

# **RESPONSIBLE REPRESENTATION AGREEMENT UNDER GLOBAL NUMBER**

(versie 16/06/2014)

Between

..... (name and legal form), whose registered office is situated at ....., entered in the ..... Register of Companies under number ....., represented by ....., of the one part.

hereinafter referred to as "the Principal",

and

**European Customs Agency (public limited company)**, whose registered office is situated at **Laar 179 - 2180 Antwerp**, entered in the Register of Companies under number **0466.862.186**, represented by **Mr. Kurt Crauwels**, of the other part.

Hereinafter referred to as "the Responsible Representative"

## **Article 1. Definition**

### **Principal:**

any natural person or body corporate that will do only such acts as are specified in section 2, §1 of Royal Decree No. 31 of 2 April 2002 issued to implement the Belgian Value Added Tax Code, on Belgian territory, as specified in section 299 of the consolidated version of the Treaty establishing the European Economic Community<sup>1</sup>, and whereby the Principal orders the Responsible Representative to represent him, in accordance with section 55 §3 of the Belgian Value Added Tax Code and Royal Decree No. 31 of 2 April 2002 issued to implement such Code.

### **Responsible Representative:**

any natural person or body corporate representing the Principal in accordance with section 55 paragraph 3,2° of the Belgian Value Added Tax Code and section 31 of Royal Decree No 31 of 2 April 2002 issued to implement such Code.

The Responsible Representative hereby confirms to be competent to enter into Agreements, to be domiciled in Belgium and to be sufficiently solvent to fulfil the obligations imposed on tax subjects by the Belgian Value Added Tax Code or the implementation decrees concerned.

The Principal confirms not to have already been identified in Belgium under an individual number (direct identification or identification with recognition of a Responsible Representative in accordance with section 55 §§ 1 and 2 of the VAT Code.

## **Article 2. Formalities**

The Responsible Representative undertakes to perform the formalities specified in Royal Decree No 31 of 2 April 2002 issued to implement the Belgian Value Added Tax Code.

The Principal undertakes to fully cooperate, sign the necessary documents, furnish and supply the records and information concerned at the Responsible Representative's first request.

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<sup>1</sup> as applicable since the modification and renumbering my treaty of 2 October 1997 (official journal C. 340, 10 November 1997), approved by the act of 10 August 1998 (Belgian official Gazette *Belgisch Staatsblad - Moniteur belge* 30 April 1999 (third edition)

### **Article 3. Responsible Representative's Obligations**

The Responsible Representative undertakes to perform his assignments in accordance with the provisions of Belgian Value Added Tax Code and the Decision E.T. 124.203, dd. 31.03.2014.  
The Representative has to act in good faith.

In accordance with section 2, § 3 Royal Decree No 31 of 2 April 2002, the Responsible Representative is subrogated to all the Principal's rights granted to the Principal or to all obligations imposed on the Principal by or in pursuance but the Belgian Value Added Tax Code.

The Responsible Representative shall fulfil all and any obligations *inter alia* regarding the keeping of the books, the preparation of declarations and listings, and the issue and making out of invoices and documents and pay the value added tax due on account of the declarations made.

The representative must have included the intra-community deliveries performed by his principal, within the accounting, the regular VAT return and the intra-community submission of global VAT IDs.

For each and every delivery executed for the client, the representative must be able to present an excerpt of the VIES system, which proves the VAT ID of the contracting party of the principal (or - if goods are transferred - the principal's VAT ID) under which the intra-community purchase in a member state other than Belgium is realized, was valid at the time of delivery (or - if extended - at the time of import subject to the application of tariff regulation no. 42, immediately preceding suchlike intra-community delivery).

In exceptional cases, the VAT ID's validity may be otherwise verified retroactively by the representative.

The Responsible Representative represents the Principal with regard to such authorities as are competent to pursue the application of the Belgian Value Added Tax Code and the implementation decrees concerned.

### **Article 4. Principal's Obligations**

The Principal undertakes to order only the person mentioned in article 1 of this Agreement as his Responsible Representative to represent him in accordance with section 55 § 3 of the Belgian Value Added Tax Code and Royal Decree No 31 of 2 April 2002 issued to implement such Code.

The Principal undertakes to limit himself to doing the following acts whereof a limitative enumeration hereinafter appears, with the Responsible Representative's intervention:

- the import of such goods as are not placed under the VAT entrepot regime, insofar as such import has taken place with the view to the next delivery of the same goods;
- the acts aimed at by section 39<sup>quarter</sup>, § 1, 1<sup>o</sup> and 3<sup>o</sup> of the Belgian Value Added Tax Code or such acts of placing goods under the VAT entrepot regime as are not subject to value added tax:
- the withdrawal of goods from the VAT entrepot regime;
- the intra-Community acquisition of goods or acts regarded as equivalent which are not placed under the VAT entrepot regime, to such extent as to which the intra-Community acquisition of goods has taken place with a view to a next delivery of the same goods which is exempt under section 39, § 1, 1<sup>o</sup> and 2<sup>o</sup> the Belgian Value Added Tax Code (export);
- the acts consisting in an intra-Community acquisition of goods which are not placed under the VAT entrepot regime, with the exception of any other acts subject to value added tax in Belgium.

