

## **General terms and conditions of OOC RAIL BV**

1. General
  - a. These general terms and conditions refer to all offers and services of OOC RAIL BV.
  - b. OOC RAIL BV does not accept any other general terms and conditions brought in by clients unless OOC RAIL BV explicitly signed these other general terms and conditions for approval and provided them to her clients.
2. Offers and agreements
  - a. Offers of OOC RAIL BV are provided to the client in writing and apply for the period as indicated.
  - b. Offers do not obligate OOC RAIL BV to accept any assignment, but only have the purpose to communicate the rates and terms.
  - c. An assignment comes about when the client makes a request for handling and OOC RAIL BV responds positively to this request or has made a, for the Client visible, start in complying with the Agreement.
  - d. Assignments can be agreed upon verbally or in writing, whereby the last Offer as well as these general terms and conditions are always inextricably connected to the services and to the assignment.
3. Obligations of the client
  - a. When entering into an Agreement, Client needs to mention at least the following information:
    - i. date, time and location on which the wagons/freight trains are placed at the disposal of OOC RAIL BV;
    - ii. the car list;
    - iii. the train report with, when applicable, the Gevi/Sti list per wagon, including load;
    - iv. in case the client uses material with a limitation in usage that needs to be handled by OOC RAIL BV, client needs to point out in advance, in writing, which materials and which limitations it concerns.
  - b. Changes in and additions to a provision from the Agreement are only valid if and for as far as they have been confirmed by OOC RAIL BV in writing and the Client has not filed a written objection within two work days after the date of this written confirmation.
  - c. The Agreement and the general terms and conditions contain the entire content of the rights and obligations of the parties and replace all previous written and verbal agreements, declarations and/or notifications of the parties. In case of contradictions or an inconsistency between the Agreement and the general terms and conditions, the provisions of the Agreement prevail.
4. Rates and costs
  - a. Prices as declared by OOC RAIL BV are excluding VAT.
  - b. If, during the execution of the Agreement, the prices of the Services and/or price-determinants on which OOC RAIL BV does not have an influence, such as currency fluctuations, fuel costs, taxes, levies and insurance rates, rise, irrespective of the reason for this, OOC RAIL BV will be authorized to increase the price of the Services accordingly.
  - c. If a change in or an addition to the Agreement on request of the Client is agreed upon, OOC RAIL BV is authorised to increase the agreed price. If OOC RAIL BV does not receive the instructions of the Client in time, Client will reimburse all costs resulting from this to OOC RAIL BV.
5. Payment
  - a. Payment of all invoices needs to take place within fourteen days after the invoice date, in the currency as mentioned on the invoice.
  - b. Payments must be made without discounts, deduction or set-off for any reason whatsoever, unless OOC RAIL BV explicitly mentioned otherwise in writing. Client is not authorised to suspend its payment obligations

