

General terms and conditions of the Rotterdam Terminal Operators' Association (VRTO)

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Article 1 - Definitions

EDI	Electronic Data Interchange: the electronic interchange of structured and standardized messages between information systems
Principal	the counterparty of the Terminal Operator
SDR	Special Drawing Right: a unit of account set by the International Monetary Fund
Terminal	All sites, buildings and waters where the Terminal Operator is based or where it carries out the Work, including any quays, railways, crane tracks, waterways, roads (whether adjacent or not)
Terminal Operator	The user of the General Terms and Conditions
Means of Transport	A construction designated for the transport of goods and/or people regardless of whether such construction is self-propelled or not
General Terms and Conditions	The general terms and conditions of the Rotterdam Terminal Operators' Association (VRTO)
Work	All factual and legal acts of the Terminal Operator connected in the broadest sense with the loading and unloading of Means of Transports, including but not limited to the acceptance, temporary storage, shifting, weighing, repackaging, checking / ordering the checking and/or delivery of goods (for the purpose of these General Terms and Conditions also including livestock), the execution of shipping activities and the use of floating cranes or other kinds of cranes

Article 2 - Applicability

- 2.1 **ANY GENERAL TERMS AND CONDITIONS APPLIED BY THE PRINCIPAL ARE EXPRESSLY PRECLUDED.**
- 2.2 The General Terms and Conditions are applicable to all legal relationships of the Terminal Operator under which the Work is carried out, regardless of whether this is effected on orders, on other grounds, against payment or free of charge.
- 2.3 The Principal leaves it at the discretion of the Terminal Operator to engage third parties within the scope of the Work or other activities and to accept the (general) terms and conditions of such third parties. The Principal agrees to let such general terms and conditions apply against the Principal.
- 2.4 In the event of incompatibility between the General Terms and Conditions and the general terms and conditions stated in article 2.3 the most favourable provision for the Terminal Operator by right shall be applied.

2.5 The Terminal Operator is entitled to rely on the custom of the port in addition to this.

Article 3 - Quotations, rates, payment, suspension, security, et cetera

- 3.1 All offers made by the Terminal Operator are non-binding until an agreement has been concluded. An agreement is concluded by written confirmation of the Terminal Operator or by the Terminal Operator's starting with the execution of the Work.
- 3.2 The Terminal Operator is entitled to adjust any already accepted rates in all fairness if after the conclusion of the agreement cost-increasing factors occur that are beyond the control of the Terminal Operator. (Non-exhaustive) Examples are (government) measures in the area of safety, quality, the environment and taxation aspects and market developments in the area of labour and energy that had not been taken into account upon entering into the legal relationship with the Terminal Operator.
- 3.3 If in the reasonable opinion of the Terminal Operator the circumstances have changed after the conclusion of the agreement such that it is unfair to expect that the Terminal Operator shall (continue to) carry out the Work even against the rates that have been adjusted in accordance with article 3.2, the Terminal Operator shall have the right to dissolve the agreement if and insofar as this refers to the Work not yet carried out, without becoming liable to pay damages as a result.
- 3.4 All invoices of the Terminal Operator must be paid by the Principal by the payment deadline set in this respect, but at the latest within 30 days, without any deduction or set-off. Challenging an invoice shall not suspend the payment obligation.
- 3.5 In the event of a dispute about what the Principal owes the Terminal Operator by virtue of the Work carried out, the documentation to be submitted by the Terminal Operator shall provide full evidence of the nature, contents and scale of the Work carried out, except for any proof of the contrary. The documentation of the Terminal Operator has preference over any documentation drawn up by the Principal or by third parties.
- 3.6 In the event of late payment of any claim of the Terminal Operator payable on demand, the Principal owes statutory commercial interest in this respect pursuant to Section 119a Dutch Civil Code from the due date until the date of full payment.
- 3.7 The Terminal Operator is at all times entitled to demand an advance payment from the Principal, a prepayment, an interim payment or a security that is adequate in its opinion for all claims by the Terminal Operator against the Principal now or in the future. If the Principal fails to fulfil such a request immediately, the Terminal Operator shall be entitled to refuse, suspend, interrupt or terminate the Work without requiring any written warning, notice of default or judicial interposition. The same applies if the Principal fails to perform any other obligation towards the Terminal Operator. The Terminal Operator shall never accept any liability for any resulting damage whatsoever.
- 3.8 All claims of the Terminal Operator shall become immediately payable if and as soon as the Principal or its representative applies for an administration order, files a bankruptcy petition, is declared bankrupt, ceases its activities in whole or in part or transfers them to third parties, or loses control of its assets in whole or in part due to attachment or similar measures. In such cases the Terminal Operator shall also be entitled to terminate the legal relationship with the Principal with immediate effect, without prejudice to the right of the Terminal Operator to claim damages.
- 3.9 The Terminal Operator has a pledge and/or a lien over all goods, documents and funds of the Principal in the possession of the Terminal Operator now or in the future regardless of the grounds and regardless of its designated use, for all and any claims against the Principal now or in the future. The Terminal Operator is also entitled to exercise such rights concerning what the Principal still owes the Terminal Operator in connection with previous legal relationships or previous assignments. In the event