The Principal undertakes to provide a Responsible Representative with all and any such documents as are necessary for the performance of his assignment (Annex 1), in time, both at the beginning and during the performance of the Agreement.

The Principal shall be responsible for the completeness, correctness, validity, authenticity, timeliness and the proper use of the documents put at the Responsible Representative's disposal by him.

The Principal undertakes to deliver the transport documents (CMR, ...) and/or signed delivery notes, which can be used as a receipt by the consignee / customer in another member state, to the Responsible Representative immediately.

By signing this Agreement, the Principal confirms to have taken note of the fact that in accordance with section 55 § 4, paragraph 2 of the same Belgian Value Added Tax Code, the Responsible Representative is jointly and severally liable together with the Principal to pay the value added tax, interests and fines owed by the Principal, by virtue of the Belgian Value Added Tax Code and the implementation decrees concerned.

The Principal undertakes to sign all and documents drawn up by the authorities as mentioned in article 3, last paragraph of this Agreement, regarding the control of a correct application of the Belgian Value Added Tax Code and the implementation decrees concerned, together with the Responsible Representative.

The principal confirms the knowledge of the Decision E.T. 124.203, dd. 31.03.2014 (Annex 1) in which the conditions are stipulated for the exoneration of the joint liability for the Representative.

#### **Article 5. Duration and Termination of Agreement**

5.1. Unless otherwise agreed, the Responsible Representative binds himself for the periods wherein acts are performed by the Principal in Belgium as set forth in article 4, paragraph 1 of this Agreement.

The Responsible Representative's assignment shall commence from the signature of this Agreement unless this Agreement is signed before he is recognised as Responsible Representative, in which case it shall commence from such recognition.

The Agreement can be terminated reciprocally subject to six months' notice being given, reckoning from the day after the day the registered letter was sent.

5.2. The Agreement can be terminated immediately if the Principal does not fulfil his obligations as specified in this Agreement as well as in the event of any shortcoming or infringement of any obligation set forth in the Belgian Value Added Tax Code or the implementation decrees concerned, which together with reasons of bankruptcy, apparent insolvency, delay in the payment of invoices and expired security, is accepted by the Principal as unilateral grounds of termination without notice, without prejudice to the Principal's obligation to hold the Responsible Representative unconditionally harmless also after the termination of this Agreement and to fulfil each claim made against the latter by the public authorities or third parties.

5.3. In the event of decease, withdrawal of his recognition by the public administration or in the event of a fact resulting in the Responsible Representative's incapacity, the Principal shall take care of his immediate replacement so that the Responsible Representative's removal is acceptable to the public authorities.

As long as this is not done, the Principal shall abstain from any such acts as are specified in section 2 § 1 of Royal Decree No 31 of the 2 April 2002 issued to implement the Belgian Value Added Tax Code.

#### **Article 6. Payment**

Any amounts or fees charged by the Responsible Representative shall be payable cash at the registered office within eight days from the date of invoice.

If the term of notice is not observed, a fixed fee equal to the invoices of the last six months related to the fiscal representation shall be due.

Any protest against the invoicing or against any services and amounts charged must have been received by the Responsible Representative in writing within 8 days from the date of invoice.

Any debt not paid on the due date shall be increased by compensatory interests at the legal interest rates increased by fixed damages equal to 10% of the debt, to cover the economic and administrative

losses, without previous notice of default, without prejudice to the Responsible Representative's right to prove that the existence of higher losses.

#### **Article 7. Liability and Indemnification**

7.1. The Responsible Representative shall perform his assignment with reasonable care, dedication and perception, and he shall answer for the normal professional performance of the assignment entrusted to him. He shall act in accordance with the stipulations of the Decision E.T. 124.203 dd. 31.03.2014.

The Responsible Representative shall not be supposed to examine the correctness of the information given by the Customer or the authenticity or regularity of the documents furnished by the Customer. Such information shall be accepted in good faith.

7.2. The Principal shall irrevocably and unconditionally indemnify the Responsible Representative and in such sense he shall be responsible towards the latter for *inter alia*:

- All and any costs, expenses, duties, taxes, levies, interests and fines whatsoever and qualified by whosoever to the extent whereof the Responsible Representative is sued by the public authorities or third parties, for which reason whatsoever, directly or indirectly claimed in connection with the work performed by order of the Principal, unless the Principal shows that such claims were directly caused by a fault for which only the Responsible Representative is responsible;
- Any costs, expenses, duties, taxes, levies, interests and fines whatsoever and qualified by whosoever to the extent whereof the Responsible Representative is sued in such case as wherein the only liability rests on the Responsible Representative under any statutory provisions or regulations for the payment of taxes, interests, fines, duties and debts, whereby the competent authorities can invoke securities and sureties given by or on behalf of the Responsible Representative.

