

# General Conditions

## Container Terminal Utrecht

*In the event of discrepancies or ambiguity between the original Dutch version of these General Conditions and its translation, the Dutch version supersedes the English translation.*

*These general conditions have been deposited at the Chamber of Commerce in Utrecht under registration number 30144428.*

### GENERAL PROVISIONS

#### **1. General**

- a. These general conditions apply to all offers, quotations and agreements of the following corporations: Theo Pouw Containerterminal, Containerterminal Utrecht and/or one of more subsidiaries of these corporations, hereafter collectively and individually referred to as 'CTU'.
- b. The individual or company with whom CTU has made an agreement or with whom CTU has entered negotiations in relation to concluding such agreements will hereafter be referred to as 'the other party'.

#### **2. Quotations, offers and agreements**

- a. All of CTU's quotations are without any obligation, unless stated otherwise in the quotation.
- b. In case a quotation of CTU contains an offer without obligation, and this offer is accepted by the other party, CTU has the right to revoke this offer within two working days after the other party has accepted the offer.

#### **3. Amendments and additional work**

- a. If CTU agrees to an amendment to an agreement after it had been concluded, the other party is obliged to reimburse CTU of any additional costs that CTU may incur as a result of carrying out the additional work.
- b. In case amendments or additional work result in the execution of the agreement being delayed, the terms that CTU had mentioned in the agreement will be extended by the amount of time equal to the delay, without prejudice to the provisions in these general conditions that concern force majeure.

#### **4. Terms**

- a. The terms that CTU has given the other party with regard to the execution of the agreement are not considered strict deadlines, even if they concern firm dates.
- b. In case a term that CTU has mentioned is exceeded, CTU will only then be in default after the other party has declared, in writing, CTU to be in default, and after it has given CTU a reasonable amount of time to completely fulfill its obligations towards the other party. This additional amount of time shall be at least equal to half of the original agreed upon term for the execution of the agreement in question.

#### **5. Complaints**

- a. The other party is required to confirm in writing any complaints with regard to the execution of the agreement by CTU within two working days after receipt of the goods. If this term is exceeded, any claim towards CTU in relation to complaints as referred to in the preceding sentence will be voided.
- b. Filing a complaint about the execution of the agreement by CTU does not dismiss the other party from its obligation to pay CTU.

## **6. Force Majeure**

- a. In these general conditions, as used by CTU, force majeure shall include, but is not limited to, the following:
  - i. operational failures;
  - ii. strike;
  - iii. sickness absence;
  - iv. disruptions in the supply of materials or energy; hindrance or restriction of transport;
  - v. fire, explosions, acts of war, wars and any other kinds of external calamities;
  - vi. frost, storms or other weather conditions that hinder normal operation;
  - vii. governmental measures that affect the execution of the agreement;
  - viii. any shortcomings of third parties that have been involved in the execution of the agreement, whether they had been requested by CTU to do so or not.
- b. In case of force majeure, CTU shall be authorized to charge for the parts of the agreement that have already been executed thus far.
- c. In case of temporary force majeure on CTU's part, CTU shall be authorized to extend the time limits within which the agreement is to be executed with the amount of time that the temporary hindrance lasts.

## **7. Prices, rates and invoices**

- a. Unless stated otherwise, all prices and rates that CTU mentions are excluding value added tax, and excluding any other possible government taxes.
- b. Unless agreed upon otherwise, in writing, and insofar contracted third parties do not charge the other party directly, all costs that are charged by third parties that have been contracted by CTU will be at the other party's expense.
- c. At all times, CTU has the right to transfer to the other party all the price-increasing factors that have come up after the quotation has been made, or after the agreement has been concluded.
- d. In case CTU will make deliveries to the other party in installments, CTU has the right to send an invoice for each separate delivery.
- e. In case the other party wishes deliveries to take place on weekends or on national holidays, CTU has the right to add a surcharge.

