

Terms and Conditions Rotterdam Bulk Cargo Stevedores

Rotterdam 1991

of the

Vereniging van Rotterdamse Machinale

Overslagbedrijven

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**Terms and conditions Massagoed-stuwadoors Rotterdam 1991**

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### **Article 1 Stevedore**

1. In these terms and conditions the term 'stevedore' shall mean a company which is engaged in the unloading, loading, moving, treatment, blending, screening, storage, administrating as well as reloading of bulk cargo and/or other cargo, the foregoing with the help of mechanical equipment, auxiliaries and systems, fixed, floating or rolling for grabbing, lifting, carrying and storing, all in the widest sense of the word.

### **Article 2 Principal**

1. In these terms and conditions the term 'principal' shall mean a natural person or company which has granted for its own account and risk an order to the stevedore and who/which shall implicitly represent to the stevedore the owner of the goods as well as the shipowner or the owner of the means of transport involved in the execution of the order and shall accept all liability to the stevedore for all said persons.
2. During the execution of an order the stevedore shall not accept any liability for parties other than the principal, unless the principal has declared in writing and in advance, that this other represents him and that the principal guarantees any obligation assumed by the said other vis-a-vis the stevedore. Where there is no such declaration the principal shall not hold the stevedore liable for any claims from third parties who are involved, directly or indirectly, in the execution of the order.

### **Article 3 Order**

1. In these terms and conditions order shall mean all ordered work, irrespective of the goods involved and irrespective of the means of transport - floating, fixed or rolling - and or methods of operation involved. The order shall include all work connected therewith or arising therefrom, irrespective of whether or not the stevedore is obliged to carry out this work.
2. Without prior consultation with the principal, the stevedore shall be empowered to carry out the order or to have the order carried out, in whole or in part, by third parties and/or personnel and/or equipment of third parties. The stevedore shall be deemed to have negotiated for the benefit of this third party the same rights as set forth in these terms and conditions, also if the stevedore, for whatever reason, should transfer the order in its entirety to this third party and the principal simultaneously releases the stevedore from his liabilities vis-a-vis himself.

#### Article 4 Execution of the Order

1. The stevedore undertakes to carry out the order with due care and diligence as is customary in the stevedoring practice in the Rotterdam port area.
2. The stevedore shall designate the berth or parking place of the means of transport, which shall be wholly and exclusively at the risk of the principal after acceptance by the principal or the captain, master or driver of the means of transport concerned.
3. The equipment (fixed, floating and rolling) in use by the stevedore shall be used at the risk of the principal. The stevedore shall only accept liability if the principal should prove that the said equipment was not in a good state of repair and did not meet government requirements, if any, at the time the damage was sustained and that the sustained damage was caused by these circumstances.
4. Insofar as not excluded pursuant to these terms and conditions, the responsibility for the goods or part thereof and the liability arising therefrom, shall as regards the stevedore always commence at the time that the part concerned has left the means of transport or terminates when said part has been loaded into the means of transport, as the case may be.
5. The storage of the goods shall be effected exclusively for the account and risk of the principal. With due observance of the other provisions in these terms and conditions, the stevedore shall not be liable for any damage and/or loss caused by defects to, in or of the equipment used for the storage, including silos, sheds, partitions, tarpaulins etc., unless the principal proves that said damage or loss has been caused by gross negligence on the part of the stevedore.
6. Payment for transshipment, unloading, storage and reloading shall be owed by the principal on the basis of the conditions agreed with him (weight, number of m3 or m2 etc.).

The stevedore shall not be liable for any established difference between the quantities of unloaded and of reloaded goods, unless the difference has been caused by acts on the part of the stevedore for which and insofar under the present terms and conditions he has accepted liability.

If at any moment there appears to be a difference between the quantities of stored and yet to be shipped goods, the payment due for the storage of the remaining part shall be recalculated according to the actually stored quantity as from the date that the difference has been established.

Said recalculation shall only apply to the quantity at that time in storage without any retroactive effect to the advantage or disadvantage of the stevedore or principal.

