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**AGREEMENT / AUTHORISATION**

**TO ACT AS**

**FISCAL REPRESENTATIVE**

**WITH A LIMITED LICENCE**

**IN THE NETHERLANDS**



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## **AGREEMENT TO ACT AS A FISCAL REPRESENTATIVE WITH A LIMITED LICENCE**

The undersigned,

Company Name ....., hereinafter referred to as 'Principal'

Address: .....

Postal code: .....

Country: .....

Chamber of Commerce registration number: .....

V.A.T.-identification number: .....

and

Berbo Grens Service B.V., hereinafter referred to as 'Fiscal Representative'

V.A.T.-identification number NL805841246B02

AEO-certified business partner.

Certificate number: AEOF 0001124: Customs simplifications / Security and safety.

Parties hereby declare that they have agreed as follows.

### Principal:

..... hereby states to be a foreign enterprise without permanent establishment in the Netherlands whose activities involve dealing with Dutch turnover tax. Principal hereby designates Berbo Grens Service B.V. to carry out the operations and activities prescribed pursuant to the 'Wet op de Omzetbelasting 1968' [Turnover Tax Act 1968] and associated legislation and regulations concerning consignments of goods brought in by/on behalf of Principal or intended for Principal. Principal shall issue a separate Power of Attorney to Fiscal Representative in respect of the work assigned. Principal will not make use of any other Fiscal Representative with a limited licence within the Netherlands.

### Fiscal representative:

Berbo Grens Service B.V., declares to act as Fiscal representative with a limited licence on behalf of ..... regarding the import of goods and the subsequent delivery of consignments of goods brought in by/on behalf of Principal or intended for Principal.



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## Article 1

### GENERAL CONDITIONS

- 1.1 Fiscal Representative shall at all times be entitled to refuse operations and activities ensuing from this contract.
- 1.2 Use of the VAT identification number of Fiscal Representative by Principal shall only be permitted to the extent that such ensues from the present contract and is necessary in order to meet legal obligations.
- 1.3 Fiscal Representative shall only use Principal's documents, information and data for operations / activities ensuing from the present contract. Fiscal Representative shall not make such documents, information or data available to third parties, unless such ensues from the present contract or be required in order to achieve an accurate tax levy or ensues from a legal obligation.
- 1.4 Barring deviations / supplementary rulings in the present contract, the **'Nederlandse Expeditievoorwaarden' [Dutch Forwarding Conditions]** shall apply to the relationship between parties, as filed by FENEX at the Offices of the District Courts in Amsterdam, Arnhem, Breda and Rotterdam. The latest version of the Dutch Forwarding Conditions at the time such operations/activities are performed shall apply.<sup>1</sup>
- 1.5 The following **appendices** constitute part of this contract:
- Appendix a)** Dutch Forwarding Conditions.  
**Appendix b)** Power of Attorney to act as a Fiscal Representative with a limited licence.  
**Appendix c)** Required information and documentation per transaction.  
**Appendix d)** Agreed prices and rates for Fiscal Representative's operations and activities.
- 1.6 Matters relating to the implementation of the present agreement may be further arranged by parties, supplementary to this agreement, in appendices that shall automatically constitute part of this agreement after having been signed or initialled.

## Article 2

### DESCRIPTION / NATURE OF AGREED ACTIVITIES

- 2.1 Fiscal Representative shall act on behalf of Principal in respect of all obligations ensuing from Dutch regulations concerning Fiscal Representation with a limited licence.
- 2.2 Fiscal Representative shall carry out the following activities on behalf of / for the benefit of Principal:
- a) Monthly V.A.T- declaration under the V.A.T-identification number allocated to the Fiscal Representative (Aangifte OB).
  - b) Quarterly report of intra-Community supplies (Aangifte ICP).
  - c) CBS / Intrastat reporting.
  - d) V.A.T.- -identification number checking.

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<sup>1</sup> Dutch Forwarding Conditions may be consulted at [www.fenex.nl](http://www.fenex.nl) under downloads.



