

# General Terms and Conditions of the Rotterdam Terminal Operators' Association (VRTO)

These terms and conditions were filed with the **Chamber of Commerce** on 11 December 2023

## Article 1 - Definitions

GDPR	the General Data Protection Regulation
EDI	(Electronic Data Interchange) the electronic exchange of structured and standardised messaging between information systems
Client	the Terminal Operator's counterparty
Damage	any damage, loss, financial disadvantage, third-party claims, fines and/or costs, however this arises, of whatever nature and however this is named
SDR	Special Drawing Right, a unit of account defined by the International Monetary Fund
Terminal	all land, buildings and bodies of water on which the Terminal Operator is located or at which it carries out its Work, including adjacent or non-adjacent quays, railways, crane tracks, roads and waterways
Terminal Operator	the user of the General Terms and Conditions
Means of transport	a structure that is intended to transport items and/or persons irrespective of whether this structure can drive itself or not
General Terms and Conditions	the general terms and conditions of the Rotterdam Terminal Operators' Association (VRTO)
Work	all actual and legal acts of the Terminal Operator that, in the broadest sense, relate to the loading and unloading of Means of Transport, including logistics services such as, but not limited to, the acceptance, temporary storage, transfer, weighing, repackaging, checking and/or delivery of goods, or having goods checked and/or delivered (which goods for the purposes of these general terms and conditions also includes live animals), carrying out forwarding work and the use of crane vessels or other types of cranes

## Article 2 - Applicability

- 2.1 **GENERAL TERMS AND CONDITIONS USED BY THE CLIENT ARE EXPRESSLY REJECTED.**
- 2.2 The General Terms and Conditions apply to all legal transactions of the Terminal Operator under which the Work is performed, regardless of whether this takes place under contract, on another basis, for payment or not. Where mandatory law provisions apply to (parts of) the Work, only those provisions from the relevant regulations will apply that cannot be derogated from by agreement, otherwise the General Terms and Conditions provisions will apply.
- 2.3 The Client permits the Terminal Operator to engage third parties in the context of the Work or other activities and to accept the general or other terms and conditions of those third parties. The Client agrees that these terms and conditions apply to the Client.

- 2.4 In the event of a contradiction between the General Terms and Conditions and the terms and conditions as referred to in Article 2.3, the provision most favourable by law to the Terminal Operator shall be applied.
- 2.5 The Terminal operator is also entitled to invoke standard port operations.

### **Article 3 - Quotations, rates, payment, suspension, security, etc.**

- 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 from the Terminal Operator or by the Terminal Operator starting to implement the Work.
- 3.2 The Terminal Operator is entitled to make reasonable adjustments to already accepted rates if cost-increasing factors that are beyond the Terminal Operator's control occur after concluding the agreement. Examples (not exhaustive) include government and other safety, quality, environment and taxation measures, and labour and energy market developments that had not yet been taken into account at the time the legal transaction with the Terminal Operator was concluded.
- 3.3 If, in the Terminal Operator's reasonable judgement, circumstances have changed after the conclusion of the agreement to such an extent that the Terminal Operator cannot reasonably be required to carry out or continue to carry out the Work even at the rates adjusted in accordance with article 3.2, the Terminal Operator is entitled to dissolve the agreement insofar as this concerns Work not yet carried out without becoming liable for compensation as a result.
- 3.4 The Client must pay all the Terminal Operator's invoices within the set payment term, and within 30 days at the latest, without any deduction or set-off. Contestation of an invoice does not suspend the obligation to pay the invoice.
- 3.5 In the event of a dispute regarding the amount owed by the Client to the Terminal Operator based on the Work carried out, the documentation to be submitted by the Terminal Operator shall, unless there is evidence to the contrary, constitute full proof of the nature, content and extent of the Work carried out. The Terminal Operator's documentation prevails over documentation prepared by the Client or third parties.
- 3.6 In the event of non-timely payment of any claim from the Terminal Operator, the Client shall owe statutory commercial interest on this claimed amount pursuant to Article 119a of the Dutch Civil Code, starting from the due date until the date the payment is made in full.
- 3.7 The Terminal Operator is at all times entitled to demand an advance payment, prepayment, interim payment or, in its opinion, proper security from the Client for everything that the Terminal Operator may or shall be able to claim from the Client. If the Client fails to promptly comply with a request to that effect, the Terminal Operator is entitled to refuse, suspend, interrupt or terminate the Work without warning, notice of default or judicial intervention. The same applies if the Client fails to fulfil any other obligation towards the Terminal Operator. The Terminal Operator shall never be liable for any resulting Damage.
- 3.8 All the Terminal Operator's claims are due and payable immediately if and whenever the Client or its representative applies for suspension of payments or bankruptcy, is declared bankrupt, initiates WHOA proceedings, ceases all or part of its activities or transfers them to third parties, or loses control of all or part of its assets through seizure or similar measures. In such cases, the Terminal Operator is also entitled to terminate the legal transaction with the Client with immediate effect, without prejudice to the Terminal Operator's right to damages.
- 3.9 For all claims it has or may have against the Client, the Terminal Operator has a right of lien and/or a right of retention on all the Client's items, documents and funds that the Terminal Operator has or will have in its possession from the Client on whatever basis and for whatever purpose. The