Without prejudice to the provision in article 4.7, the principal shall be deemed to have voluntarily and unconditionally resigned his right of ownership of the goods (including an established surplus, if any) which are not shipped in time as agreed between the stevedore and the principal in favour of the stevedore. The stevedore shall be entitled to freely dispose of these goods.

7. The principal shall be obliged to collect stored goods (have the goods collected) by the last day of the agreed period or, in case of storage for an indefinite period of time, by the last day of a term of at least 15 days to be set by the stevedore. In case of non-compliance with this obligation the principal shall be liable for all costs, damage and interest which may arise therefrom to the stevedore. Furthermore, the stevedore shall in that case be empowered to have the goods removed for the account and risk of the principal and to store the said goods or have the goods stored elsewhere for the latter's account and risk.
8. If the goods (to be stored or stored) have been sold or the ownership has been transferred to third parties, in part or in whole, by or on behalf of the principal before the agreed date of termination of the storage, the principal shall remain fully liable vis-a-vis the stevedore for the transferred part, unless the new owner has acknowledged in writing the same obligations and liabilities as those of the principal vis-a-vis and to the satisfaction of the stevedore.
9. The principal shall ensure and guarantee vis-à-vis the stevedore:
  - a. that the means of transport with all and any accessories are fully suitable for the goods and for the working method applied in general and for the use of cranes in particular.
  - b. that the work on the means of transport can start immediately and that said work can be continued and completed without delay, which implies that any means of transport, if required by the stevedore, shall be shifted or moved immediately.
  - c. that at all times aboard the vessels that are being loaded or unloaded the winches needed for shifting are ready for use.
  - d. that "there is sufficient lighting for carrying out the work aboard the vessels where the work is carried out.
  - e. that during the work or after completion thereof the means of transport shall be shifted or removed upon the stevedore's first request.
10. The stevedore shall reserve the right to terminate the order prematurely if:

the principal does not comply with his obligations or it is foreseeable that he may not want to or is unable to comply with his obligations, as the case may be.

the stevedore finds himself in a position that completion of the order cannot in reasonably be expected from him.
11. In both cases the principal and the stevedore shall settle the amounts due on the basis of the work carried out up to that moment without prejudice to the right of each of them to claim damages from the other with due observance of the provisions in these terms and conditions.
12. Delay of the commencement, the execution and/or the completion of the order, due to who ever or whatever, does not release the principal from his obligation to pay on time to the stevedore the incurred additional costs as a result thereof for the waiting time of equipment and personnel, port charges, demurrage.

13. The principal as described in Article 2 shall not (and shall cause every person in his employment not to) file a claim for damages on any account whatsoever, other than against the stevedore, such by exclusion of claims against any person in the employment of the stevedore or his subcontractors.

#### **Article 5 General Liability**

1. On the penalty of exclusion of any liability on the part of the stevedore, the principal shall inform any third party who is involved in the execution of the order in conjunction with him of these general terms and conditions and conclude agreements with any such third party in accordance therewith. In case of non-compliance with the foregoing, the principal shall hold the stevedore free of all claims by third parties.
2. The stevedore shall only be liable for damage caused to the goods, to the means of transport of, or working on the orders of, the principal or to persons in his employment or otherwise working for him if and insofar as there is proof that this damage is the result of gross negligence or intent on the part of the stevedore or of one of his subordinates.
3. The stevedore's liability for damage as referred to in the second paragraph of this article, insofar as this has not been excluded according to the cause or the party interested, shall be limited to a maximum of Euro 22,500.-- per order, irrespective of the duration of the order, the number of times the damage is sustained, the nature or the cause of the damage and irrespective of whether said damage concerns only one or several parties. One and the same damage occurring during the execution of two or more different orders shall remain limited up to the same maximum of Dfl. 22,500.--, but shall be divided among the joint principals pro rata.
4. Any liability on the part of the stevedore shall cease if the stevedore has not been notified in writing by the principal of the damage sustained before termination of the order or before the departure of the means of transport related to the order or of the good to which damage has been caused, as the case may be, and has been given the opportunity to satisfy himself of the damage sustained. If notification of damage before the termination of the fixed terms was not reasonably possible but the damage was indeed already known to the principal, the expiration date shall be the first following date on which the principal could have notified the stevedore, such however with a maximum of three days after termination of the order. The damage shall be determined as per the date on which the damage was established or should or could have been notified at the latest pursuant to the first sentence of this article.
5. The principal shall be sufficiently insured against the risks which have been excluded from the stevedore's liability by virtue of these terms and conditions (according to the nature or to the amount).
6. Payments of damages made by the stevedore to the principal shall only imply fault and liability on the part of the stevedore, if and insofar as the latter has acknowledged this expressis verbis.