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- 2.3 In his declaration of intra-Community supplies to acquiring parties registered for turnover tax, Fiscal Representative shall, wherever possible on the basis of the invoice supplied or other documents, information and data, apply the zero rate tariff. If so requested by Principal in writing, Fiscal Representative shall periodically verify the VAT identification number of the intra-Community acquiring party with the tax authorities.
- 2.4 Without prejudice to the foregoing, Fiscal Representative is subject to the following legal obligations:
- Provision of security with the tax authorities.
  - If so required, supply information to the tax authorities.
  - Keep proper records in order to show in the case of audits that correct tax levy has taken place (see Appendix c, article 4.3 for more details)

### **Article 3 RIGHTS ACCRUING TO FISCAL REPRESENTATIVE**

- 3.1 For all operations / activities and formalities relating to the agreement, if Fiscal Representative should have any doubts concerning the correct application of the VAT rate (including the zero rate tariff) / transfer of turnover tax, he shall be entitled to file the VAT declaration or amend a VAT declaration already filed, applying the valid rates for turnover tax.<sup>2</sup>
- 3.2 Fiscal Representative shall retain the right to suspend operations and activities until the amount due within the framework of the present agreement or the relevant conditions has been settled. In the case that operations and/or activities should be suspended, Fiscal Representative shall inform Principal accordingly.
- 3.3 In the case that Principal shall not meet his obligations ensuing from the present contract or if Fiscal Representative may reasonably assume that Principal shall fail to fulfil these obligations, Fiscal Representative shall be entitled to offset any payments/refunds by the tax authorities of whatever nature accruing to Principal.
- 3.4 Fiscal Representative shall be entitled but not obliged to consult / negotiate with the tax authorities concerning tax levies, supplementary tax levies and/or other costs and matters falling under the present agreement. Consultation with Principal shall take place in respect of calling in third parties to handle claims and negotiations with the tax authorities. All said operations and activities shall be at the expense and risk of Principal.

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<sup>2</sup> See article 4.4 for more details.





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- 3.5 Fiscal Representative shall request instructions from Principal if an unexpected situation should arise in respect of performance of activities that has not been provided for in the present Agreement. However, should Principal fail to respond within a reasonable period of time and immediate action be required in view of urgent circumstances, Fiscal Representative shall deal with the matter at his own discretion, having due regard to the provisions of this Agreement.

#### **Article 4 PRINCIPAL'S OBLIGATIONS**

Principal shall be obliged to:

- 4.1 provide Fiscal Representative in good time on 1 January of each subsequent year with an estimate of the anticipated nature and quantity of goods consignments;
- 4.2 notify Fiscal Representative on 1 January of each subsequent year of anticipated changes in the nature and quantity of the goods consignments if these deviate by more than 10 % of the expected amount of import turnover tax;
- 4.3 provide Fiscal Representative with all required documents, information and data - also per individual consignment/transaction - required pursuant to the relevant regulations and under the present Agreement, in conformity with Appendix c.  
Principal shall guarantee the accuracy of said documents, information and data;
- 4.4 make all efforts required in connection with the application of Article 3.1, such upon first request by Fiscal Representative;
- 4.5 hold Fiscal Representative indemnified against claims by third parties in connection with failure on the part of Principal and his contractual parties to meet any obligations that may exist under the present Agreement and/or relevant general conditions, including the provision of correct VAT identification numbers and correct documents, information and data;
- 4.6 in addition to the agreed remuneration, reimburse / pay any other sums/expenses ensuing from the present agreement and/or relevant general conditions.  
Said obligation to pay shall remain valid in the case of any dispute between parties;
- 4.7 reimburse / pay Fiscal Representative at all times upon first request for any amounts to be levied or additionally demanded by any authority in connection with the present agreement, as well as any fines imposed and interest due;



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- 4.8 notify Fiscal Representative in good time of the sale / transfer of his company, any change in control of the company as well as application for a moratorium and bankruptcy.