of non-payment of the claim(s) for which such rights are exercised the Terminal Operator shall be entitled to sell the pledge in the manner prescribed by law.

- 3.10 Payment to the Terminal Operator must be effected in the manner specified by the Terminal Operator. Payment to a representative of the Principal shall not release the Principal from its obligation.
- 3.11 Payment by the Principal to the Terminal Operator shall serve first of all for the payment of the costs, subsequently for the payment of the outstanding interest and finally for the payment of the portion of the principal amount and the accrued interest specified by the Terminal Operator, despite any direction to the contrary by the Principal.
- 3.12 If the Principal fails to pay the claim(s) of the Terminal Operator in time, the amount of the claim(s) shall be increased by at least 10% handling fees to cover collection via legal proceedings or otherwise, unless the expenses turn out higher, in which case the Terminal Operator shall also be entitled to the extra amount.

Article 4 - General provisions regarding the Work

- 4.1 The Terminal Operator is entitled to have the Work carried out in whole or in part by staff and equipment of third parties as well as, at the discretion of the Terminal Operator, with the help of the loading & unloading equipment and/or drive power of the Means of Transport to be made available by the Principal free of charge.
- 4.2 If and insofar as it concerns them, the Terminal Operator and the Principal shall each see to obtaining and keeping all necessary permits as well as to compliance with all applicable regulations. They guarantee compliance with said obligations by their staff, assistants and subcontractors.
- 4.3 All information supplied by the Terminal Operator, such as the availability of berths and the time of execution of the Work, is not binding.
- 4.4 The Terminal Operator and the Principal warrant the material made available by them during the execution of the Work.
- 4.5 The Principal must prepare the Means of Transport and the goods to be loaded or unloaded from it at its own expense and risk such that the Terminal Operator is able to carry out the Work safely, in a responsible manner and without any delay.
- 4.6 In case of refusal, suspension, interruption or termination of the Work, the Principal must ensure that the Means of Transport and corresponding items shall leave the Terminal upon first request thereto by the Terminal Operator, for lack of which the Terminal Operator shall be entitled to take appropriate measures at the expense and risk of the Principal.
- 4.7 The Work does not entail inspection or insurance of the goods unless this has been explicitly agreed in writing, in which case the cost of inspection and insurance shall be borne by the Principal.
- 4.8 The Principal guarantees packing respectively packaging that is sea-proof or appropriate for the transport modality concerned (including but not limited to containers in which the goods are stowed) and clearly readable labelling of the goods in accordance with the applicable regulations (concerning safety and the environment), and for lack thereof, in accordance with the applicable standards under current market practices and behaviour.
- 4.9 Well in time before the start of the Work, the Principal must notify the Terminal Operator in writing of the possibly special or dangerous nature, scale and treatment of the goods as well as, in general, provide the Terminal Operator well in time with all instructions and information of which the Principal is aware or ought to be aware that the Terminal Operator needs them in order to carry out the Work safely, in a

responsible manner and without any delay. Any additional work in connection with non-fulfilment of the aforementioned shall be at the expense of the Principal.

