclude contracts of carriage on account of the Client with freight forwarders, carriers, shipping lines, airlines, warehouse operators, customs brokers or other logistics providers.

2.3. COMEXAS acting as Carrier

COMEXAS may exceptionally act either as actual or contracting carrier if he:

- organises and effects the carriage of goods as actual carrier with his own means of transport, as e.g. with own trucks or vehicles, or
- issues own transport documents in his capacity as contracting carrier, as e.g. own HAWB's (House Air Waybill), Consignment Notes or B/L's (Bill of Lading).

2.4. COMEXAS acting as Warehouse Operator

COMEXAS shall act as Warehouse Operator if a separate contract of warehousing is concluded with the Client and the goods are stored in his own premises, yards or warehouses.

3. General Consideration

- 3.1. In case of requests for quotation / tariffs, the Client shall furnish the ordinary and necessary information and mention specific instructions in writing to enable COMEXAS to send a proper and adequate quotation / tariffs.
- 3.2. Unless otherwise specified, such offers of COMEXAS shall be binding for a period of 30 (thirty) days after the date of issuance and submission of the quotation / tariffs and shall cease to be valid if they are not accepted in writing within the provided time period. Notwithstanding, COMEXAS shall be entitled to revise quotations, tariffs, freight and charges with or without prior notice in the event of unforeseeable
- 3.3. COMEXAS shall apply any taxes assessed or levied including but not limited to tax increase, modification or newly created, retroactively if necessary, pursuant to the relevant law.
- 3.4. If orders are given orally or by phone, the Client shall bear the risk of incorrect and/or incomplete information or unclear instructions.
- 3.5. COMEXAS shall endeavour to carefully analyse the contents of the orders placed by the Client, without assuming any obligation to verify and/or to examine the correctness and accuracy of the contents of such information furnished as general instructions, description of goods, weight and measurement or packaging.
- 3.6. The Client agrees that large outlays might be paid in advance upon COMEXAS's request, which will not be greater than the estimated outlays and only used to that purpose. Outlays means all payments for services provided by third party being but not limited to freight costs, Customs duties, port charges, hotel costs.
- 3.7. In the event a credit limit is agreed, at receipt of the relevant statement showing a negative or null balance, the Client agrees to pay immediately up to the agreed credit limit. COMEXAS reserves the right to alter any agreed credit limits with or without prior notice.
- 3.8. Either Party may terminate all or any part of this Agreement forthwith without cause at any time by giving no less than 30 (thirty) days prior written notice to the other Party. All work performed by COMEXAS to the date of termination will be invoiced and the Client guarantee payment in a timely manner.
- 3.9. COMEXAS is insured for the performance of its core business only. If the Client wishes COMEXAS to provide service outside its Scope of Activities, the Client accept to bear the entire risk that could arise.

4. Obligations and Liability of Client

- 4.1. The Client undertakes and warrants to COMEXAS to fulfil any and all information and documentary provisions, instructions, requirements, legal and other obligations in agency business and transportation as well as to furnish any legally required information by Customs, Authorities and/or Governments for transportation, customs, security, safety and / or other purposes in relation with the services and with all particulars of the goods as description of the goods, marks, numbers, dangerous goods declaration, quantity and weight and to guarantee that this information is correct and accurate.
- 4.2. The Client has to ensure that the packages have been clearly and durably marked to facilitate their proper handling during transportation in respect of addresses, marks, numbers, symbols for handling and properties.

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4.3. The Client shall be liable for his own errors and omissions as well as for defective or insufficient packing of the goods or for inadequate loading or packing within the containers or other transport units when such loading has been performed by the Client, its servants, subcontractors or other persons acting on his behalf.

4.4. The Client shall be liable, hold harmless, defend and indemnify COMEXAS for all loss, damage, cost and expense, penalties, fines and duties arising out or in connection with, including but not limited to the inaccuracy, incorrectness and / or incompleteness of information and particulars and / or non-observance of above described obligations.

5. **Delivery and Time Guarantees**

5.1. COMEXAS shall not be responsible for ensuring that within any kind of agency, freight forwarding or transportation activities and / or services offered and performed by third parties any schedules and delivery times shall be observed and executed accordingly, even though clear instructions have been given on behalf of the Client to the contractors or carriers. COMEXAS shall also not be liable if the goods do not arrive at a specific date or within a reasonable time frame.