**Article 5 PRICES AND RATES + YEARLY ADJUSTMENT**

- 5.1 Agreed prices and rates for operations and activities by Fiscal Representative shall be included in Appendix d.
- 5.2 All sums of whatever nature owed to Fiscal Representative by Principal must be paid within 2 weeks after invoice date of the Fiscal Representative invoices. Should Principal fail to pay the sum due immediately upon demand or after the applicable term of credit, Fiscal Representative shall be entitled to charge the legal interest in conformity with sections 6:119 and 6:119a of the 'Burgerlijk Wetboek' [Dutch Civil Code].
- 5.3 If according to the judgment of Fiscal Representative it should be necessary to deviate from the principles of Appendix d, for example as a consequence of a return based on articles 4.1 and 4.2, Fiscal Representative may re-determine prices and rates and submit these to Principal for approval.
- 5.4 Prices and rates shall be adjusted annually in \_\_\_\_\_, unless otherwise agreed.

**Article 6 LIABILITY OF THE PARTIES**

- 6.1 Without prejudice to the provisions of the Dutch Forwarding Conditions, Fiscal Representative shall not be liable for the operations and activities of third parties brought in according to article 3.4.
- 6.2 Principal shall be liable for any damages resulting from failure by Principal and/or his contractual parties to meet any obligations existing pursuant to the present agreement and/or relevant general conditions, including the provision of accurate VAT identification numbers and correct documents, information and data.

**Article 7 SECURITY**

- 7.1 In conformity with the Dutch Forwarding Conditions, Principal has the obligation to provide sufficient security upon first request of Fiscal Representative<sup>3</sup>.

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<sup>3</sup> Bulletin 20 "Fiscal Representation for the levy of turnover tax " (Decree of 9 May 1994, nr VB 94/1143) by the State Secretary of Finance deals with security in the case of fiscal representation



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- 7.2 Upon commencement of fiscal representation, Principal has the obligation to provide a bank guarantee - the nature and content of which shall be considered adequate by Fiscal Representative - to cover anything that may ensue from the present agreement.

**Article 8 DURATION / TERMINATION AGREEMENT**

- 8.1 This agreement has been entered into for:
- an indefinite period, commencing \_\_\_\_\_. The agreement may be terminated with due observance of a period of notice of 3 months .
- 8.2 The agreement shall be terminated by written notice by registered letter.
- 8.3 Parties engage to ensure correct finalization upon termination of the agreement.
- 8.4 Either party may terminate the agreement prematurely by means of dissolution with immediate effect, without consequences and without intervention by the courts/arbitration, provided:
- a) other party to the contract, after written notice of default, does not fulfil its obligations as recorded in the present agreement, or;
  - b) other party to the contract sells or transfers their company to a third party or there is a change in control of the company, or;
  - c) other party to the contract has been granted a moratorium or is in a state of bankruptcy, or;
  - d) it is proven that Fiscal Representative evidently is not able to act in that capacity.
- 8.5 Pursuant to article 8.4 paragraph 1 Fiscal Representative is entitled to terminate the agreement prematurely if such be justified in the judgment of Fiscal Representative on the basis of articles 4.1 and 4.2, in the event that agreement cannot be reached concerning price and/or rates and the bank guarantee to be provided.
- 8.6 Upon termination and dissolution of the agreement, all claims - including future claims - by Fiscal Representative ensuing from the operations and activities carried out by Fiscal Representative within the framework of the present agreement, shall be immediately and fully due and payable.
- 8.7 Principal shall provide adequate security in the judgment of Fiscal Representative for any sums that are or may be due after termination of the agreement, including provision of a bank guarantee the nature and content of which shall be considered adequate, whereby earlier guarantees provided by Principal shall remain in full force.



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8.8 The provisions of this agreement will continue to apply after termination of the agreement, to the extent that such shall be relevant in connection with amounts to be levied or additionally demanded by any authority, meeting obligations to any authority or any other payments.

**Article 9 INVALID PROVISION / AMENDMENTS BY THE STATE**

9.1 If one or more individual provision(s) of this Agreement should be null and void or be annulled, this shall not affect the validity of the remaining provisions hereof.

9.2 In the event that stipulations of the agreement should prove null and void / subject to annulment, or if this contract should need to be amended due to changes in legislation / regulations, Fiscal Representative shall retain the right to terminate this contract without consequences or, in consultation, to amend the stipulation into a valid version without prejudice to the other provisions.

