

## General Conditions Container Terminal Doesburg B.V.

### Article 1 - Applicability:

- 1.1 These terms and conditions apply to all offers and/or assignment confirmations made by Container Terminal Doesburg B.V., hereinafter "CTD", and to all agreements made by CTD and to every form of service provision by CTD.
- 1.2 The applicability of any terms and conditions of customer or of a party that joins an agreement between CTD and customer, is explicitly disclaimed, even if such terms and conditions are mentioned in the assignment to CTD or any other correspondence with CTD.

### Article 2 - CTD's capacity and sectoral terms and conditions:

- 2.1 Unless explicitly agreed otherwise in writing, CTD shall carry out its work in the capacity of shipping agent (including but not limited to having goods transported, carrying out customs-related activities, and acting as receiving shipping agent, even in case these activities are carried out in relation with a transport assignment), and/or in the capacity of storekeeper (including but not limited to storage and related logistic services), and/or in the capacity of stevedore.
- 2.2 Unless explicitly agreed otherwise in writing, in addition to these terms and conditions, the most recent version of the following sectoral terms and conditions shall apply, except for any choice-of-court clauses or arbitration clauses of those terms and conditions:
  - a. in case of shipping agent activities, the FENEX's Dutch Shipping Conditions shall apply;
  - b. in case of storage and related logistic activities, the Logistic Service Conditions shall apply. These have been determined by FENEX (the Dutch Organization for Shipping and Logistics) and TLN (Transport and Logistics Netherlands), and deposited at the district court of Rotterdam on 2 April 2014, under number 28/2014;
  - c. in case of stevedore activities, the terms and conditions of the Rotterdam Terminal Operators Association (VRTO) shall apply.
- 2.3 In case of discrepancy between these terms and conditions on one side and the sectoral terms and conditions mentioned in article 2.2 on the other side, CTD's terms and conditions shall prevail, without prejudice to the provisions of article 9.

### Article 3 - Making an agreement:

- 3.1 All quotations and offers from CTD are without obligation and are only valid during the indicated term of validity
- 3.2 An agreement is made at the moment that customer has accepted a quotation/offer made by CTD, in writing, and CTD has taken notice of this acceptance. In case customer has given an assignment, the agreement is made at the moment that CTD accepts the assignment in writing, or at the moment that CTD starts any activity.
- 3.3 Any changes in the agreement made by customer, must be made in writing and with CTD's written approval. Any changes in the agreement made by CTD shall be regarded as accepted by customer when customer has not contested these changes in writing within 14 days after CTD notified customer of these changes.
- 3.4 'In writing' shall mean, among other things, notification by EDI, internet or email.

### Article 4 - Provision with regard to the services to be provided:

- 4.1 Any form of insurance shall only be provided by CTD after an explicit written order to that end. The costs for this shall always be borne by customer.
- 4.2 Unless explicitly agreed otherwise in writing, dates and/or terms shall not be guaranteed. Information provided in advance or between times shall never lead to any obligation or liability for CTD.
- 4.3 Customer shall be responsible for obtaining and maintaining all necessary permits, and commits himself to comply with all applicable rules and regulations.

- 4.4 In case of temporary force majeure, the assignment remains in force, but CTD's obligations shall be suspended for the duration of the force majeure, without prejudice to CTD's right to dissolve the agreement in such event, as far as it has not been executed, and to invoice the part that has already been performed, in proportion to the whole, at CTD's sole discretion. All additional costs resulting from a circumstance beyond CTD's control shall be borne by customer.
- 4.5 Customer is responsible for the packaging of the goods. This includes the loading units (e.g. containers) in which the goods are delivered to CTD. Customer is liable for all damages resulting from loading into an unsuitable or damaged loading unit, unless the loading unit in question was provided by CTD and the defects were already present at the moment of delivery to customer or to the person designated by customer, and the defects were not or could not reasonably be apparent to them.
- 4.6 For operational reasons, possible damage to the container(s) cannot be determined during the container transfer in the seaport. The first possible moment is after the containers arrive at CTD.
- 4.7 After the goods have been delivered in accordance with the agreement, customer must return the loading units provided by CTD to the agreed place, clean and undamaged. If customer fails to comply with this obligation, customer shall reimburse CTD for all resulting costs (including but not limited to those of repair, cleaning, detention/demurrage, and loss of rental income).