5.2. Therefore, special attention has to be given by the Client to any kind of information or declaration of the carriers provided in respect of schedules or ETD, estimated time of departure, or ETA, estimated time of arrival, because they are subject to change without notice from carriers. In addition, special attention has to be given to the Liability Exclusions and Exemptions of Liability in the terms and conditions of the transport document provided by carriers, applicable mandatory international transportation Conventions or national Laws.

5.3. COMEXAS shall, under no circumstance and for whatsoever reason, be liable for any delay including but not limited to delays at customs due to Brexit.

6. **Valuables**

6.1. The Client is expressly required to specifically designate valuable goods in the transport order and to give clear instructions sufficiently in advance in respect of, including but not limited to, specific handling, modes, storage, service level, and security & safety requirements.

7. **Hindrances affecting Fulfilment, Performance and Delivery**

7.1. COMEXAS undertakes to use reasonable endeavours to fulfil the orders and services, to transmit Client instructions to the carriers and to complete the transport and to deliver the goods at the place designated for delivery.

7.2. If at any time the fulfilment and performance of this contract in the opinion of COMEXAS is or will be affected by any hindrance, risk, delay, difficulty or disadvantage of any

kind including but not limited to dangers, perils of the sea, strike, lockout or other labour unrest, governmental action, war, riots, social disturbance, ice or quarantine, or if the consignee does not take delivery of the goods at destination, COMEXAS shall not be held responsible for any liability and the goods shall be placed

and stored for the account of the Client, at its sole risk and expense, until further written instructions are given from the Client.

8. **Freight, Duties and additional Charges**

8.1. The Client shall be liable, hold harmless and indemnify COMEXAS for any freight, duties, taxes, levies, deposits, outlay or additional charges levied by any government, authority, customs, port, airport or place for or in connection with the goods and for any payments, storage, demurrage, fines and duties, loss, damage or expense

whatsoever incurred or sustained by COMEXAS in connection with the performance of the services or carriage.

8.2. Whenever COMEXAS should on behalf and account of the Client advance monies, guarantees, securities, freight, customs duties, taxes, cost and expense or other

disbursements an additional commission shall be payable by the Client to COMEXAS unless an advance payment had been paid pursuant to article 3.6 of these STC.

9. **Freight Collect and COD's**

9.1. COMEXAS does not collect freight, duties, fees, charges or other expense from any other company or person other than the Client.

10. **General Liability Clause**

10.1. COMEXAS shall be responsible for the careful organisation and execution of the services or transport orders.

10.2. COMEXAS shall assume the responsibility for the non-performance and non-fulfilment of his contractual obligations in accordance with these STC. COMEXAS shall bear the

burden of proof to allege and prove that he has exercised the necessary and expected due diligence in order to fulfil the contractual obligations and to protect the

interest of the Client in accordance with the provisions of the contract and these STC.

11. **Liability as Agent**

11.1. The liability of COMEXAS as Agent of the Client or Principal under these STC in respect of the organisation and performance of all kind of agency and/or husbandry

services for Loss of or Damage to Property, Goods, Delay, Death and Personal Injury or for whatsoever reason caused by independent Contractors as e.g. Suppliers, Transport Operators, Airlines, Shipping Lines, Truckers, Carriers, etc. and / or their Subcontractors or other Third Parties shall herewith be expressly excluded.

11.2. All claims arising out of the concluded contracts of COMEXAS as Agents of the Client or Principal with the Contractors, Suppliers, Carriers, etc. shall be brought against them directly by the Client at their domicile and place of jurisdiction as provided in the concluded contracts.

11.3. The liability of COMEXAS shall be limited to errors and omissions caused by COMEXAS in respect to the careful selection and instruction of the mandated contractors according

to the received order, information and instructions from the Client and COMEXAS shall be relieved from any liability if the selection has been done carefully according to

local market standards and the obtained written instructions have been transmitted to the contractors in accordance with the Client's order.

12. **Limitation of Liability as Agent**

12.1. The liability of COMEXAS as Agent of the Client as per Art. 11 for his own errors and omissions shall be limited and in no case exceed the maximum liability of SDR 10,000

for any claim, incident or occurrence. In this STC, SDR means Special Drawing Rights of the International Monetary Fund (IMF).