**Article 10 PRESCRIPTION**

10.1 Article 21 of the Dutch Forwarding Conditions shall apply, with the proviso that contrary to article 21 sub 1, any claims by Fiscal Representative under this agreement in respect of amounts to be levied or additionally demanded by any authority as well as any fines imposed and interest due, shall be prescribed by the mere lapse of five years.

In the case of objection and/or appeal, the period of prescription shall commence on the day following that upon which judgment in the case of objection and/or appeal became final.

**Article 11 CHOICE OF APPLICABLE LAW**

11.1 This agreement shall be governed by Dutch law.

**Article 12 DISPUTES**

12.1 All disputes that may arise between Fiscal Representative and Principal shall – to the exclusion of the ordinary courts of law - be subject to arbitration in accordance with the regulation thereof in the Dutch Forwarding Conditions (Appendix a), unless otherwise agreed. A dispute shall be considered to exist whenever any of the parties declares this to be so. Without prejudice to the provisions of the preceding paragraph, Fiscal representative shall be at liberty to bring before the court claims for sums of money due payable, the indebtedness of which has not been disputed in writing by the opposing party within four weeks after the invoice date.

12.2 This Agreement has been drawn up in two languages, the Dutch and the [ English ] language In case of different interpretations, the Dutch version shall prevail.





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**Principal, legally represented by:**

Full name \_\_\_\_\_

Position \_\_\_\_\_

Date and place \_\_\_\_\_

Signature Business stamp \_\_\_\_\_

Business stamp \_\_\_\_\_

**Fiscal Representative, legally represented by:**

Full name Mr. W.Ubing

Position Managing Director

Place Duiven, The Netherlands

Signature



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## APPENDIX C

### INFORMATION AND DOCUMENTS REQUIRED PER TRANSACTION

A licence to act as Fiscal Representative will only be granted by the Dutch tax authorities if certain conditions are fulfilled. One of these conditions is that the Fiscal Representative keeps efficient and well-organized records. These must clearly and convincingly demonstrate to the tax authorities that legislation and regulations have been applied correctly. The period of prescription applicable to a tax levy is 5 years pursuant to article 27 of the 'Invorderingswet 1990' [Collection of State Taxes Act 1990]<sup>4</sup>.

In many cases the Fiscal Representative will not have the required documents, information and data at his disposal, but nevertheless shares responsibility in respect of the tax authorities, Principal should provide these appropriately and in a timely manner - **within a period of 5 days / weeks after expiry of the tax return period**, unless otherwise indicated. After termination of the agreement, Principal shall continue to have the obligation, pursuant to article 8.8, for the period during which the authorities may impose retrospective-tax<sup>5</sup>, to cooperate in every way and if so required supply all documents, information and data concerning the activities carried out by Fiscal Representative within the framework of the present agreement.

#### § 1 Documents, information and data to be provided by Principal

##### ➤ GENERAL

- **Written declaration by Principal** concerning the consignment for which Fiscal Representative is to act in this capacity (or by fax, e-mail)

##### ➤ REQUIRED DOCUMENTS, INFORMATION AND DATA IN THE CASE OF IMPORT

- **All documents, information and data required for customs clearance<sup>5</sup>**, such as, for example an invoice

##### ➤ SUBSEQUENT SUPPLIES

#### **Required documents, information and data in the case of Intra-community supplies**

<sup>4</sup> Article 27 of the Collection of State Taxes Act 1990 states that the right to collection under duress and the right of set-off with reference to a tax levy become prescribed five years after commencement of the day following that upon which the tax levy is fully collectable or, if such should lead to a later point in time, five years after commencement of the day following that upon which the last deed of litigation in respect of said tax levy to the party owing taxes has been passed. The second paragraph of article 27 states the cases in which the period of prescription may be extended.

<sup>5</sup> In the case that transport and/or customs clearance are not handled by Fiscal Representative, Principal should make these documents, information and data available to Fiscal Representative, if necessary through a third party brought in by him. In order to transfer the VAT due at importation to the periodical VAT declaration (in accordance with article 23 of the Turnover Tax Act 1968), Fiscal Representative's VAT identification number allocated by the tax authorities should be mentioned on the import declaration.