## **8. Intellectual property rights**

- a. Unless agreed upon otherwise with the other party, CTU shall retain all copyrights, all intellectual and industrial property rights or any other similar rights to all information, drawings, calculations, models and other documentation that is provided to the other party.
- b. Without the prior written consent of CTU, it is prohibited for the other party to transfer, copy, multiply, or to disclose the rights and items mentioned in the preceding sentence, or to otherwise use or exploit them, or to make them available to third parties, whether financially compensated or not.

## **9. Payment/setoff/security**

- a. The other party is required to make payment within 30 days after the invoice date, unless other terms have been agreed upon in the agreement.
- b. Any right of setoff by the other party, regardless of any rights or reasons whatsoever, will be denied, except for written approval for settlement, issued by CTU.
- c. Any payments made by the other party will cover due interest first, and subsequently the oldest outstanding invoices, even if the other party mentions that its payments are made in relation to a more recent invoice.
- d. The other party commits itself to provide securities at CTU's first request, or to supplement existing securities until it is secured that the other party can meet its payment obligations vis-à-vis CTU under agreements concluded with CTU.

- e. If the other party does not pay in full, does not pay on time, or does not pay at all, then the other party is indebted, without prior notice of default, to CTU an interest of 1 per cent per month on the due invoice amount, where an incomplete month counts as one full month.
- f. All legal and non-legal expenses that CTU incurs relating to the recovering of the claims against the other party, will be at the other party's expense, without prejudice to CTU's rights, such as those to compensation or fulfillment. These expenses amount to at least 15 per cent of the amount to be collected, with a minimum of €1,000.
- g. In case the other party has met its obligations that have been agreed upon in an agreement with CTU, in which CTU is the principal, the other party will invoice CTU the agreed upon price, after which CTU will pay, without prejudice to CTU's right to setoff, within 60 days after receipt of the invoice in question or within any other term limit that has been agreed upon in writing.

#### **10. Liability, prescription and indemnity**

- a. CTU is not liable for any damage the other party or third parties incur that is related to or is the result of the execution of the agreement, except for cases of willful misconduct or gross negligence on CTU's part.
- b. CTU will never be liable for damage and/or costs that, in any way, are related to or are the result of activities, negligence, errors and/or the quality of third parties that have been contracted by CTU in relation to the execution of the agreement.
- c. In case and insofar CTU is liable for anything vis-à-vis the other party, notwithstanding that what has been said in this provision, then the liability per claim/incident is limited to the equivalent amount (excluding VAT) of the agreed upon performance, as stated in the invoice, and related to the agreement, on which liability is claimed, provided that CTU's liability is limited, in any case, to the amount that CTU's insurance company reimburses based on the conditions of the insurance policy in relation to this liability.
- d. Any legal claim of the other party towards CTU will become prescribed after, at the latest, one year after conclusion and/or completion of the execution of the relevant part of the agreement upon which the claim is based.
- e. The other party indemnifies CTU against all claims of third parties in relation to agreements executed by CTU, unless it is officially established that these claims are the result of willful misconduct or gross negligence on CTU's part, and also unless the other party can prove that it cannot be blamed for anything in relation thereof. The other party is liable towards CTU for any damage that CTU or any of its employees incur as a result of items that the other party provides CTU with in relation to the execution of the agreement.

### **Suspension, termination, and retention**

- a. Besides all other rights it is entitled to, CTU also has the right to partially or completely terminate the agreement with the other party, by means of a written statement, without issuing a notice of default or without legal intervention, in case of any of the following:
  - i. in case of force majeure;
  - ii. in case the other party is provisionally or officially granted a moratorium, or in case the other party applies for its moratorium by itself, in case the debt rescheduling arrangement for natural persons is applied to the other party, in case the other party offers its creditors a settlement or private settlement or if it convenes a meeting with its creditors with the intention of offering one;
  - iii. in case the company of the other party is liquidated and/or company activities of the other party are de facto suspended or are relocated to a location outside the Netherlands;
  - iv. in case the other party's assets are put under administration, or if some of the other party's asset components are seized and this seizure is upheld for at least one month, or if it is otherwise attempted to seek recourse against the other party's assets.
  - v. in case the control structure of the other party's company is changed to such an extent that it can no longer be guaranteed that the other party can adequately meet its commitments, or in case such a change may jeopardize the other party's ability of meeting its commitments.
- b. Against anyone that demands delivery of items that CTU has in its possession by virtue of an existing legal relationship with the other party, CTU is authorized to exercise its right of retention in respect of those items until there is certainty with regard to the payment of all of CTU's claims vis-à-vis the other party.