Terminal Operator may also exercise these rights for that which is still owed to it by the Client in connection with previous legal transactions or previous orders. In the event of non-payment of the claim(s) for which these rights are exercised, the Terminal Operator is entitled to sell the collateral in the manner prescribed by law.

- 3.10 Payment to the Terminal Operator should be made in the manner specified by the Terminal Operator. Payment to a representative of the Client does not release the Client of its obligation to pay.
- 3.11 Payment by the Client to the Terminal Operator is in the first instance used to reduce the costs, then to reduce the interest due and finally to reduce that part of the principal amount and the current interest designated by the Terminal Operator, notwithstanding the Client's indication to do otherwise.
- 3.12 If the Client fails to pay the Terminal Operator's claim(s) in time, the amount of the claim(s) shall be increased by at least 10% administrative costs to cover collection by judicial or other means, unless such costs turn out to be higher. If such costs do turn out to be higher, the Terminal Operator is also entitled to claim the extra amount.

#### **Article 4 - General provisions relating to the Work**

- 4.1 The Terminal Operator is entitled to have all or part of the Work carried out by third parties, with the help of personnel and equipment procured from third parties for that purpose and, at the discretion of the Terminal Operator, using loading and unloading equipment and/or the Means of Transport's drive power that are made available free of charge by the Client.
- 4.2 The Terminal Operator and the Client shall each, as far as it applies to them, ensure that all necessary permits are obtained and maintained and that all applicable regulations are complied with. They guarantee that their employees, assistants and subcontractors fulfil these obligations.
- 4.3 All information provided by the Terminal Operator, such as the availability of berths and the time of performing the Work, is non-binding.
- 4.4 The Terminal Operator shall exercise all necessary care with respect to the equipment it makes available when implementing the Work. If the Client makes equipment available, it guarantees the soundness and suitability of this equipment.
- 4.5 The Client must set up the Means of Transport and the goods to be loaded onto/into this or unloaded from/out of this at its own expense and risk, so that the Terminal Operator can carry out the Work safely, responsibly and without delay.
- 4.6 In the event of refusal, suspension, interruption or termination of the Work, the Client must have the Means of Transport and equipment connected to this removed from the Terminal upon the Terminal Operator's first request, failing which the Terminal Operator is entitled to take appropriate measures to remove the above-mentioned Means of Transport and equipment at the expense and risk of the Client.
- 4.7 The Work does not include any inspection or insurance of the equipment unless expressly agreed in writing. The Terminal Operator is nevertheless entitled to inspect the equipment at any time. The costs of the inspection and insurance are for the Client's account.
- 4.8 The Client guarantees seaworthy packaging or packaging sufficient for the mode of transport concerned (which also includes containers in which the goods are stowed) and clearly legible labelling of the goods in accordance with applicable safety, environmental and other regulations and, in the absence thereof, in accordance with the standards that apply according to commonly accepted practice.