- c. Invoices will be considered accepted and approved unless Client objects against the invoice in writing, within five days after the date of the invoice.
  - d. In case of failure to fulfil a payment obligation of an invoice at the time of the due date, Client will pay to OOC RAIL BV the in the Netherlands indebted legal (trade) interest over the amount in question, starting from the date on which the amount is indebted until the date of complete payment, with due observance of other contractual and legal rights of OOC RAIL BV.
  - e. Client is obliged, at any given time, to reimburse OOC RAIL BV all by any government to be claimed or recovered amounts such as import duties, excise duties, VAT/turnover tax, agricultural restitutions, costs for administrative activities and retributions, connecting with rail transportation as well as connected to all existing customs formalities and declarations during or in relation with rail transport.
6. Execution time
- a. The by OOC RAIL BV mentioned execution times, delivery times and time schedules are an indication and thus form an estimation made to the best knowledge of OOC RAIL BV.
  - b. OOC RAIL BV is not in default if OOC RAIL BV exceeds the under 1 meant indicative execution times, delivery times or time schedules. In such case these execution times, delivery times or time schedules are automatically prolonged with the duration of the exceedance.
7. Execution of Services
- a. The services are executed on the railway yards of the territory of Oss Netherlands and are limited to railway yards Oss Centraal and Elzenburg industrial zone, and all railways and railway yards located between these two.
  - b. OOC RAIL BV may execute the Agreement in parts.
  - c. Client will place the freight trains, wagons, shunting parts and such at the disposal of OOC RAIL BV on time, at the agreed location.
  - d. Client guarantees that all permits, licences and documents needed for the execution of the Agreement are present, correct and complete.
  - e. Unless otherwise agreed upon, during the execution of the Agreement OOC RAIL BV is not obliged to check the load, including but not limited to determining the number of items, the dimensions of the load, the external condition and the mass of the load. OOC RAIL BV will only look at the freight train/wagons and load to determine whether they will be able to correctly execute their obligations resulting from the Agreement.
  - f. OOC RAIL BV does not take care of loading and unloading the load.
8. Liability
- a. If and for as far as legally permitted, the liability of OOC RAIL BV to the Client is limited to the amount that is paid to OOC RAIL BV, as a result of the liability insurance policy for the situation, multiplied with the amount of the deductible excess that applies under the insurance policy. If OOC RAIL BV's insurance for any reason whatsoever does not proceed to pay the insurance benefits or when the liability insurance in question does not provide coverage, the liability of OOC RAIL BV in any event will be limited to the amount of the by the parties agreed net price in the Agreement concerned.
  - b. OOC RAIL BV is not liable for damage as a result of complete or partial loss or damage of wagons, train sets, materials and such which Client has placed at the disposal of OOC RAIL BV in the scope of the execution of the Agreement.
  - c. OOC RAIL BV is not liable for damage as a result of complete or partial loss or damage of any load of wagons or train sets which Client as placed at the disposal of OOC RAIL BV in the scope of the execution of the Agreement. OOC RAIL BV also is not liable for compensation of damage caused to the railway during the execution of the Agreement.
  - d. OOC RAIL BV is not liable for the presence of hazardous substances or all consequences resulting from that. Client must satisfy himself that hazardous substances on the railway of Elzenburg industrial zone are forbidden. Wagons with markings of hazardous substances obstruct the complete train handling by OOC RAIL BV.

- e. OOC RAIL BV is not liable for any damage whatsoever which the Client or a third party has suffered as a result of exceedance of the in 6.a intended indicative execution times, delivery times or time schedules, unless explicitly otherwise agreed upon with OOC RAIL BV, in writing. Exceedance of the under 6.a mentioned indicative execution times, delivery times or time schedules is never a reason for the Client to terminate the Agreement.
  - f. Client is never liable for damage as a result of complete or partial loss or damaging of by or on behalf of OOC RAIL BV in the scope of the execution of the Agreement used material, which is provided by the Client, its employees, third parties hired by the Client, or wagons/train sets, material or load provided by the Client.
  - g. OOC RAIL BV is not liable for indirect damage or result damage suffered by the Client, including but not limited to loss of profit and damage due to business interruption.
  - h. Condition for the occurrence of liability of OOC RAIL BV for any damage that comes about in the scope of the execution of the Agreement, is that Client reports the occurrence of the damage within 1 month after it has occurred, to OOC RAIL BV in writing. (Legal) claims with regard to the damage will lapse by the mere expiry of 24 months after the delivery date.
  - i. Condition for the occurrence of liability of OOC RAIL BV for any damage that comes about in the scope of the execution of the Agreement, is that Client, if OOC RAIL BV desires this, enables OOC RAIL BC to investigate the cause, nature and size of the damage or to have it investigated.
  - j. The limitations of the liability of OOC RAIL BV mentioned in the previous parts of this article do not apply in case of damage as a result of serious fault or serious negligence by the management of OOC RAIL BV in the execution of the Agreement.
  - k. If the Agreement pursuant to article 7.b of these General terms and conditions is executed in parts, OOC RAIL BV is not liable for damage (direct or indirect), of any nature whatsoever, caused in the period during which OOC RAIL BV does not perform services, including but not limited to the period starting from the moment on which OOC RAIL BV has notified the Client that the freight train/wagons have arrived on the terminal, until the moment that they depart from the terminal again.
  - l. The Client safeguards OOC RAIL BV, its employees, third parties hired by OOC RAIL BV, or third parties that are involved in the Agreement in any other way, against all claims of third parties (including but not limited to senders and addressees as meant in title 8:18 BW), irrespective of the reason, that in any way are connected to the Agreement and to the execution of it. Client will completely reimburse all by OOC RAIL BV or by its hired third parties suffered damage and costs, if and for as far as this damage and costs pursuant to this Agreement are not for account of OOC RAIL BV.
9. Force Majeure
- a. None of the parties is responsible or liable for a delay or a shortcoming in the fulfilment of the Agreement that is the result of force majeure (a non-attributable shortcoming). Each of the parties carries their own damage. In the case of OOC RAIL BV, force majeure in any case includes, but is not limited to, every natural disaster, strike, labour conflicts, sickness or inability to work of the employees and managers of OOC RAIL BV, exclusion during strikes, uprising, acts of war, epidemics, complete or partial mobilisation, import and/or export bans, government measures, fire, explosions, frost, communication failures, electricity failures, earthquakes, floods and similar disasters.
  - b. Force majeure does not release Client from its payment obligations.
10. Shortcomings of the client
- a. Client is considered legally in default and its (remaining) debt claims regarding OOC RAIL BV will be immediately claimable and indebted if:
    - i. Client files for its own bankruptcy or suspension of payment, is declared bankrupt or is granted with suspension of payment;