#### Article 5 - Rates:

- 5.1 If increases or surcharges with regard to the prices of CTD's suppliers, wages, social and other charges, material prices, freight, demurrage, harbour or transshipment rates and/or other costs, however named, take effect after making the agreement, CTD has the right to increase its prices or surcharges for activities in customer's service accordingly.
- 5.2 With regard to prices or rates based on duration, e.g. for rent or provision of staff, goods or spaces, the time starts running at the moment that the person or the object in question is made available to customer at CTD's company (or another place designated by CTD), and ends at the moment that that person or object is returned to CTD's complete disposal at the same place. However, the time is extended by the time needed to repair any damage caused while the object was in customer's possession, if such damage is to be accounted for by the customer.
- 5.3 The prices provided in the quotation do not include any amounts due to third parties, including but not limited to customs duties, VAT, detention/demurrage, gas measuring, degassing, scanning, physical cargo checks, low tide surcharges, and energy surcharges; these shall be calculated separately.

#### Article 6 - Payment:

- 6.1 CTD's payment term is 14 days after the invoice date, unless explicitly agreed otherwise in writing
- 6.2 Shipments for new customers must be paid in advance, unless explicitly agreed otherwise in writing. Invoices exceeding € 4,500 must also be paid in advance.
- 6.3 When customer fails to comply with this obligation, CTD has the right to terminate the agreement immediately, without being liable for any resulting damages and/or costs.
- 6.4 When customer has not contested or returned the invoice within 14 days after receiving the invoice, CTD shall regard the invoice as uncontested. If customer does not pay on time, he shall be in default automatically, without the need of any proof of default. From the day following the day on which the payment term expires, customer shall pay an interest of 1% per month, including part of a month, over the outstanding amount.
- 6.5 Customer does not have the right to deduct the price from any demands he claims to have against CTD, and/or to suspend payment.
- 6.6 In the following cases, customer shall pay CTD the agreed price even if CTD does not perform the assignment ('dead freight'):
- if customer or a third party appointed by customer fails to make the goods available to CTD at the agreed place and time;
  - if continuation of the activities is temporarily or permanently impeded for reasons that cannot be attributed to CTD;
  - if the goods are lost or confiscated, or can no longer be transported, moved or stored for reasons that cannot be attributed to CTD;
  - if customer terminates the agreement or declares that he will not comply with it.

#### **Article 7 - Right of distraint and retention:**

- 7.1 CTD has a right of distraint and retention on all goods, documents, and money that it has or will have in its possession under the agreement, against anyone who demands their surrender, for all demands that CTD has against customer and/or owners of those goods, documents and money.
- 7.2 CTD can also exercise its rights under article 7.1 for any amounts that customer and/or owner owes CTD under an earlier agreement.

#### **Article 8 - Termination of the agreement:**

- 8.1 If customer fails to comply with any of his obligations towards CTD, or in case one of the circumstances referred to in article 6.6 or these terms and conditions presents itself, CTD has the right to dissolve the agreement, partly or completely, effective immediately, at its sole discretion, without any proof of default or judicial intervention, without prejudice to its right to demand damages and without having to pay any damages.
- 8.2 In case of any circumstances under which continuation of the agreement cannot reasonably be demanded from CTD, CTD has the right to dissolve the agreement, partly or completely, effective immediately, at its sole discretion, without proof of default or judicial intervention, without prejudice to its right to demand damages and without having to pay any damages.

