

GENERAL TERMS AND CONDITIONS

General terms and conditions of the private limited company Transport Trading Amsterdam (T.T.A.) B.V., having its registered office at Ruijgoordweg 80, 1047 HM Amsterdam, entered in the Commercial Register under file number 33250516, also trading under the names Barge Company Amsterdam and Ter Haak Intermodal, referred to hereinafter as 'TTA'.

1. APPLICABILITY

1. These general terms and conditions apply to all activities that TTA performs on the instructions of the other party, regardless of the nature of those activities.
2. TTA expressly rejects the applicability of the other party's general terms and conditions.
3. TTA is not bound by any variation from or addition to these general terms and conditions, unless these have been agreed in writing with a person who is authorised to represent TTA.
4. By contracting once with TTA on the basis of these general terms and conditions, the other party accepts the applicability of these general terms and conditions to all its future contractual and other relationships with TTA.
5. These general terms and conditions invalidate all terms and conditions agreed previously between TTA and the other party.
6. If and insofar as any provision of these general terms and conditions is void or may be voided, it will be replaced by a valid provision that corresponds as far as possible with the content and meaning of the void or voided provision. The voidness or voidability of any provision does not affect the applicability and validity of these general terms and conditions.

2. REFERRAL

1. TTA works as a freight forwarder and carrier on inland waterways. It also arranges for temporary storage, should the need arise. These general terms and conditions always apply in addition to mandatory conventions and legislation. The standard sectoral conditions referred to below apply each time to specific activities in addition to these general terms and conditions. This will be set out in further detail in the following paragraphs of this article.
2. In case of transport that is subject to the mandatory application of the Budapest Convention on the Contract for the Carriage of Goods by Inland Waterway (CMNI), these general terms and conditions will apply in addition to that convention.
3. In case of freight forwarding and other logistical activities, the Dutch Forwarding Conditions of Fenex – with the exception of the arbitration clause in those conditions and the article which refers to certain sectoral conditions for specific other activities – will be applicable.
4. In case of storage prior to, during or after any period of transport insofar as this does not form part of the transport, the Dutch Storage Conditions of Fenex – with the exception of the arbitration clause in those conditions and the article which refers to certain sectoral conditions for specific other activities – will be applicable.
5. With regard to any road transport route to the agreed loading port or from the agreed port of discharge (prior to or after the carriage by inland waterway), TTA undertakes towards the other party to only enter into a contract of carriage with a road carrier on behalf of the other party as a freight forwarder within the meaning of Section 60, Book 8 of the Dutch Civil Code. TTA will therefore not act as a road carrier itself. If TTA is nevertheless regarded as a road carrier in a given case, the General Transport Conditions of Stichting Vervoeradres (AVC) – with the exception of the arbitration clause in those conditions and the articles which refer to certain sectoral conditions for specific other activities – will apply in addition to the rules set out in Section 2, Part 13 of Book 8 of the Dutch Civil Code in case of internal (non-cross-border) road transport.
6. With regard to the transport of goods by rail, TTA undertakes to only enter into a contract of carriage with a rail operator on behalf of the other party as a freight forwarder within the meaning of Section 60, Book 8 of the Dutch Civil Code. TTA will therefore not act as a rail operator itself.

7. If TTA is nevertheless regarded as a rail operator in a given case, these terms and conditions will apply in addition to the provisions of any applicable convention or legislation. In that case, COTIF-CIM 1999 will also apply to cross-border rail transport if the place of receipt or the place that is designated for delivery is located in a State that is not a party to the convention. The rules set out in Book 8 of the Dutch Civil Code apply to all internal (non-cross-border) rail transport.
8. If TTA is regarded as a rail operator, the parties will be deemed to have entered into a separate agreement with regard to any road transport route or carriage by inland waterway prior to, in-between or following the rail transport. TTA undertakes with regard to the different route to only enter into a contract of carriage with a carrier on behalf of the other party as a freight forwarder within the meaning of Section 60, Book 8 of the Dutch Civil Code. TTA will not act as the carrier itself. If TTA is nevertheless regarded as the carrier with regard to the different route, the AVC (again excluding the arbitration clause and references to other sectoral conditions) will apply in addition to the rules set out in Section 2, Part 13 of Book 8 of the Dutch Civil Code in case of internal (non-cross-border) road transport.
9. The most recent version of these standard terms and conditions will apply at all times. TTA will decide in case of any doubt as to which terms and conditions also apply or in case of inconsistency.