- ii. All or part of the capital of the Client is seized and this seizure is not withdrawn within ten days after the seizure;
  - iii. Despite a written notice of default whereby Client is granted a reasonable term, Client does not or does not completely fulfil an obligation arising from the Agreement;
  - iv. Client neglects to partially or completely settle an invoice within the agreed period;
  - v. Client liquidates or decides to liquidate its company, partially or completely sells its company, changes the objective of its company or ends its company;
  - vi. A direct or indirect change takes place in the control of (part of the) company of the Client.
- b. In the situations as described in article 10.a of the General terms and conditions, OOC RAIL BV is authorized to, without further formal notice, without judicial or arbitral interference, without being bound to any compensation, and with due observance of the other contractual and legal rights of OOC RAIL BV:
  - c. Suspend fulfilment of its obligations against Client, until Client has fulfilled all its obligations against OOC RAIL BV;
  - d. Partially or completely terminate the Agreement with immediate effect by means of a written notification to the Client;
  - e. Demand full and immediate payment of any amount which Client is indebted to OOC RAIL BV;
  - f. Require sufficient certainty from the Client for the timely fulfilment of its payment obligations before commencing with the execution of the agreement.

#### 11. General provisions

- a. If a provision from an Agreement or the general terms and conditions is or shall be declared null and void, such provision will be complied with for as much as possible. In this case, the other provisions of the Agreement and the general terms and conditions remain valid and in force and the parties will replace the null or unenforceable provision by one or more new provisions that will approach the content of the original provision as accurately as possible.
- b. OOC RAIL BV is authorised to change the general terms and conditions. Client will be considered to have accepted every change in the general terms and conditions if Client has not made a written objection against (one or more) of the changes within 5 work days after notification of the changes by OOC RAIL BV.
- c. Unless after written permission of OOC RAIL BV, Client is not authorised to grant third parties access to the documents that are part of or that originate from OOC RAIL BV, or to publish them to the audience, including reports, advices, descriptions, working methods and such.
- d. OOC RAIL BV is allowed to have the Agreement partially or completely executed by third parties if OOC RAIL BV deems this necessary. OOC RAIL BV will ensure that these third parties will properly execute the agreement as if they were the ones executing the Agreement.

#### 12. Applicable law

- a. Dutch law applies to every agreement between OOC Rail BV and clients.

#### 13. Authorised judge

- a. All disputes that arise between the parties as a result of the agreement and the general terms and conditions in question, including those who are only considered as such by one of the parties, will be submitted to the authorised judge in the district in which the head office of OOC Rail BV is located.