13. **Liability as Freight Forwarder**

13.1. COMEXAS acting as Freight Forwarder shall be liable for his own errors and omissions in the performance of the contract. COMEXAS shall not be liable for loss of or damage to the goods or delay caused by acts or omissions of third parties as carriers, truckers, shipping lines, airlines, freight forwarders, warehouse operators or other

logistics providers, and any liability of COMEXAS shall be herewith expressly excluded.

13.2. If contractors or subcontractors are mandated for the performance and execution of the transport order, COMEXAS shall only be liable for the careful selection and

instruction of those contractors, subcontractors or third parties according to the received order.

14. **Limitation of Liability as Freight Forwarder**

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14.1. The liability of COMEXAS for his own errors and omissions shall be limited and in no case exceed the following maximum liability limits and amounts of compensation:

a) Loss of or Damage to the Goods (only during the physical care, custody and control of COMEXAS):

SDR 8.33 per kg of gross weight of the part of the goods lost or damaged

b) Delay : the Freight Amount

Property and Financial Damage: SDR 1,000 per incident or occurrence or in case of customs clearance by COMEXAS to the amount of duties and taxes levied.

And for each of a, b and c items, the Total Maximum of Liability and Compensation must be SDR 20,000 per claim, incident or occurrence.

15. Liability as a Carrier

15.1. The period of responsibility of COMEXAS as Carrier for the carriage of goods under these STC shall be determined according to the provisions of the issued transport

document. The period of liability shall begin at the time the carrier has taken the goods into his care, custody and control and shall end at the time of their delivery at the final destination.

16. Limitation of Liability as a Carrier

16.1. The liability of COMEXAS as Carrier (with own trucks, vehicles or equipment) or as contracting Carrier (when own transport documents as HAWB's, Consignment Notes or

B/L's are issued by COMEXAS as carrier) shall be limited and in no case exceed the following maximum liability limits and amounts of compensation:

16.1.1. In case of international transportation:

The applicable liability provisions and limits of the issued transport document are the ones from the international transportation Conventions which provide mandatory limits of liability.

16.1.2. In case of national with international transportation or in all other cases where no mandatory liability provisions apply: the herewith contractually agreed

liability provisions and limits of liability in these STC shall apply for:

a) Loss of or Damage to the Goods: SDR 8.33 per kg of gross weight of the part of the goods lost or damaged

b) Delay: the Freight Amount

c) Property and Financial Damage: SDR 1,000 per incident or occurrence.

And for each of a, b and c items, the Total Maximum of Liability and Compensation must be SDR 20,000 per claim, incident or occurrence.

17. Liability as Warehouse Operator

17.1. If a separate and specific contract of warehousing is concluded, the period of responsibility of COMEXAS as Warehouse Operator in his own premises, yards or

warehouses shall begin at the moment COMEXAS has taken the goods into his care, custody and control and shall cease at the time of their delivery to the Client or his

duly authorised representative.

18. Limitation of liability as Warehouse Operator

18.1. The liability of COMEXAS as Warehouse Operator shall be limited and in no case exceed the following maximum liability limits and amounts of compensation:

a) Loss of or Damage to the Goods : SDR 8.33 per kg of gross weight of the part of the goods lost or damaged

b) Delay: the Freight Amount

c) Property and Financial Damage: SDR 1,000 per incident or occurrence

and for each of a, b and c items, the Total Maximum of Liability and Compensation must be SDR 20,000 per claim, incident or occurrence or series of same incidents attributable to the same cause or inventory difference.

17. General Liability Exclusions

17.1. Irrespective, in which capacity COMEXAS may act or which kind of services may be performed under these STC, COMEXAS shall not be liable for whatsoever reason and relieved of any liability if the loss or damage, property or financial damage or personal injury has been caused by the following liability exemptions:

a) an act or omission of the Client, a Contractor or any company or person acting on behalf of the Client,

b) failure, incompleteness and/or lack of compliance with legal information requirements, non-observance of provisions and necessary instructions in respect of

security, safety and environmental provisions or Codes;

c) handling, loading, stowage or unloading of the goods by the Client or a person acting on his behalf;

d) inherent vice of the goods;