- 4.9 The Client must inform the Terminal Operator in writing in good time before the start of Work of any special or hazardous nature, size and handling of the goods as well as, in general, provide the Terminal Operator with all instructions and information in good time that the Client knows or ought to have known that the Terminal Operator needs in order to carry out the Work safely, responsibly and without delay. Additional work required in relation to the Client's failure to comply with the above shall be borne by the Client.
- 4.10 The Client guarantees that anyone who enters the Terminal from the water or shore in the context of the Work for or on behalf of the Client shall comply strictly with the safety and other regulations that apply at the Terminal. The Terminal Operator is entitled to refuse or have removed from the Terminal any person who fails or threatens to fail to comply with these regulations or is otherwise undesirable in the opinion of the Terminal Operator. The Client also guarantees that all those entering the Terminal for or on behalf of the Client in the context of the Work have accepted the provisions and liability provisions of these General Terms and Conditions. The Client indemnifies the Terminal Operator from claims by these persons and their employer or assignees in connection with their presence at the Terminal.
- 4.11 The Client shall include a third-party clause in its legal transactions with third parties in favour of the Terminal Operator, which the Terminal Operator accepts in advance. This includes clauses such as a so-called Himalaya clause, on the basis of which the Terminal Operator and its subordinates or assistants have the right (also) to invoke jurisdiction clauses and all liability limitations and exclusions available to the Client, including a before-and-after clause, for Damage, loss and/or delay of the goods transported or to be transported by the Client.

#### **Article 5 - Electronic exchange of messages**

- 5.1 Exchange of messages between the Client and the Terminal Operator can take place via EDI if agreed in writing.
- 5.2 If message exchange via EDI is agreed, this should take place in accordance with internationally-applicable messaging standards and recommendations.

#### **Article 6 - Liability and indemnification**

##### **A. The Terminal Operator**

- 6.1 The Work takes place at the expense and risk of the Client.
- 6.2 The Terminal Operator is not liable towards the Client and/or third parties for any Damage unless the Client proves that the Damage, measured by objective standards, was caused by wilful intent, gross culpability or gross negligence of the Terminal Operator itself or of persons in charge of the management of the company.
- 6.3 The Terminal Operator's period of liability does not start earlier than the point at which the goods are in or at the Terminal Operator's unloading installation or unloading equipment and ends at the latest at the point at which the goods are loaded onto the Client's Means of Transport.
- 6.4 The Terminal Operator is never liable for any damages other than material damage to property and personal injury such as, but not limited to, lost profits, lost savings, reduced goodwill, production loss, penalties, lost time, off-hire, delay, costs or any other form of non-material, indirect and/or consequential damage.
- 6.5 The Terminal Operator is released from any liability unless the Client notifies the Terminal Operator of the Damage in writing no later than the time at which the Means of Transport, goods or persons

leave the Terminal. If the Damage was not visible at that time, the Client must notify the Terminal Operator in writing, under penalty of forfeiture of claims, within four weeks after the Client has become aware of the Damage. In the event of timely reported Damage, any claim against the Terminal Operator shall lapse nine (9) months from the time the goods or persons left the Terminal, or from the occurrence of that claim, whichever is earlier, and shall lapse twelve (12) months from the time the goods or persons left the Terminal, or from the occurrence of that claim, whichever is earlier. Written notice is understood to mean a registered letter or registered e-mail.

- 6.6 The Terminal Operator shall never be liable for claims of less than €500 (in words: five hundred euros). The Terminal Operator's liability in all cases is limited to 2 SDR per kilogram of damaged or lost gross weight to a maximum of 100,000 SDR per event or series of events with one and the same cause of damage.
- 6.7 The Terminal Operator shall endeavour to take the necessary measures to limit the risk of stowaways or other unwanted access of persons to the Client's Means of Transport. In the event that stowaways or other unwanted persons are nevertheless found in the Client's Means of Transport, the Terminal Operator is not liable for any resulting Damage.
- 6.8 The Client indemnifies the Terminal Operator at first request against all claims or demands from third parties in connection with the Work, except in the case of intent or gross negligence on the part of the Terminal Operator itself.
- 6.9 All limitations and exclusions of liability in the General Terms and Conditions in favour of the Terminal Operator also apply to its employees, independent assistants and subcontractors.