## Article 6 Liability Exclusions

1. Damage for which the stevedore has excluded liability according to nature or amount by virtue of these general provisions and which are recovered by third parties (including the insurers of the principal) on the stevedore, shall be compensated by the principal to the stevedore. The principal shall (where possible and when allowed) join the stevedore as co-defendant in any action to be defended by the stevedore, at the latter's request.
2. With due observance of article 5 paragraph 2 the stevedore shall never be liable for:
  - a. Damage to goods which is, wholly or partly, attributable to the nature and/or the condition of said goods.
  - b. Damage to goods which is foreseeable or unavoidable when the equipment used and/or working method used (in all aspects of the order) are applied, unless the principal has, within reason, made objections beforehand.
  - c. Damage to goods caused by loss of weight, loss of quality, pollution, mixing (including damage by dusting) or the presence of alien objects in the goods.
  - d. Damage caused by the goods, either due to their nature or as a result of any act or neglect by the stevedore or a third party, which damage may be (jointly) recoverable from the stevedore according to present or future legislation by third parties, including also pollution of soil, water and air, product liability, dust and unbearable smell.
  - e. Damage caused during the execution of the order to means of transport (floating or rolling) or to persons who are used or employed, as the case may be, and are not the property or in the employment, as the case may be of the stevedore for, on the orders of or on behalf of the principal.
  - f. Damage caused during the execution of the order to other cargo aboard the means of transport as referred to under e and which, when the damage occurs, is not subject to the order.
  - g. Damage to the means of transport due to or as a result of preparatory and additional activities beyond the scope of the order such as installment of lights, repairs, manipulating batches, shifting/moving etc.
  - h. Any damage directly or indirectly arising and resulting from a damage for which the stevedore has acknowledged liability.
  - i. Damage in the form of loss of dispatch money or demurrage to be paid, demurrage of inland vessels and demurrage of wagons or cars or trucks, irrespective of the cause as well as any form of loss of time or after completion of the order as a result of repairs under the stevedore's responsibility.

## Article 7 Force Majeure

1. The stevedore shall never be liable for damage caused by or to be attributed to occurrences of force majeure, including among others:

- war
- riots
- government acts
- sabotage
- organized or unorganized strike
- exclusion of workers
- labour unrest
- burglary
- fire
- explosion
- nuclear reactions
- electricity and/or water supply failures
- acts of God
- high or low tide

irrespective of the way in which and where they have occurred.

2. The force majeure with respect to the stevedore shall also include the breakdown and repair or replacement of equipment and/or other appliances used or to be used by or on behalf of the stevedore which are necessary for the execution of the order or to which replacement or repair should reasonably be preferred to execution of the order.

3. The force majeure with respect to the stevedore shall also include the circumstance that upon arrival there is no berth or parking place immediately available for means of transport to be loaded or unloaded.

4. In all cases of force majeure the loss of time and the demurrage and/or costs of recovery arising therefrom shall be for the account of the principal.