e) lack, insufficiency or defective condition of the packing of goods, containers or transport units;

f) insufficiency or inadequacy of marks and/or numbers on the goods or unit loads;

g) war, strike, lockout, stoppage or restraint of labour, social disturbances and civil commotions;

h) act of God;

i) fire, explosion and

j) any incident or circumstances COMEXAS could not avoid by reasonable care and the consequences of which he was unable to foresee and prevent by the exercise of

due diligence. COMEXAS shall in no circumstance be liable for any indirect loss or consequential damages or expenses, such as loss of profit, loss of clients, penalties,

claims for losses due to depreciation and conventional fines, exchange rate, fluctuations, increased levies or taxes by authorities for whatsoever reason.

17.2. COMEXAS shall in no circumstance be liable for any indirect loss or consequential damages or expenses, such as loss of profit, loss of clients, penalties, claims for losses due to depreciation and conventional fines, exchange rate, fluctuations, increased levies or taxes by authorities for whatsoever reason.

18. Claim notification as Agent

18.1. Claims for apparent loss of or damage to goods, property and financial losses or personal injury shall be reported by the Client immediately after the incident occurred in writing to the guilty contractor, supplier, carrier, etc. with copy to COMEXAS. If the contractor at the moment of the incident should not been known, the claim notification shall be sent to COMEXAS directly and COMEXAS will hold liable immediately in writing the contractor.

19. Claims Notification as Freight Forwarder, Carrier and Warehouse Operator

19.1. Claims for apparent loss of or damage to the goods shall be reported by the Client immediately upon delivery of the goods or performance of the services in writing to COMEXAS or to the carrier by giving clear and detailed specific reserves in the transport document or delivery note.

19.2. Claims for non-apparent loss of or damage to the goods shall be reported by the Client in writing, at latest within eight (8) days after delivery, or in case of loss or non-delivery, misdelivery or delay from the date that the goods should have been delivered, or in case of international transportation as per mandatory applicable claims notification provisions of the international transportation Conventions.

20. Forfeiture and Time bar

20.1. COMEXAS shall not be liable and shall be relieved of any liability if the claims notification provisions as described in art. 20 & 21 are not observed and fulfilled. Otherwise, any claim against COMEXAS shall be forfeited.

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20.2. Irrespective of what kind of services have been offered and performed, COMEXAS shall in any case be discharged from any and all liabilities under these STC, unless suit is brought within 6 (six) months or 3 (three) days for African countries after delivery of the goods or the date when the goods or the services should have been delivered or performed, except that such prescription and time bar should be held contrary to any international transportation Convention or Law compulsory applicable.

21. Prohibition to Set-off

21.1. Amounts due by the Client to COMEXAS as Agent, Freight Forwarder, Carrier, Warehouse Operator or for any kind of services performed and / or in connection with these STC for services, carriage, storage, freight, charges, costs, expenses, outlays for customs duties, taxes or other services, may under no circumstance and for whatsoever reason be set-off against any and other claims of the Client.

22. Lien

22.1. COMEXAS shall have a particular and general lien on any and all goods and property, including any documents relating thereto, of the Client, in its care, custody and control or en-route, for all monies due, claims or charges, expenses or advances incurred by COMEXAS in connection with any services or shipments of the Client, including all service and agency fee, freight and charges, expense, costs applicable to past services and shipments, and if such claim remains unsatisfied for 30 days after written demand for its payment, COMEXAS shall be entitled to sell at public auction or private sale, upon 10 days written notice by registered mail to the Client, the goods or so much as may be necessary to satisfy such lien, and the costs including attorney's fees of recovering the same.

23. Marine / Transport Insurance

23.1. COMEXAS acting in his capacity as Agent or Intermediary of the Client only undertakes to arrange Marine / Transport Insurance upon the Client's express written request and instruction and at the Client's costs, as per common market standards. The Client shall check the insurance confirmation sent by the Insurer subject to the applicable terms and conditions of the insurance policy and subject to general and specific applicable obligations, duties and exclusions in the quoted Marine / Transport insurance coverage.

24. Invoices, Payment and Currency Fluctuation

24.1. The Client is primarily liable for the payment of the services and any outlays necessary for the performance of the services ordered.