## **B. The Client**

- 6.10 In addition to its liability under common law, the Client is also liable for all claims, however these are named, in respect of customs or similar duties and taxes, fines, (negative) costs and interest, including import duties, excise duties and costs of disposal and destruction relating to or connected with goods that the Terminal Operator has, has had or will have in its possession by virtue of the Work. The Client shall fully indemnify the Terminal Operator against the above-mentioned claims upon first request as well as, upon first request, provide adequate guarantees in favour of the Terminal Operator or the involved customs authority, including the reasonable costs of defence.
- 6.11 If the Client is liable towards third parties for Damage that the Client wishes to recover from the Terminal Operator, the Client shall give the Terminal Operator the opportunity to be present or to be represented at the investigation into the cause and extent of this Damage. The Client must also prove that it has availed itself of all defences to which it is entitled in its legal transaction with this third party in order to reject or limit liability unless the Terminal Operator has expressly agreed in writing to accept liability by the Client or to a settlement thereof with this third party. If the Client fails to fulfil these obligations, the Terminal Operator shall be released from any liability.
- 6.12 The Client shall take out and maintain appropriate insurance to cover its potential liabilities towards the Terminal Operator. The Client shall allow the Terminal Operator to inspect the policy or policies concerned on request.
- 6.13 The Terminal Operator's failure to exercise or delay in exercising any right under these General Terms and Conditions shall not constitute a waiver of such right. A single or partial exercise of a right under these General Terms and Conditions by the Terminal Operator does not preclude any other or further exercise of this right or of other rights.

## **Article 7 - Force majeure**

- 7.1 The Terminal Operator is entitled to suspend the Work in the event of force majeure. The Terminal Operator is never liable for the consequences of this.
- 7.2 For the Terminal Operator, force majeure includes:
- strikes or work stoppages, lockouts, go-slow strikes/lightning strikes and all other forms of labour unrest
  - disease, epidemics, quarantines
  - extreme weather or water conditions and natural disasters
  - burglary, fire, explosion and nuclear reaction
  - government measures
  - war, riot, insurrection, terrorism, hostage-taking, sabotage, destruction and similar unrest
  - computer malfunctions and power cuts
  - cybercrime, cyberattacks and other cyber/software related problems
  - hidden defects in the equipment used by the Terminal Operator
  - as well as all circumstances that are not attributable to the fault of the Terminal Operator and that are not for the Terminal Operator's account under the law, legal act or generally accepted practice, and the consequences of which the Terminal Operator could not reasonably have prevented.
- 7.3 In the event of force majeure, the Terminal Operator shall inform the Client in writing as soon as possible and take all reasonable measures to remedy the force majeure situation as soon as possible and limit the consequences thereof.
- 7.4 All extra costs caused by force majeure, such as transport and storage costs, warehouse or site rent, demurrage and standing charges, insurance, removal, etc. are at the expense and risk of the Client and must be paid to the Terminal Operator on first demand.

#### **Article 8 - Applicable law and dispute resolution**

- 8.1 All legal transactions of the Terminal Operator and the interpretation of these shall be governed by Dutch law.
- 8.2 All disputes under or in connection with the above-stated legal transactions are subject to arbitration in Rotterdam in accordance with the UNUM Arbitration Rules. The arbitral tribunal will comprise three arbitrators unless the parties agree on a sole arbitrator. The proceedings will be conducted in Dutch. Each of the parties is obliged to report the request for arbitration and its outcome to the secretariat of the Rotterdam Terminal Operators' Association and to file the decision of the arbitrator there.
- 8.3 Notwithstanding the provisions of the preceding paragraph, the Terminal Operator is entitled to apply to the competent court in Rotterdam for the collection of monetary claims and claims in summary proceedings.

#### **Article 9 - Processing of personal data**

Personal data provided by or on behalf of the Client to the Terminal Operator within the scope and for the execution of the Work shall only be processed by the Terminal Operator in the interests of and in connection with the execution of the Work and in accordance with the applicable laws and regulations, including the GDPR. The agreement between the Client and the Terminal Operator shall detail the safeguards and principles to be observed by the Terminal Operator in this respect.

#### **Article 10 - Citation title and authentic text**

- 10.1 The General Terms and Conditions can be referred to as '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 Stevedores 1976 (Rotterdam Stevedoring Conditions).
- 10.2 In the event of differences between the Dutch text of the General Terms and Conditions and a translation thereof into a foreign language, the Dutch text shall prevail.