- 4.10 The Principal guarantees that anyone who enters the Terminal from the water or from the shore within the scope of the Work for or on behalf of the Principal shall strictly adhere to the safety regulations and other regulations applicable to the Terminal. The Terminal Operator is entitled to remove from the Terminal - or to order the removal of - anyone who does not adhere to - or threatens to act in breach of - such regulations or who is unwelcome otherwise in the opinion of the Terminal Operator.
- 4.11 In its legal relationships with third parties, the Principal shall include a third-party clause in favour of the Terminal Operator, such as a so-called Himalaya clause, which entitles the Terminal Operator to rely (also) on jurisdiction clauses and all limitations and exclusions of liability in favour of the Principal, including a "before-and-after" clause, for damage, loss and/or delay of the goods (to be) transported by the Principal, which preferential treatment is accepted by the Terminal Operator beforehand.

Article 5 - Electronic data interchange

- 5.1 The interchange of messages between the Principal and the Terminal Operator may take place via EDI if agreed in writing.
- 5.2 If data interchange via EDI has been agreed this must be effected in accordance with the internationally applicable messaging standards and recommendations.

Article 6 - Liability and indemnification

A. The Terminal Operator

- 6.1 Without prejudice to the articles 3.3, 3.7, 6.6, 6.9 and 7.1, the Terminal Operator is liable for:
- a. any damage to or loss of a Means of Transport that is operated by the Principal in ownership, charter, lease or otherwise, during the time when the Means of Transport is located on or at the Terminal within the scope of the Work;
 - b. any damage to or loss of goods that the Work refers to, from the moment of physical receipt until the moment of physical delivery by the Terminal Operator;
 - c. personal injury or damage caused by death of any person who is involved for or on behalf of the Principal during the execution of the Work, if and insofar as such damage was caused on or at the Terminal.

The Terminal Operator does not accept liability for the damage or loss stated if the Terminal Operator is able to prove that such damage or loss was not caused by negligence on the part of the Terminal Operator or people or parties for whom the Terminal Operator is responsible within the scope of the Work.

The Terminal Operator does not accept liability whatsoever for the damage or loss stated if the Terminal Operator is able to prove that such damage or loss was caused by gross negligence or wilful intent on the part of people or parties for whom the Terminal Operator is responsible within the scope of the Work.

- 6.2 If damage or loss stated becomes evident after the Means of Transport, the goods or the person involved has/have left the terminal, the Terminal Operator shall only be liable if the Principal proves that such damage or loss was caused by negligence on the part of the Terminal Operator or on the part of the people or parties for whom the Terminal Operator is responsible under article 6.1.
- 6.3 The Terminal Operator shall never accept any liability for loss of profit, production loss, delay or any other form of consequential damage.

- 6.4 The Terminal Operator shall be discharged from all liability unless the Principal notifies the Terminal Operator in writing of damage or loss as set forth in article 6.1, either within four weeks after the Principal has become aware of the damage, or within three months after the Means of Transport involved, the goods or the person involved has/have left the Terminal, whichever term is shorter. All and any claims against the Terminal Operator shall become time-barred by the mere expiry of twelve months since said claim has arisen.
- 6.5 The Terminal Operator shall never accept any liability for claims below € 500 (five hundred Euro). In all events the liability of the Terminal Operator shall be limited to the sum insured that is actually paid out to the Terminal Operator increased by the deductible. For damage or loss referred to in article 6.1 the liability of the Terminal Operator is limited as follows:
- a. for damage or loss referred to in article 6.1 subsection (a) the liability of the Terminal Operator is limited to € 1,000,000 (one million Euro) per insured event;
 - b. for damage or loss referred to in article 6.1 subsection (b) the liability of the Terminal Operator per insured event is limited to 875 SDR (eight hundred and seventy-five special drawing rights) per package or unit, or 3 SDR (three special drawing rights) per kilo of gross weight of the goods lost or damaged, whichever amount is the higher;
 - c. for damage or loss referred to in article 6.1 subsection (c), the liability of the Terminal Operator is limited to € 1,000,000 (one million Euro) per insured event.

In case of several claims per insured event together exceeding the maximum amounts stated, such maximum shall be allocated pro rata to the value of such claims mutually agreed or determined in court.