24.2. The payment of services and outlays shall be deemed fully earned when COMEXAS has performed the services according to the received order. It is expressly stated and agreed that some outlays might be paid in cash; however, such payment is always documented by official tariffs and proper receipt. The Client shall, under no circumstance and for whatsoever reason, be allowed to reduce the service fee and any outlays with any claim, counterclaim or setoff.

24.3. At completion, COMEXAS will issue an invoice, which will include the Services and all relevant back-ups justifying outlays payments that were necessary for the Client's operations. When outlays are invoiced in another currency than the one contractually agreed, COMEXAS will convert the currency at the currency rate published the Friday before the invoice issuance.

24.4. If advance payments (article 3.6) are received in foreign currency for any outlays, such amounts shall be converted into the contractual currency at the exchange rate of the day of the relevant invoice.

24.5. The Client, Principal, shipper, consignee and owner of the goods shall be jointly and severally liable for all unpaid services, freight, charges, cost and expense payable on account of any service or shipment.

24.6. The payment of all COMEXAS invoices shall be made at the latest 30 (thirty) days after the receiving date of the invoice.

24.7. The Client has 10 (ten) days to notify in writing to COMEXAS the disputed item(s) of the relevant invoice and shall pay the undisputed part.

24.8. A monthly interest rate of 5% will be applied if the Client fails to pay within the delay

24.9. All Payments under this STC shall be in the currency stated into the pricing issued by COMEXAS including but not limited to quote, tariffs, tender application. At the date of issuance, all pricing issued by COMEXAS are indexed to either dollars of the United States of America (USD) or euros (EUR). If payment is in USD or EUR, then the following applies.

(a) If any currency stated in the pricing is subject to fluctuation against USD or EUR whatever the reason then:

- All currency of outlays' invoices must be converted at the date of COMEXAS's payment of such invoices,
- For COMEXAS services' invoices received but not paid yet by the Client, COMEXAS reserves the right to adjust the final amount to reflect the new currency rate,

(b) Any COMEXAS invoices issued after the exchange rate change will be at the new rate of exchange.

This provision shall be subject to such reasonable changes in interpretation as may be appropriate to minimise the economic effect on the parties to this agreement of any fluctuation in currency such as but not limited to devaluation, government decision.

25. Severability

25.1. If any clause, provision or term should be held to be invalid, illegal or unenforceable under any law, statute, regulation or other rule, such provision shall not affect the validity or enforceability of this contract and its terms and conditions and the remaining clauses shall remain in effect.

26. Actions in Tort

26.1. The defences, exemptions and limits of liability stated in these STC shall apply in any action against COMEXAS for non-performance of any kind of service, loss of or damage to goods, property, delay, death or personal injury as well as for any other claim in connection with the performance of these services, whether the action be founded in contract or in tort.

27. Business Ethics

27.1. Either party shall at all times perform their obligations in a lawful manner consistent with the highest ethical standards and the Client shall not at any time enter into any business arrangement with personnel or officers or agents of COMEXAS or their affiliates without the prior consent of COMEXAS.

27.2. COMEXAS is strongly committed to upholding ethical standards in all its affairs and to promoting compliance with the anticorruption laws where it conducts business

28. Place of Jurisdiction and Governing law

28.1. These STC are governed by the Laws of Côte d'Ivoire.

28.2. All disputes arising out of or in connection with the interpretation or application of the provisions of these STC shall exclusively be governed by the Laws of Côte d'Ivoire. Any dispute or Claim arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination shall be submitted to the Court of Abidjan.

29. Confidentiality & Data Protection

29.1. All information concerning any Party's activities, personnel obtained by the other Party in the performance of this Agreement and all information or data otherwise furnished to any Party by the other Party shall be considered confidential and shall not be divulged by any Party to any third party without the prior written consent of the other Party or used by any Party for any purpose other than performing this Agreement. The provisions of this Clause shall not apply to information which:

- (a) is already part of the public domain; or
- (b) was in the possession of the relevant Party prior to the Effective Date and which was not subject to any obligation of confidentiality owed to the other Party.

29.2. Specific legal responsibilities regarding the use of Personal Data have been set out by the European Union in the General Data Protection Regulation (GDPR), adopted on 27 April 2016 and applicable as of 25 May 2018. COMEXAS is committed to protect Personal Data and the Client guarantee implementing the GDPR.