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- **VAT identification number of party dealing with Intra-Community acquisitions** should be passed on to Fiscal Representative by Principal prior to the Intra-community supply
- **Invoice** presented to the Intra-community acquiring party. In order to apply the zero rate, this invoice should include both the VAT identification number of the Fiscal Representative and that of the Intra-Community acquiring party (for further general invoice requirements, please refer to §2)
- **Proof of delivery**<sup>6</sup>, for example signed waybill (B/L or CMR)
- **Carrier(s)' invoice**<sup>7</sup>

In accordance with bulletin 38 by the State Secretary for Finance (Decree of 20 June 1995, nr. VB 95/2120), documents that Fiscal Representative may require of Principal, could include the following:

- **Order confirmation**<sup>7</sup>
- **Proof of payment by acquiring party**
- **Insurance policy covering transport of the goods**
- **Acquiring party** should send Fiscal Representative a **FAX of receipt of goods**<sup>8</sup>
- **Declaration by acquiring party** that he has reported/will report an **Intra-community acquisition** in the VAT declaration in the member state where the goods were acquired<sup>9</sup>
- Copies of the **VAT declaration by acquiring party** should be sent to Fiscal Representative<sup>9</sup>

## **Required documents, information and data for supplies within the Netherlands**

- **Invoice** presented to the Dutch acquiring party. In order to transfer the VAT to a company with domicile in the Netherlands and registered for VAT, this invoice should include both the VAT identification number of the acquiring party and the statement "verlegging conform artikel 12 lid 3 Wet op de Omzetbelasting 1968" [Transfer in conformity with article 12 paragraph 3 Turnover Tax Act 1968]. Supplies to Dutch acquiring parties other than a company registered for turnover tax or with an unknown VAT identification number are not eligible for transfer under article 12 paragraph 3 Turnover Tax Act 1968. Invoice should include VAT (for further general invoice requirements, please refer to §2)
- **Proof of delivery**<sup>7</sup>, for example signed waybill or other documents that may serve as proof of delivery

<sup>6</sup> In the case that Fiscal Representative does not have the transport documents/proof of delivery at his disposal (for example: not arranging transportation) Principal should make these documents available to Fiscal Representative, if necessary through a third party brought in by him.

<sup>7</sup> Correspondence between seller and acquiring party

<sup>8</sup> In the case that Principal is not the party who acquired the goods, Principal should instruct the acquiring party accordingly.



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Depending on the situation, documents required of Principal by Fiscal Representative may include:

- Order confirmation<sup>8</sup>
- Proof of payment by acquiring party
- **Declaration by acquiring party** that he has submitted or will submit a **VAT declaration**<sup>9</sup>

#### **Required documents, information and data for export**

- **Invoice** presented to acquiring party of the goods (for further general invoice requirements, please refer to §2)
- **3<sup>rd</sup> copy of the customs export document, validated by customs at EU border**
- **Proof of delivery**<sup>7</sup>, for example signed waybill (B/L or CMR)
- **Carrier(s)' Invoice**<sup>7</sup>

Depending on the situation, documents required of Principal by Fiscal Representative may include:

- **Order confirmation**<sup>8</sup>
- **Import documents non-EU countries**
- **Proof of payment** foreign (non-EU) acquiring parties
- **Insurance policy covering transport of the goods**<sup>7</sup>

**Documents, information and data required for pick-up shipments** (meaning that the Fiscal Representative places the goods at disposal of acquiring party, without arranging further transportation)

- **Invoice** presented to acquiring party of the goods<sup>9</sup> (for further general invoice requirements, please refer to §2)
- Acquiring party shall provide Fiscal Representative with **a declaration** (prior to transport) **as referred to in section 4.3 of Bulletin 38**<sup>9</sup>. If this declaration is not available, we strongly advise charging VAT, as this declaration is crucial for the correct application of the zero rate
- Other considerations are:
  - **Fax** in which acquiring party of the goods declares to Fiscal Representative that he has actually taken delivery of the goods<sup>9</sup>
  - Copies of the **VAT declaration by acquiring party** should be sent to Fiscal Representative<sup>9</sup>
- **Further documents, information and data** should be supplied in conformity with the relevant sections of this Appendix, depending upon domicile of acquiring party