- 6.6 The Terminal Operator shall make an effort to take the necessary measures in order to limit the risk of stowaways or access of other unwanted people to the Means of Transport of the Principal. If nevertheless stowaways or other unwanted people are discovered in the Means of Transport of the Principal, the Terminal Operator shall not be liable for any possibly resulting damage, expenses and fines.
- 6.7 Upon first request thereto the Principal shall indemnify the Terminal Operator against all and any claims by third parties in connection with the Work where exceeding the liability of the Terminal Operator under the General Terms and Conditions.
- 6.8 All limitations and exclusions of liability in the General Terms and Conditions in favour of the Terminal Operator shall also apply to its staff, independent assistants and subcontractors.

B. The Principal

- 6.9 Apart from its liability under ordinary law, the Principal is also liable for all claims by whatever name concerning customs duties or similar duties and charges, fines, (negative) expenses and interest, including import duties, excise duties and expenses for removal and destruction referring to or in connection with goods that the Terminal Operator possesses, has possessed or shall possess by virtue of the Work. Upon first request thereto the Principal shall fully indemnify the Terminal Operator against said claims and shall also furnish adequate security upon first request thereto in favour of the Terminal Operator or the customs authority involved, including the reasonable costs of defence.
- 6.10 If the Principal is liable towards third parties for damage for which the Principal wishes to have recourse against the Terminal Operator, the Principal shall enable the Terminal Operator to be present or represented during the investigation into the cause and scale of such damage. The Principal must also prove that it has conducted all entitled defences in its legal relationship towards such third party in order to turn down or limit liability, unless the Terminal Operator has agreed explicitly and in writing to the acceptance of liability by the Principal or has come to a settlement in this respect with such third party. If the Principal still fails to fulfil said obligations, the Terminal Operator shall be discharged from all liability.

- 6.11 The Principal shall take out and maintain an appropriate insurance policy to cover its possible liabilities towards the Terminal Operator. Upon request thereto the Principal shall give the Terminal Operator access to the insurance policy sheet(s) concerned.

Article 7 - Force majeure

- 7.1 The Terminal Operator is entitled to suspend the Work in the event of force majeure. The Terminal Operator shall never accept liability for the consequences of force majeure and/or of such suspension of the Work.
- 7.2 Force majeure includes but is not limited to:
- strikes or work stoppage, lockouts, go-slow actions, lightning strikes and all other forms of industrial unrest
 - extreme weather conditions or water circumstances and natural disasters / Acts of God
 - burglary, fire, explosion and nuclear response
 - government measures
 - war, uproar, uprising, terrorism, hijacking, sabotage, vandalism and similar unrest
 - computer breakdown and power outage
 - latent defects in the equipment used by the Terminal Operator
 - all other circumstances that cannot be blamed on the Terminal Operator and that are not the responsibility of the Terminal Operator pursuant to the law, legal act or current market practices and behaviour.
- 7.3 In the event of force majeure the Terminal Operator shall notify the Principal in writing as soon as possible and take all reasonable measures in order to terminate the force majeure situation as soon as possible and limit the consequences thereof.
- 7.4 All and any extra expenses caused by force majeure shall be at the expense and risk of the Principal.

Article 8 - Applicable law and settlement of disputes

- 8.1 All legal relationships of the Terminal Operator and the interpretation thereof are governed by Dutch law.
- 8.2 All disputes under or in connection with the legal relationships aforementioned shall be subject to arbitration in Rotterdam in accordance with the TAMARA Arbitration Regulations. The arbitration tribunal shall consist of three arbitrators unless parties agree to one single arbitrator after all. The proceedings shall be conducted in the Dutch language. Each of the parties is obliged to report the request for arbitration and the result thereof to the secretariat of the Rotterdam Terminal Operators' Association and to file the award of the arbitrators there.
- 8.3 The Terminal Operator is entitled to waive arbitration for the collection of monetary claims, in which case the court of competent jurisdiction in Rotterdam shall have exclusive jurisdiction.

Article 9 - Official title and authentic text

- 9.1 These General Terms and Conditions may be quoted as the "VRTO General Terms and Conditions". They are deemed to be the most recent version of the General Terms and Conditions of the Association of Rotterdam Stevedoring Companies 1976 (Vereniging van Rotterdamse Stuwadoors) ("Rotterdamse Stuwadoors Conditities").
- 9.2 In the event of any differences between the Dutch text of the General Terms and Conditions and a translation thereof into a foreign language, the Dutch text shall prevail.