3. EXCLUSION AND LIMITATION OF TTA's LIABILITY

1. All activities are performed at the other party's expense and risk.
2. TTA excludes any liability for consequential damage, bodily injury or damage caused by loss or damage of goods other than those to which the agreement applies, except insofar as such damage or injury is caused by the deliberate intent or wilful recklessness of TTA itself or its managerial staff.
3. In case of carriage by inland waterways that is subject to the mandatory application of the CMNI Convention, neither TTA nor any subcarrier that it engages will be liable for damage caused by:
 - an act or omission by the master of the vessel, the pilot or any other person in the service of the vessel, pusher or tower during navigation or in the formation or dissolution of a pushed or towed convoy [Article 25(2)(a) CMNI];
 - fire or an explosion on board the vessel [Article 25(2)(b) CMNI];
 - defects on TTA's own vessel, or on a vessel rented or chartered by it, existing prior to the voyage, if TTA can prove that these defects could not be detected prior to the start of the voyage despite due diligence [Article 25(2)(c) CMNI].
4. In case of carriage by inland waterways, the other party is obliged to load, stow and secure the goods in the vessel in the loading port or to unload the goods from the vessel in the port of discharge. TTA excludes any liability for damage caused during loading, stowing or unloading by or on the instructions of the other party.
5. In case of carriage by inland waterways, TTA excludes any liability for damage caused by the loss or damage of the goods for transport, which arose before loading in the vessel or after unloading from the vessel.
6. In case of rail transport, the other party is responsible for loading and unloading the goods.
7. If TTA is held non-contractually liable by the other party for damage arising during the performance of the activities, it will be not liable to any greater extent than it would have been contractually.

4. THIRD-PARTY CLAUSE

1. On behalf of its directors, employees, the agents its engages and their directors and employees, TTA stipulates the right, by accepting this clause, to rely on the agreement between TTA and the other party and to put forward all defences that TTA would be able to put forward against the other party.

5. LIABILITY OF THE OTHER PARTY

1. Insofar as the rules and conditions set out in Article 2 do not already make provision for the obligations and liability of the consignor on this point, the other party is obliged to ensure that its goods, accompanied by all documentation and information required under the provisions of any convention or legislation or as agreed with TTA, are present at the agreed time and place and that delivery is taken of such goods after transport.
2. The other party is fully liable towards TTA for all costs and damage arising for TTA from the failure to deliver or take delivery of the goods, or to do so on time, for the failure to provide compulsory or agreed documentation, or to do so on time, and for the incompleteness or inaccuracy of such documentation or information. This also applies specifically to costs and damage passed onto TTA by third parties that it engages.
3. TTA is also entitled to charge the other party in full for the agreed amount of the transport order if the other party does not deliver the goods at the agreed time or place, cancels the order within 24 hours prior to the agreed time of delivery or does not provide all documentation or information required by the provisions of any convention or legislation or as agreed with TTA, or fails to do so on time, and the transport cannot proceed or is delayed as a result.
4. If the other party wishes for the transport order to still be carried out in case of a delay, TTA will only be obliged to do so if the other party pays all the additional costs and damage in advance. TTA is entitled to charge the other party half of the agreed amount for the transport order if the other party cancels the order within a period of 48 hours prior to the agreed time of delivery.

6. RIGHT OF RETENTION

1. Insofar as the rules and conditions set out in Article 2 do not already grant TTA the right to suspend the handover of goods/documents, TTA has a right of retention with regard to the goods and documents that it has or will have under its control, for all claims that it has or may acquire against the other party.
2. This right of retention also covers unpaid amounts owing with regard to previous transport orders and may be relied on by TTA against third parties with an older right to the item in question.

7. EXCLUSION OF RELIANCE ON SET-OFF/SUSPENSION

1. The other party is not entitled to suspend the payment of amounts owing to TTA or to set off any amount owing to TTA against any claim that it has or alleges that it has against TTA. The other party also cannot rely on suspension or set-off by way of defence.

8. EXPIRY PERIOD

1. Insofar as the CMNI Convention, COTIF-CIM 1999, the Dutch Civil Code or the standard sectoral conditions mentioned in Article 2 of these general terms and conditions do not already provide in a given case for a specific prescription and/or expiry period, all legal claims against TTA will lapse by the mere expiry of one year.
2. This period commences on the day following that on which the claim became due and payable or the date on which the aggrieved party became aware of the damage.

9. APPLICABLE LAW AND JURISDICTION

1. The legal relationship between TTA and the other party will be governed exclusively by Dutch law, whether or not in addition to the mandatory provisions of any convention. In case of CMNI transport, Dutch law will apply as the chosen additionally applicable national law in accordance with Article 29 CMNI. Dutch law also applies to the issue of the applicability and validity of these general terms and conditions.
2. The Amsterdam District Court has exclusive jurisdiction in the first instance to take cognisance of disputes that may arise between TTA and the other party.