<sup>9</sup> For the various invoice requirements, depending on domicile of acquiring party, please refer to the relevant sections in this Appendix and to the general invoice requirements included in §2





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## **Required documents, information and data for intra-Community supplies under connected contracts (simplified A-B-C scheme)**

A transaction is considered to be a simplified ABC transaction if:

- several transactions take place with reference to the same item between three parties who are each established in a different EU member state, and
- parties 'A' and 'B' reach agreement over carriage of the goods to 'C', and
- goods are transported directly from the Netherlands to 'C' in 'C's country.
- **Documents, information and data** should be provided in accordance with the section on Intra-community supplies in this Appendix. Furthermore, Fiscal Representative's Principal
- 'A' should instruct the other party to the contract 'B' that all required information should be sent to Fiscal Representative (for example, a CMR waybill signed by 'C')
- Moreover Principal 'A' should instruct the other party to the contract 'B' with respect to the following:
  - **Invoice to client 'C'** should show the VAT identification number of both 'B' and 'C' as well as the indication that the VAT on the supply to 'C' will be transferred to client 'C' "conform artikel 28 quater.E.3 Zesde richtlijn" [in conformity with article 28 quater.E.3 of the Sixth Directive]
  - **Declaration by client 'B'** should be sent to Fiscal Representative<sup>10</sup>, implying that 'B' has reported or will report an Intra-community acquisition in the **VAT declaration** in the member state of establishment

## **§ 2 General invoice requirements**

An invoice must be made up for all goods and services to an entrepreneur or a legal entity who is not an entrepreneur. An invoice should be sent before the 15<sup>th</sup> day of the month following the month in which the goods were supplied. In the case that the services of a Fiscal Representative are called in, the following information should be mentioned on the invoice.<sup>11</sup>

- Name and address of selling party (in full)
- Name and address of acquiring party (in full)
- '(name and address of Fiscal Representative)' shall act as Fiscal Representative with a limited licence
- Fiscal Representative's VAT identification number<sup>13</sup>
- Invoice date
- Invoice number (invoices should be numbered consecutively)
- Detailed description of nature and quantity of goods supplied (HS-code / GN-code if any)
- Date on which the supply of goods was made or completed
- Unit price excluding VAT<sup>12</sup>

<sup>10</sup> If 'B' can show that he acquired the goods for the purpose of selling them on to 'C', 'B' does not need to be registered in 'C's state and ultimately 'B' will not have to pay VAT

<sup>11</sup> Principal who is not seller, should instruct other party to the contract relating to the goods transaction on invoice requirements

<sup>12</sup> Per 1-1-2004 (Council Directive 2001/115/EG)



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- Any advance payments, discounts and rebates if these have not been included in the unit price<sup>13</sup>
  - Taxable amount per rate or exemption<sup>13</sup>
  - Price excluding VAT, unless a special ruling applies
  - VAT rate applied<sup>13</sup>
  - Price including VAT
  - The amounts which appear on the invoice may be expressed in any currency, provided that the amount of tax to be paid is expressed in the national currency of the Member State where the supply of goods takes place.
- There are supplementary invoice requirements for various transactions, also in relation to fiscal representation, in the case that a transfer or exemption ruling applies.

**in the case of Intra-community supplies / simplified A-B-C transactions**

- VAT identification number of (Intra-Community) acquiring party
- VAT zero rate, statement for levy criterion “nihil conform artikel 9 lid 2 sub b jo. Tabel II post a 6” [nil in conformity with article 9 par 2 sub b jo. Table II item a 6]

**in the case of supplies within the Netherlands to a for VAT-registered enterprise**

- VAT identification number of Dutch acquiring party
- statement “verlegging conform artikel 12 lid 3 Wet op de Omzetbelasting 1968” [transfer in conformity with article 12 par 3 Turnover Tax Act 1968]
- Neither VAT rate nor price including VAT should be mentioned

**in the case of deliveries outside the European Union (export)**

- zero VAT rate, statement for levy criterion “nihil conform artikel 9 lid 2 sub b jo. Tabel II post a 2” [nil in conformity with article 9 par 2 sub b jo. Table II item a 2]