#### **Article 9 - Liability:**

- 9.1 In contravention to the order of rank as determined in article 2.3 of these terms and conditions, the following provisions of article 9 about CTD's and customer's liability shall only apply if CTD performs work and/or activities that are out of the scope of the sectoral terms and conditions referred to in article 2.2 of these terms and conditions, or if a subject referred to below in article 9 is not regulated by the sectoral terms and conditions referred to in article 2.2, or if provisions regarding subjects from the sectoral terms and conditions referred to in article 2.2, referred to below in article 9 are not applicable and/or have been nullified for whatever reason.
- 9.2 CTD is not liable for any damage unless customer proves that the damage is the result of the behaviour or negligence of CTD's management, either with the intention to cause that damage, or with recklessness and in the knowledge that that damage would be a likely result. CTD's liability shall be limited to a maximum of € 25,000 per incident or series of incidents with the same cause, at all times and in all cases.
- 9.3 Customer is obliged to reimburse CTD for damage caused to CTD or its auxiliaries by the goods provided to CTD for the performance of the agreement, or their treatment, unless as far as the damage is the result of the behaviour or negligence of CTD's management, either with the intention to cause that damage, or with recklessness and in the knowledge that that damage would be a likely result.
- 9.4 Damage also includes damages suffered by third parties that CTD is obliged to compensate, damages resulting from death or injury, and any form of financial loss.
- 9.5 CTD shall never be liable for consequential damage, emotional damage, indirect damage, or lost profit.

#### **Article 10 - Complaint and expiry term:**

- 10.1 Customer must notify CTD of all complaints with regard to any shortcomings by CTD in the performance of the work and/or with regard to any damage in writing and within fourteen days after customer has discovered the shortcoming and/or damage, on pain of losing all rights of compensation and/or compliance. The complaint must contain a detailed description of the shortcoming/damage to enable CTD to send a well-founded reply and to take action to limit the damage if necessary.
- 10.2 Every demand against CTD must be brought before the competent court within twelve months after customer discovers, or reasonably should have discovered the damage and/or defect, on pain of losing all rights of compensation and/or compliance.

**Article 11 - Indemnification and Himalaya clause:**

- 11.1 Customer is obliged to indemnify CTD against all demands from third parties with regard to damage caused during the performance of the work by CTD (including but not limited to demurrage, detention, and general average contributions), unless as far as the damage is the result of the behaviour or negligence of CTD's management, either with the intention to cause that damage, or with recklessness and in the knowledge that that damage would be a likely result.
- 11.2 When CTD's subordinates and auxiliaries whose services CTD uses for the performance of the agreement are held liable, these persons can claim every limitation of or release from liability that CTD can claim under these terms and conditions (including the conditions/regulations referred to in art. 2) or under any other statutory or contractual provision.

**Article 12 - Hazardous goods:**

- 12.1 In case the goods are hazardous according to the applicable regulations for the inland waterway, road, or sea transport of hazardous goods, the ADN(R), ADR, and IMDG code, as well as the applicable national regulations, among other regulations, shall apply to such transport.
- 12.2 In case CTD suffers damage as a result of customer's failure to comply with the obligations as determined in (one of) these hazardous goods regulations, or because customer provided CTD with incomplete or incorrect information or documentation about the hazardous goods, customer shall reimburse CTD completely for such damage.
- 12.3 Customer is obliged to reimburse CTD for damage caused to CTD or third parties by the hazardous goods or their treatment, unless as far as the damage is the result of the behaviour or negligence of CTD's management, either with the intention to cause that damage, or with recklessness and in the knowledge that that damage would be a likely result.
- 12.4 Customer is obliged to provide CTD with information with regard to hazardous goods on time and in writing (regardless of whether the hazardous nature of the goods is common knowledge or not), including the exact nature of the goods (quality, composition, temperature, weight, volume, origin, chemical properties, etc.) and the necessary precautions that must be taken.
- 12.5 If customer does not make the hazardous goods available to CTD, or collect them, at the agreed time and place, and does not ask CTD to store the hazardous goods in a suitable place, CTD reserves the right to store the hazardous goods in a suitable place, return them, destruct them or render them harmless, at CTD's sole discretion and without having any liability towards customer.

**Article 13 - Applicable law and competent judge:**

- 13.1 All disputes resulting from or related to the agreement and/or the performance of the work shall be decided exclusively by the competent judge of Rotterdam, Netherlands.