7.3. The Principal undertakes to pay such amounts at the Responsible Representative's first request without prejudice to the latter's right to claim such amounts back from the Responsible Representative afterwards if the claims relating to such amounts are proved at law by the Principal to have been caused only by a fault or omission for which only the Responsible Representative is responsible pursuant to this Agreement.

#### **Article 8. Guarantee and payment of guarantee**

8.1. The Principal undertakes to pay all and any amounts in principal, interests and costs for which the Responsible Representative is sued by the public authorities or third parties regardless of any dispute or defence, to him or directly to the public authorities, at the Responsible Representative's first request.

The Responsible Representative is supposed to pay such amounts to the public authorities or to the third party concerned.

Should such payment be made on account of guarantee, the Principal shall be supposed to stipulate this explicitly in writing.

8.2. The Principal undertakes to provide an abstract bank guarantee in favour of the Responsible Representative at the latter's first written request or in favour of a third party designated by the Responsible Representative, which guarantee is such as to irrevocably and unconditionally satisfy all claims in principal, interests and costs of the public authorities or third parties, they might formulate in connection with the fulfilment of any obligation under this Agreement, with regard to or against the Responsible Representative.

The Responsible Representative shall have the autonomous and sovereign right of decision to judge the opportunity of any dispute according to the extent of the guarantee and the cover in principal, interests and costs.

After the regularisation of the findings made during an inspection by the competent authorities in accordance with the Belgian Value Added Tax Code whereby the Liable

Representative is released from his liability, the guarantee may be terminated or reduced with the Responsible Representative's approval.

The bank guarantee shall at all times be callable at the Responsible Representative's first written Request.

- 8.3 The Responsible Representative may at all times ask the Principal to extend the guarantee given.  
The Principal undertakes to extend such guarantee within a term of 30 days before it is called.

#### **Article 9. Prescription**

The liabilities and guarantees under this Agreement shall become prescribed between the Parties hereto after a period of 10 years reckoning from the termination thereof, but in the event of any proceedings between the Parties hereto or towards the Public Authorities or third parties they shall be suspended to 6 months after the final and binding judgment on such dispute.

#### **Article 10. Jurisdiction and Administration of Justice**

This Agreement shall be governed only by the laws of Belgium.

The nullity or revocation of one clause of this Agreement shall not entail the nullity or revocation of the Agreement.

All and any such disputes between the contracting parties as may arise from this Agreement shall fall within the exclusive jurisdiction of the Courts of the place of the Responsible Representative's registered office, without prejudice to the Responsible Representative's right to bring the dispute before another Court himself.

Antwerp,

Each Party hereto acknowledges having received one original copy.

The Principal

The Responsible Representative

## **ANNEX 1. Conditions of the Decision E.T. 124.203 dd. 31.03.2014**

For each transaction the principal will deliver following documents:

1. The VAT ID of the contracting party of the principal (or - if goods are transferred - the principal's VAT ID) under which the intra-community purchase in a member state other than Belgium is realized.
2. A copy of the invoice related to the delivery or the proof of transfer of the goods, executed by the principal.
3. A completed and signed waybill for all intra-community deliveries in order to verify the intra-community transportation of goods that is subject of a specific delivery. The data related to the goods listed in this waybill have to match with those on the invoice. This principle applies independent of the question by who or on whose account the goods are intra-community transported.

A waybill might be just any document that - according to the transport law - is to be attached to goods transported on the road, on inland waters, by sea or air, or by railway.

This waybill is to be signed upon receipt of the goods by the buyer or any other party entitled to receive the goods on behalf of the buyer within the scope of executing the purchase contract concluded between the parties.

If the AAFisc has approved the use of documents other than the waybill towards the representative, this document with all information also provided by the waybill and signed upon the goods' receipt, has to be provided by the principal for all intra-community deliveries they were approved for.

4. In cases in which the principal does not transport the goods personally or does not give instructions to transport the goods on his behalf (ex-works cases) and in which - due to this fact - the representative may reasonable doubt to receive a returned signed copy of the waybill, the below documents have to be presented instead of the waybill for intra-community deliveries performed by the buyer or on the buyer's account:

a. either a copy of the invoice for the intra-community transportation (subject to the condition that it contains the below information in addition to the data commonly indicated):

- date and place of the transport's departure and arrival;
- a receipt confirmation for the goods ;

b. or - in case the representative does not own any invoice for the intra-community transportation or does own it but it doesn't meet the conditions defined under Paragraph a) hereof:

(i) (as agreed with the global agent) a document issued by a supplier not based in Belgium, which contains the below information:

- seller's name and address;
- buyer's / consignee's name and address;
- specification of the type and amount of the goods transported;
- date and place of the transport's departure and arrival;
- a receipt confirmation for the goods

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(ii) the payment mode applied to each and every intra-community transaction of the principal. The principal's personal statement that all intra-community transactions have been settled also can be accepted.