### **11. Requirement of confidentiality**

The other party commits itself to observe confidentiality vis-à-vis third parties with regard to all company information and knowledge that comes from CTU, as well as company information and knowledge that the other party was provided with or had come to the other party's notice prior, during and/or after a legal relationship between it and CTU.

### **12. Applicable law**

Applicable law to all of the agreements between CTU and the other party is Dutch law only.

### **13. Dispute settlement procedure**

The District Court of Utrecht shall settle in first instance all disputes that are the result of or are related to agreements between CTU and the other party, including disputes that are regarded as such by only one of the parties, as well as all resulting or related agreements thereof.

*The abovementioned general provisions, as well as the specific provisions below, apply to all of CTU's agreements. The complete version of the applicable General Conditions has been deposited at the Chamber of Commerce in Utrecht under registration number 30144428, and requests for perusal can be submitted to the Chamber of Commerce or to CTU.*

## SPECIFIC PROVISIONS

### **General**

15.
  - a. A quotation is valid until one month after its date.
  - b. CTU explores the operational feasibility of all assignments, and preserves the right to reject any booking request.
  - c. In case of a rejection, CTU will inform the other party thereof, and will explain the rejection.
  
16. Agreement confirmations supersede all other arrangements, unless, expressly and in writing, agreed upon otherwise.
  
17.
  - a. Empty import containers will be delivered no later than two working days at the return location (terminal or depot) of the other party's choice, barring any delays and/or other unforeseen circumstances. Should these occur, CTU will inform the other party of this in writing (mail, email or fax).
  - b. Any detention costs resulting from possible delays and/or other unforeseen circumstances both within the specified term of two working days as well outside that term will be at the other party's expense, unless the cause of detention is the result of negligence on CTU's part.
  
18.
  - a. The time of unloading containers can be determined after consultation with CTU in order to limit demurrage costs.
  - b. CTU aims to unload containers as soon as possible. In case, for any reason, unloading of the containers is not possible, CTU is not responsible for demurrage costs, except in the event that the time of unloading had already been agreed upon with CTU.
  
19. Changes to fuel surcharges will be announced in writing before they take effect.
  
20. All additional costs that are not the result of willful misconduct or gross negligence on CTU's part, will be at the expense of the other party. These include in-vain transports on barges of CTU, futile transports, etc.
  
21. All additional costs will be reported to the other party on the next working day, at the latest, per fax or email, and will include the necessary pieces of evidence.
  
22.
  - a. In case a container is picked up by an external carrier that is not contracted by CTU, CTU is not responsible for an on-time delivery.
  - b. The container will no longer be CTU's responsibility the moment the driver signs the gate-out interchange.
  
23. The general and specific provisions apply to all our quotations, offers and agreements.

24.

- a. Inland shippings are subject not only to these CTU general conditions, but also to the shipping conditions of the Dutch Central Office of Rhine and Inland Shipping [*Centraal Bureau voor Rijn- en binnenvaart*].
- b. The CTU-conditions prevail should these and the CBRB-conditions conflict with one another.

25.

- a. Road transports are subject not only to these CTU terms and conditions, but also to the CMR/AVC conditions [CMR: Convention on the Contract for the International Carriage of Goods by Road, AVR: *Algemene Vervoers Conditie* – General Transport Conditions].
- b. The CTU-conditions prevail should these and the CMR/AVC-conditions conflict with one another.