## Article 8 Principal's Liability

1. The principal shall be obliged to inform the stevedore of all properties of the goods and of the means of transport as a result of which the goods, either spontaneously or due to certain influences or conditions, may cause a danger to other goods or objects, including equipment and storage areas, or to persons or to the environment such as soil, water or air.
2. The principal shall be obliged to compensate all damage to the stevedore which occur or may occur as a direct or indirect result of the properties mentioned above, irrespective of the fact whether he has informed the stevedore, or which occur or may occur as a direct or indirect result of any defect of the goods or of the means of transport, known or unknown, including the presence in the goods of alien objects or goods.
3. The principal shall be obliged to hold the stevedore free of all claims by third parties (including the stevedore's employees) as regards the damage referred to above.
4. The principal shall be obliged to compensate the stevedore for all damage, both direct and indirect, sustained by the stevedore as a result of the fact that, on or near the stevedore's territory, means of transport which according to the order must be, are being or have been loaded or unloaded, become defective, sink, ask for assistance and/or in any way obstruct, hinder, cause difficulties or danger in any way to the operation of the stevedore or to the continuation of the execution of the order. The damage referred to in this paragraph shall include all costs incurred by the stevedore to prevent or reduce imminent damage as well as the costs necessary to eliminate a condition causing damage.
5. The principal shall owe the stevedore additional payment for the execution of the order if during the execution it appears that the goods or the means of transport have such properties or characteristics that the work as regards time, manpower or use of equipment comprises more than could be foreseen within reason at the time of acceptance of the order. Such additional payment shall apply in any case if the loading and unloading with grabs is considered impossible by the stevedore, and/or there is not sufficient manpower aboard the means of transport to carry out the order in the usual manner.
6. The principal shall be liable for any damage which is a direct or indirect result of non-compliance or partial compliance with directives or rules issued by the stevedore's employees and/or non-compliance with government regulations.

## **Article 9 Payment**

1. The payment of amounts owed to the stevedore on account of or connected with the order shall be made promptly after completion of the order. payment of expenses to be calculated periodically shall be made immediately upon expiration of the period concerned. Legal interest shall be due on claims payable to the stevedore in case of non-payment as from the date the claim becomes payable. Furthermore, the stevedore shall be entitled to charge to the principal all costs connected with the collection of the outstanding claim, both judicial and extra-judicial. In this connection the extrajudicial collection costs shall amount to at least 15% of the outstanding and payable claim. The amounts owed to the stevedore shall never be set off against claims the principal has against the stevedore which have not been acknowledged by the latter.
2. Irrespective of the foregoing, the stevedore shall have the right to retain goods, either by refusing to load the means of transport or by preventing the departure of the loaded means of transport, until the principal has paid the stevedore all he owes on account of this article.

## **Article 10 Additional services**

1. If and insofar as part of the order additional services (towing, pushing, transportation of persons or objects, repairs etc. irrespective of the fact as to whether these additional services are carried out by the stevedore himself or by third parties on his behalf) are rendered by or on behalf of the stevedore as part of the order, equipment and personnel shall be made available on the terms and conditions laid down in the most recent version and lodged with the District Court or the Chamber of Commerce in Rotterdam" as applied by the companies concerned. If the principal makes no objections against the stevedore's proposal regarding the choice of the company providing assistance, the principal impliedly accepts the terms and conditions lodged on which this company operates.
2. Costs for additional services shall be invoiced separately and shall not be part of the price of the contracted order, unless otherwise agreed.

## **Article 11 Disputes**

1. All disputes arising or resulting from these terms and conditions shall be subject to arbitration in Rotterdam and governed by the laws of the Netherlands, in accordance with the TAMARA rules (to be obtained from the Chambers of Commerce in Amsterdam and Rotterdam and from the stichting TAMARA, Post Office box 4222, 3006 AE Rotterdam). The principal and the stevedore hereby agree in future to submit their dispute to three arbitrators.
2. As regards the collection of payable claims the stevedore shall be empowered to waive the provisions laid down in this article, in which case the competent judge in Rotterdam shall be exclusively competent to hear and determine the claim concerned.

## **Article 12 Final Clauses**

1. These terms and conditions shall be issued by the stevedore to the principal for inspection. Insofar as these terms and conditions do not provide for certain cases, the customary port practices shall apply. These terms and conditions shall be referred to as "1991 Terms and Conditions Rotterdam Bulk Cargo Stevedores". These terms and conditions have been lodged on behalf of the stevedore for general inspection with the office of the District Court in Rotterdam under no 505 and with the Chamber of Commerce in Rotterdam. The stevedore shall ensure that a copy of these terms and conditions is always available at or near the place where the work is being carried out.
2. Unauthorized translations of these terms and conditions in English, French and German have been lodged with the bodies mentioned above in clause 1. In the event of any disputes arising between parties, only the Dutch version shall be binding.